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18th sitting, 13 June 2017 (cont.), 4.50 p.m.

18^e séance, 13 juin 2017 (suite), 16 h 50

18.^a sesión, 13 de junio de 2017 (cont.), 16.50 horas

Chairperson: Mr Washington González

Président: M. Washington González

Presidente: Sr. Washington González

Discussion of individual cases (cont.)

Discussion sur les cas individuels (suite)

Discusión sobre los casos individuales (cont.)

Botswana (ratification: 1997)

Freedom of Association and Protection of the Right to Organise
Convention, 1948 (No. 87)

convention (n° 87) sur la liberté syndicale et la protection
du droit syndical, 1948

Convenio sobre la libertad sindical y la protección del derecho
de sindicación, 1948 (núm. 87)

A Government representative (Mr MABEO, Minister of Employment, Labour Productivity and Skills Development) stated that significant effort had been made, in collaboration with the social partners, towards the enactment of labour laws that protected and promoted workers' rights. The Trade Disputes Act had been amended in August 2016 in order to address delays in the resolution of trade disputes. Legislative amendments had

also been introduced pursuant to the Court of Appeal ruling on the invalidity of statutory provisions which gave the Minister the power to amend the list of essential services. That judgment clarified that it was the role of Parliament to determine the list of essential services. In response to the judgment, the Government had presented amendments to the Trade Disputes Act which included the issue of essential services. The Government's position on essential services was premised on the socio-economic circumstances of the country. Inclusion on the list of essential services did not deny those categories of employees the right to organize or to associate, but only the right to withdraw their labour. Section 13 of the Constitution guaranteed freedom of association, and allowed the reasonable limitation of that right in the interest of defence, public safety, public order, public morality or public health. The Trade Disputes Act had been carefully crafted to ensure its conformity with the Constitution and had been promulgated after extensive consultations. A considerable consultation had also been undertaken with public service unions on the Public Service Bill, and care had been taken to ensure that the Bill was constitutional. The Bill was at the stage of publication in the *Official Gazette* before being tabled before Parliament. That publication would allow for further consultation and input, and could result in further amendments prior to its consideration in Parliament.

The Committee of Experts considered that essential services were those whose interruption would endanger the life, personal safety or health of the whole or part of the population. However, the Committee of Experts also considered that account must be taken of the special circumstances that existed in various member States. While the interruption of certain services in some countries might only cause economic hardships, it could prove disastrous in others and rapidly lead to conditions that might endanger the life, personal safety or health of the population and stability of the country. That flexibility allowed the taking into account of the circumstance of the country when incorporating the spirit and intent of a Convention into domestic legislation. A more rigid approach would unduly restrict member States. The original list of essential services in the Trade Disputes Act had

been adopted approximately 25 years ago, and was amended in 2016 in response to new developments and the specific circumstances in the country.

The exclusion of prison officers from the coverage of the Trade Disputes Act and the Trade Unions and Employers' Organizations Act had also been cited as a contravention of the Convention. Prison officers in Botswana were classified as members of the disciplined forces and were the custodians of public safety and security. The constitutionality of that exclusion had been reaffirmed by the Court of Appeal. However, support staff or administrative staff were covered by the Trade Disputes Act and the Trade Unions and Employers' Organizations Act.

In the spirit of discussion and consultation, the Employment Act and Trade Unions and Employers' Organizations Act were being reviewed, which would include a number of the issues raised by the Committee of Experts. A request had been made to the ILO Decent Work Team for Eastern and Southern Africa in January 2017 for technical assistance in a number of areas, including labour law reform, with a focus on the Employment Act and the Trade Unions and Employers' Organizations Act. The objectives of that review were: addressing the gaps in those Acts; making the legislation conducive to the undertaking of business; incorporating the various decisions of the Courts; and aligning the Acts with the international labour standards ratified. Several ILO missions had been undertaken in April 2017. There had been general consensus that some of the labour legislation was outdated and needed revision in order to align it with ILO Conventions, and to comply with the decisions of courts. It had therefore been agreed that the main focus for the reform would be the Employment Act and the Trade Unions and Employers' Organizations Act, but reform could be extended to include other Acts, to ensure consistency. Social dialogue and stakeholder engagement during the labour law reform process were considered central to its success. The Government was committed to aligning its labour laws with ILO Conventions. There had not yet been the opportunity for open discussion with the social partners on the labour laws and the law reform and other consultation processes should be allowed to take their course. It was therefore necessary to wait for the outcome of these discussions.

