The Worker member of the United Kingdom joined in the comments made by the Worker members as well as those made by the Worker member of Rwanda. He stated that the Ethiopian Government's interference with the trade union activities had not only extended to control of the national centre of the Central Ethiopian Trade Union (CETU), but also to eight of its affiliates over the past few years. He noted that, since the beginning of 1999, the Government had constantly harassed the International Federation of Banks and Insurance Trade Unions (IFBITU) which was the one remaining affiliate still independent of government influence. In addition, trade unionists allied to IFBITU President Abiy Mellesse had been intimidated, harassed and detained, with many having been forced into exile. In 1999, the Ethiopian authorities placed further pressure upon the leadership of the union, marginalizing it in four out of the five institutions where it was organized. Government security forces had also attempted to prevent union elections within the offices. Subsequently, illegal trade union elections were held and the new leadership took the union back into the CETU, thereby placing it under government control.

He emphasized that IFBITU President Abiy Mellesse now feared for his life. He recalled that the supervisory bodies of the ILO had repeatedly observed that it was impossible to exercise trade union rights effectively in an atmosphere of fear and violence. He ended by stating, based on the comments made by the Worker member of Rwanda with regard to the continued detention and lack of due process in the case of the President of the Ethiopian Teachers' Association, Dr. Woldesmiate, whose case had been followed with great concern, not only by the ILO and the international trade union movement, but also by teachers' unions affiliated to the TUC in the United Kingdom.

He concurred with the Worker members' statements that allegations that the President of the Ethiopian Teachers' Association was a terrorist were simply not credible. Noting the seriousness and longstanding nature of the case, he joined the Worker members in calling for the Committee to issue the strongest conclusions possible in respect of this matter.

The Worker member of Greece said that the tragic situation of Ethiopian workers could not be reflected in a page and a half of comments. While it was true that in any organized society the different categories of workers did not have the same possibilities of free speech, it was difficult to imagine that unskilled workers or agricultural workers would have the right of free speech.

Moreover, little pleasure could possibly be felt concerning the return to dialogue with the Government of Ethiopia given that the announcement that the law would shortly be modified had been made in the previous six years. In this statement, the Government undertook to act within a definite time frame. Invoking old practices was no excuse for new delays.

The Worker member of Senegal noted that following accession to independence, governments had been able to lure trade unions into participating in united fronts with a view to economic reconstruction of their countries. This period was now over and trade union pluralism was today a reality in Africa. The observations made by the Worker member representing Ethiopia were not considered adequate or acceptable. This was why this case should be mentioned in a special paragraph. It would also be appropriate to consider other measures that could be envisaged to bring an end to the harassment of the Ethiopian workers and ensure that they enjoyed freedom of association and the right to organize in order to defend their interests.

The Government representative of Ethiopia stated that he had listened carefully to the comments made by the Employer members and Worker members as well as other speakers and thanked those who had made constructive comments and suggestions. As in previous years, some delegates had again raised the issue of cases concerning some of the former members of the executive committee of the Ethiopian Teachers' Association and their transfer to the trial and conviction of Dr. Taye Woldesmiate. In the past, the Government had provided detailed responses to these allegations. Referring to the case of Dr. Woldesmiate, the Government representative asserted that the trial and conviction was not related to the Ethiopian Teachers' Association. He maintained that Dr. Woldesmiate had been duly charged, tried and found guilty for engaging in violent actions against the law. He referred to the fact that the ILO had repeatedly observed that it was impossible to exercise free speech in Ethiopia, and noted that the translation of the court's judgement once it became available should undertake to act within a definite time frame. Invoking old practices was no excuse for new delays.

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The Worker members requested the Government to provide responses regarding the release of detained members and leaders of the union, as well as reinstatement and compensation for those union members and leaders dismissed from their jobs. The Government representatives had promised that the release of detained members and leaders of the union would be resolved overnight but on which the Government apparently was working, notably the problem related to the essential services, the Worker members nevertheless wished to see evidence of the Government's commitment.

In response to comments made by the Worker members, the Government representative affirmed his Government's commitment to report to the Committee of Experts before its next session on the application of the Convention in practice, including providing detailed responses to all the issues raised in the Committee of Experts' comments and providing evidence of tangible progress made in amending the legislation concerned to bring it into conformity with the Convention. He noted the problem with the issue of the right to strike, concerning essential services, but maintained that the moment was not propitious for finding a solution. Ethiopia was attempting to obtain information from other countries on their experiences in this regard and might not have completed its study within the six months given. However, he assured the Committee that, in accordance with the request of the Worker members, Ethiopia would continue to extend its full cooperation to the ILO supervisory mechanisms. He reaffirmed Ethiopia's strong commitment to the fundamental principles of the ILO Convention.

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in this area, and that these conclusions would encourage Congress to approve the draft definitively and transform it into the law of the Republic.

The Employer members thanked the Government representative for the information he had supplied and observed that Guatemala had been on the Committee's agenda for a very long time, much of it regrettably for this very case. In its comments, the Committee requested that on the basis of information provided by the Government of a draft law before Congress aimed at bringing legislation into conformity with Convention No. 87, made in relation to the repeated requests of the Committee of Experts. He reiterated that the Government had not been able to take measures to bring its legislation in line with the provisions of the Convention. However, the conclusions should also reflect that the Government had supplied a draft bill to the Office in May. Nevertheless, it should also be noted therein that the Committee should await the comments of the Committee of Experts on the draft legislation before coming back to this case, if necessary.

A Worker member of Guatemala stated that he had been informed by the Government's statement of the position of the Delegate of the Government of the Republic of Guatemala which was to be based on the application of a Convention which is fundamental both in law and practice. They also requested that the conclusions of the Committee should appear in a special paragraph. The Worker members considered that the statement of the Employer members last year: “On the issue of the interference of public authorities in the internal administration, programmes and the structure of trade unions ... changes without delay were required since these matters had been under discussion for more than five years.” In his statement to the Conference in 1999 the Government representative had said that his Government was aware