The Employer members commended the Government for its ratification of all eight fundamental Conventions. Pursuant to certain provisions of the Trade Unions and Employers' Organizations Act, the Trade Disputes Act and the Prison Act, members of the prison service were part of the disciplined forces, and were therefore prohibited from becoming members of a trade union. According to Article 9(1) of the Convention, only armed forces and the police could be exempted from the application of the Convention. The national courts believed that the prison service was functionally akin to the police or armed forces. In its observation, the Committee of Experts had appeared to initially agree with that assessment. However, it then concluded that the prison service was not akin to the police or the armed forces, and requested the Government to amend the Law to grant the rights under the Convention to the workers in the prison service. In that respect, the Committee of Experts' recommendations appeared to be contradictory, and its conclusion without an explanation of its reasoning was confusing. Clarity in that respect was required in order to enable the Conference Committee to properly supervise the case. In addition, the right to associate did not automatically mean that the trade unions of prison staff would have a right to bargain collectively. It also did not mean that those workers would have the right to industrial action, as the Committee of Experts had recognized that prison services were essential services where strikes could be prohibited. However, the difference between the right of association and representational rights was sometimes not well understood.

Section 46 of the Trade Disputes Act, as amended, defined essential services to include the Bank of Botswana, diamond sorting, cutting and selling services, operational and maintenance services of the railways, veterinary services in the public service, teaching services, government broadcasting services, immigration and customs services, and services necessary to the operation of any of these services. Pursuant to section 46(2) of the Trade Disputes Act, as amended, the Minister could declare any other service as essential if its interruption for at least seven days endangered the life, safety or health of the whole or part of the population or harmed the economy. In that respect, the Employer members disagreed

with the conclusion of the Committee of Experts. With reference to the Joint Statement of the Workers' and Employers' groups at the 2015 Tripartite Meeting on the Convention in relation to the right to strike and the modalities and practices of strike action at national level, they considered that there was no basis for a discussion in the Committee on that point. Regulation at the national level was appropriate for those issues and the national regulation thereof had been in accordance with a decision of the courts.

Section 48B(1) of the Trade Unions and Employers' Organizations Act granted certain facilities only to unions representing at least one third of the employees in the enterprise. While the Committee of Experts had requested that this be amended, the difficulty with this provision was not clear. It would have therefore been more appropriate for the Committee of Experts to request information on the motivation behind that section. Section 43 of the Trade Unions and Employers' Organizations Act provided for inspection of accounts, books and documents of a trade union by the registrar at "any reasonable time". The Employer members agreed with the Committee of Experts' conclusion that "any reasonable time" was not appropriate and that inspection should be limited to an obligation to provide periodic reports.

The Committee of Experts' direct request referred to the reform of employment legislation. The ILO was providing technical assistance in that respect. The Government had met with the social partners and there was a general agreement on the need for a holistic review of the legislation, rather than of certain provisions of the Trade Unions and Employers' Organizations Act, the Trade Disputes Act and the Prison Act. In that respect, the Government and the social partners should be given the time needed to finish that holistic review and to amend the legislation in accordance with the Committee's ultimate conclusions, and then to report back.

Les membres travailleurs ont souligné que la liberté syndicale consacrée dans la convention constitue un droit fondamental indispensable pour la réalisation de tous les autres droits. Ce droit implique, d'une part, le droit de s'associer avec d'autres travailleurs pour fonder des organisations syndicales et, d'autre part, le droit de mener des actions collectives. La commission d'experts a fait état à plusieurs reprises de violations de la convention par le

Botswana, ce qui lui vaut d'être présent sur la liste des cas individuels et de devoir fournir des explications circonstanciées sur les faits qui lui sont reprochés. S'agissant tout d'abord des actes de favoritisme à l'égard de certains syndicats, cette question constitue une des violations de la convention les plus insidieuses et plus dangereuses car elle a pour conséquence de semer la dissension et la divergence au sein des organisations de travailleurs. En outre, le fait de favoriser une organisation au détriment des autres constitue une atteinte indirecte au droit de s'affilier à l'organisation de son choix.

En ce qui concerne la nécessité de modifier la législation pour permettre aux travailleurs de l'administration pénitentiaire de s'affilier à un syndicat, le gouvernement estime que les services pénitentiaires font partie des forces tenues à la discipline et, par conséquent, peuvent être exclus de la protection de la convention au même titre que la police ou les forces armées. Les membres travailleurs ont souligné à cet égard que la dérogation permise à l'article 9 pour la police et les forces armées doit être interprétée de manière restrictive, comme l'a observé la commission d'experts dans son étude d'ensemble de 2012 sur les conventions fondamentales. C'est la nature des activités exercées par les fonctionnaires de l'administration pénitentiaire qui permet de relever de la dérogation et non le fait que l'administration pénitentiaire soit soumise à un régime de discipline. D'ailleurs, la police, les forces armées et les services pénitentiaires sont réglementés par des législations séparées.

S'agissant de la longue liste des services essentiels contenue dans le projet de loi sur les conflits du travail à laquelle s'est référée la commission d'experts, les membres travailleurs ont souligné que plusieurs services repris dans la liste ne peuvent pas être considérés comme relevant des services essentiels, c'est-à-dire ceux dont l'interruption mettrait en danger, dans l'ensemble ou dans une partie de la population, la vie, la sécurité ou la santé de la personne. En outre, la disposition permettant au ministre de déclarer tout autre service comme étant essentiel si son interruption porte atteinte à l'économie revêt un caractère arbitraire et n'est pas compatible avec la convention. Cette disposition est de nature à vider le droit de mener des actions collectives de toute sa substance dans la mesure où toute

action d'une certaine ampleur aura inévitablement un impact sur l'économie du pays. La législation doit donc être modifiée afin de limiter la liste de services essentiels.

En ce qui concerne les seuils de représentativité exigés pour accorder certaines facilités aux syndicats, l'instauration de seuils de représentativité n'est pas en soi incompatible avec la convention. Toutefois, cette possibilité est soumise à des conditions (caractère précis et objectif des critères ou distinction opérée limitée à certains privilèges). Dans le cas d'espèce, la loi ne fixe pas un seuil minimum d'effectif pour constituer un syndicat mais pour accorder certains privilèges comme l'accès aux locaux de l'entreprise pour recruter des membres ou la représentation des membres en cas de plaintes, de sanctions disciplinaires ou de licenciement. Or ces deux éléments sont des aspects fondamentaux et élémentaires de l'action syndicale. Sans eux, il devient presque impossible pour un syndicat de recruter des membres et de s'implanter au sein d'une entreprise. Par conséquent, les travailleurs n'ont plus la possibilité de choisir librement leur organisation syndicale.

Les membres travailleurs se sont référés à une autre disposition de la législation violant la convention et devant être amendée, celle habilitant le greffier des syndicats à inspecter les livres et documents d'un syndicat «à tout moment raisonnable». Cette mesure constitue une ingérence dans les activités des organisations contraire à la convention dans la mesure où les contrôles des autorités ne peuvent être que d'ordre exceptionnel et strictement encadrés. Les organisations doivent disposer de l'autonomie et de l'indépendance nécessaires.

En 2005, la commission d'experts a salué les efforts déployés par le Botswana pour assurer une meilleure application de la convention. Il est à espérer que de nouveaux progrès pourront être constatés concernant les différents points évoqués ci-dessus afin d'assurer le respect total de la liberté syndicale.

The Worker member of Botswana (Mr MHOTSHA) expressed support for the Committee of Experts' conclusion that prison staff were not members of the disciplined forces and were therefore being unjustly denied the right to organize and bargain

collectively. No court ruling had indicated that prison staff belonged to the disciplined forces. The recent amendments of the Trade Disputes Act had significantly enlarged the definition of essential services. In April 2011, the public service unions had gone on strike and demanded a salary increase when no agreement had been reached through negotiation. In response, the Government had quickly introduced legislation seeking to categorize a number of services as essential, including the teaching services and the diamond cutting and polishing services. That legislation had subsequently been ruled unlawful by the judiciary. In 2016, despite the strong opposition of trade unions, amendments to the Trade Disputes Act had been adopted extending the list of essential services from 10 to 16 services, certain of which did not fall under the definition of essential services in the strict sense of the term. Those amendments had opened the door for the classification of the whole economy as essential, in providing that all other services that were necessary for the operation of the services listed were also considered essential. Both workers directly involved in the services listed as essential and those working in supporting services were affected, including workers in the public, parastatal and private sectors. Moreover, the amended Act prohibited all workers in essential services from participating in a strike, which aimed to prevent the use of strikes as a bargaining tool. Those provisions had not been enacted pursuant to court rulings. Section 46(2) of the Trade Disputes Act as amended further authorized the Minister to declare more services essential if a strike lasted more than seven days after consulting the Labour Advisory Board. That was unacceptable, as consultation of the Labour Advisory Board had often been a formality. The industrial relations situation in the country was deteriorating, as evidenced by the newly proposed amendments to the Public Service Act, which were to be presented before Parliament in July 2017. The proposed amendments sought to deprive public employees of the right to bargain. Section 72 of the proposed amendments provided that the Department of Public Service Management would be the secretariat of the Public Service Bargaining Council (PSBC), and that would enable the Government to take control of the Council. In addition, section 74(4) of the proposed amendments authorized the Minister to appoint the Chairperson and Vice-Chairperson of

the Council without any consultations with, or agreement of, the trade unions. The proposed amendments would also allow employers to make salary increments without the Council's approval. Those changes, if adopted, would render collective bargaining in the public service useless. He urged the Committee to call upon the Government to comply with its international obligations.

The Government member of Swaziland (Ms MAGAGULA, Minister of Labour and Social Security), speaking on behalf of the member States of the Southern African Development Community (SADC) acknowledged the efforts of the Government. ILO technical assistance had begun with a view to achieving compliance with the Convention, and that assistance should continue. Meaningful and constructive social dialogue was encouraged among all the partners involved in ensuring full compliance with the Convention, taking into account the socio-economic environment of the country. The Government should be given the opportunity to continue the internal review process of the relevant national legislation in an effort to ensure full conformity with the Convention, and the necessary technical assistance should continue.

The Worker member of Zimbabwe (Mr MUTASA) stated that the Trade Unions and Employers' Organizations Act violated labour rights. Sections 11 and 15 of the Act prohibited unregistered trade unions from conducting any operations. However, the Committee of Experts had previously recommended that the activities of unregistered unions should not be totally banned and that an opportunity should be provided to rectify the absence of formal registration, by virtue of Article 2 of the Convention. Moreover, section 27 of the Act required that trade unions and employers' organizations conduct "a general meeting" by convening all members of the concerned organization, which was difficult to achieve in practice. Trade unions must have the right to regulate their own operations through their constitutions. Stipulating such conditions was inconsistent with the requirement of Article 3(1) and (2) of the Convention and amounted to interference. The Trade Unions and Employers' Organizations Act also granted excessive authority to the

registrar. Pursuant to section 43 of the Act, the registrar could interfere in the operations of a trade union by inspecting its books without any cause. The Government had a duty to ensure transparency, but there were no guarantees of an impartial procedure by the competent judicial authorities. It was regrettable that those provisions, which interfered with the autonomy and financial independence of trade unions, had not been amended despite the repeated recommendations by the Committee of Experts. Consequently, the Government must be called upon to abide its international obligations.

The Government member of Malawi (Ms KAWAMBA) took note of the Government's statement regarding the challenges surrounding the practical application of the Convention. She commended the Government's efforts, particularly its request for ILO technical assistance with the labour law review, to address certain gaps and with a view to guaranteeing the constitutional right to freedom of association. The ILO should provide the support necessary in order to fulfil the country's obligations. She encouraged the Government to engage in meaningful consultation with the social partners and stakeholders to align the labour laws with ILO Conventions.

The Worker member of Norway (Ms MJØBERG), speaking on behalf of the trade unions of the Nordic countries, expressed disappointment that the new Trade Disputes Act limited the fundamental rights of many workers. Prison workers were prohibited from joining trade unions. Section 46 of the Trade Disputes Act as amended enumerated a broad list of essential services, and other services could be added at the Minister's discretion. This affected approximately 20,000 workers and appeared to stifle trade union activities. Botswana's tripartite Labour Advisory Board currently only advised the Minister. Instead of imposing restrictions, the Government should enhance social dialogue with the social partners on the basis of trust and respect, and agree on a roadmap for cooperation. The right to organize for all workers was not antithetical to an agreement as to what constituted essential services. In conclusion, the Government should promote the development and use

of collective bargaining mechanisms and laws in both the private and public sectors, and widen the scope of workers covered by effective collective bargaining agreements.

Le membre gouvernemental de la France (M. JEANNEROT) s'est référé aux problèmes identifiés par la commission d'experts concernant, d'une part, les entraves au libre exercice d'une activité syndicale, et notamment l'impossibilité pour le personnel pénitentiaire de s'affilier à une organisation syndicale, et, d'autre part, la définition très large des services essentiels qui exclut de nombreux travailleurs de l'exercice du droit de grève. La liberté syndicale et les dispositions concrètes, qui permettent le plein exercice de ce droit à travers un dialogue social effectif et équilibré ou des protections et facilités accordées aux représentants des travailleurs, sont primordiales. De même, le droit de grève constitue un élément essentiel de la liberté syndicale, et il convient de rappeler l'importance qui s'attache à son respect dans le cadre de l'application de cette convention. L'orateur a invité le gouvernement à tenir compte des demandes formulées par la commission d'experts concernant la modification de la législation sur les conflits du travail et la fonction publique afin de permettre aux travailleurs dont les fonctions ne peuvent raisonnablement pas relever des services essentiels d'exercer librement une activité syndicale.

An observer representing Education International (Mr RARI) noted with concern the inclusion not only of teachers but of support staff among the essential services in section 46 of the Trade Disputes Act, as amended. As outlined in the 2012 General Survey of the Committee of Experts, the restriction of the right to strike should only be limited for those services whose interruption would endanger life, personal safety or health, and teachers did not fall within that definition. During a lengthy strike, the possibility of establishing minimum services in consultation with the social partners made the inclusion of education on the list even less necessary. The core value of respect for teachers must be reflected in appropriate working conditions as well as in freely negotiated collective agreements, for which the ability to strike was fundamental. Unions had been given only three days to make written submissions on the draft amendments to the Public Service Act,

without any face-to-face consultations. Nonetheless, the amendments had been gazetted and would be submitted to Parliament in July 2017.

An observer representing the International Transport Workers' Federation (ITF) (Mr SUBASINGHE) recalled that, as clearly enunciated by the Committee of Experts, the essential services enumerated in section 46 of the amended Trade Disputes Act did not constitute essential services in the strict sense of the term. Transport generally did not constitute an essential service. Other than air traffic control, the transport occupations listed in the Act, namely the operational and maintenance services of the railways and the transportation and distribution of petroleum products, did not constitute essential services. Furthermore, the broad classification of services necessary to operate essential services as also essential would invariably capture the majority of transport operations in the economy. Harm to the economy caused by the interruption of a service was insufficient to consider it as an essential service and this would limit collective bargaining. For example, the majority of members of the ITF-affiliated rail union workers in the state railways' operations, engineering, finance and IT departments, were all covered by the essential services provision. Moreover, the Government had failed to give compensatory guarantees for workers deprived of the right to strike. The Government had not even considered the introduction of a negotiated minimum service as a possible alternative to a total prohibition on strikes. The new essential service provisions made it more difficult for transport workers to take action in defence of their jobs, livelihoods and working conditions. Echoing the comments by the Government member of France, he recalled that the right to strike was a human right protected in international law, not only covered by the Convention, but also recognized now as customary international law. The Government was therefore urged to comply with the observations of the Committee of Experts in order to bring the amended Trade Disputes Act into conformity with the Convention.

The Worker member of South Africa (Mr MASUKU), speaking on behalf of the Southern Africa Trade Union Co-ordination Council (SATUCC) and its affiliates in the

SADC, recalled that the Trade Disputes Act and related legislation such as the Public Service Bill and the Prison Act subjected workers to a labour market system in which organizing and bargaining were viewed as contradictory to progress. Botswana illustrated a tendency to restrict workers' rights in the race to diminish labour standards. Botswana had for some time been ambivalent regarding labour rights and the freedom to express contending views. There was a regional trend to erode gains made by workers and seemingly to test problematic legislation which restricted workers' rights. When the Trade Disputes Act had been adopted it essentially eliminated the right to strike and the means to bargain. The Committee should call on the Government to respect the unequivocal and unambiguous provisions of the Convention regarding the rights of workers to organize. Ratifying a Convention without adapting national law was in violation of international law.

An observer representing Public Services International (PSI) (Mr RUBIANO) noted that the Government had started a wide-ranging process of revising the labour legislation in the country. Certain provisions of the new Public Service Bill were not fully in line with ILO principles on freedom of association and collective bargaining. Section 3(2)(c) of the Bill excluded some categories of workers from unionization. This included "members of staff" of the Directorate of Intelligence and Security. The term "members of staff" had a wide meaning, which would exclude support staff such as labourers and cleaners. Section 19(2) excluded, among others, persons who had been convicted of a criminal offence from joining the public service. The term "criminal offence" was also broad and it might prevent, for example, a person convicted of over-speeding from joining the public service. Section 50 banned political expressions in the public service but was silent as to what constituted a political matter. According to ILO principles, workers should enjoy civil liberties and freedom of political expression. Section 61 removed the power of the PSBC to settle disputes or grievances of whatever form. Sections 72 and 74(4) of the Bill gave power to the Directorate of Public Service Management and the Minister to appoint the secretariat, Chairperson and Deputy Chairperson of PSBC respectively. Currently the

Constitution of the PSBC conferred that power to the Council itself. Section 74(3) provided that representatives of both the worker and employer shall be public officers. That restriction limited both parties to be represented by experienced negotiators of their choice and was contrary to Article 3 of the Convention. Section 75 gave the employer the power to unilaterally change terms and conditions of service without input from PSBC, or even workers. Finally, section 76(2) gave the possibility for the employer to confer benefits during ongoing negotiations, which short circuited the bargaining process and might be contrary to the duty to bargain in good faith. The revision of the labour legislation in Botswana was a great opportunity for the Government and the social partners to adopt legislation in line with ILO Conventions. In that process, consultations with representative trade unions were of the utmost importance for constructive labour relations and to maintain the social peace. He requested that the Government keep working with the ILO and that there be a formal process of consultation with trade unions representing public sector workers.

The Government member of Zimbabwe (Ms CHIVAKE) expressed support for the statement delivered by the Government member. Consultations were ongoing with a view to aligning legislation with the ILO Conventions. The Committee should afford the tripartite partners an opportunity to undertake these consultations in earnest. The issues raised by the Committee of Experts provided a good platform within which the tripartite constituents in the country could continue to engage. Issues around labour law reform and social dialogue required the collaboration of the tripartite partners. The speaker encouraged the ILO to provide the necessary support in order to achieve the desired objectives.

The sitting closed at 6.05 p.m.

La séance est levée à 18 h 05.

Se levantó la sesión a las 18.05 horas.

19th sitting, 13 June 2017, 6.40 p.m.
19^e séance, 13 juin 2017, 18 h 40
19.^a sesión, 13 de junio de 2017, 18.40 horas

Chairperson: Mr Washington González
Président: M. Washington González
Presidente: Sr. Washington González

The Government representative acknowledged the contributions in the discussion as helpful and indicated that some issues raised by members of the Committee had not been factual. For instance, all registered trade unions had the right to organize and no trade unions were favoured by the Government. All trade unions were subjected to labour laws and could have recourse to established trade dispute resolution mechanisms and the courts of law. He did not agree with the statement by the Worker member of Botswana that consultations in the Labour Advisory Board were superficial. Botswana had ratified 15 ILO Conventions as a result of the advice of that body. He fully agreed with the position of the Employer members regarding the need for a holistic review of the labour laws. The Government also undertook to further engage with social partners to clarify certain issues during the labour law reform process. Consultations must be given the necessary time to take place.

Les membres travailleurs ont réaffirmé que ce cas avait toute sa place dans la liste des 24 cas individuels, qui est établie de manière consensuelle. Les violations sont clairement énoncées par la commission d'experts depuis 2001 et il est à espérer que le gouvernement mette tout en œuvre pour respecter ses obligations internationales. Pour cela, il doit notamment: i) s'abstenir de toute action ayant pour conséquence de favoriser une organisation au détriment des autres; ii) modifier la législation en vue de permettre à tous les travailleurs de l'administration pénitentiaire de s'affilier à un syndicat et de limiter la liste des services essentiels. A cet égard, il y a lieu de rappeler que, dans leur déclaration conjointe de 2015, les membres employeurs et les membres travailleurs ont reconnu le droit de mener des actions collectives. Le fait de discuter de la notion de service essentiel permet de déterminer quelles limites peuvent être apportées à ce droit, sur la base de cette déclaration conjointe. Par ailleurs, le fait de permettre à un Etat de considérer qu'un service relève d'un

service vital si son interruption porte atteinte à l'économie comporte une double conséquence: cela remet en cause le droit des travailleurs à mener des actions collectives et cela contredit l'objectif principal de l'Organisation en soumettant la réalisation de la justice sociale à un impératif d'ordre économique. A ce titre, il y a lieu de se féliciter de la déclaration du membre gouvernemental de la France selon laquelle le droit de grève constitue un élément essentiel de la liberté syndicale.

Concernant les privilèges accordés uniquement aux syndicats représentant un tiers des salariés de l'entreprise, le gouvernement doit soit revoir le seuil fixé, soit revoir les privilèges accordés à ces syndicats. Ces privilèges empêchent le développement du pluralisme syndical. Enfin, le gouvernement doit supprimer la disposition permettant au greffier des syndicats de consulter les livres et documents d'un syndicat à «tout moment raisonnable». Pour mener à bien ces réformes, les membres travailleurs ont demandé au gouvernement de se prévaloir de l'assistance technique du BIT et de mettre en place un plan de travail en collaboration avec les partenaires sociaux.

The Employer members stated that they understood why Botswana was a case on the list, and that they were in agreement that the list's determination was a consensual process. They recalled that they had questioned whether prison services were akin to the police forces or the army. However, the Committee of Experts had been correct to indicate that the legislative provision providing for the inspection of accounts, books and documents of a trade union by the registrar at "any reasonable time" should be limited to a periodic basis. Disagreement existed on the issue of essential services and the right of those services to industrial action. Disagreement existed with respect to the existence of the right to strike under the Convention. In that respect, the Government group statement of the 2015 Tripartite Meeting on the Convention in relation to the right to strike and the modalities and practices of strike action at national level had stated that the scope and conditions of the right to strike were regulated at the national level. That also applied to issues of essential services. Noting the reference to the 2012 General Survey of the Committee of Experts, the Employer

members stated that it had been that report that had led to the difficulties in the Committee's functioning.

The Employer members indicated that the provision of technical assistance should continue. The holistic review of the legislation should also continue, particularly in light of the numerous pieces of legislation mentioned by various members of the Committee. The Government should then report back as to the outcome of the holistic review and the changes made.

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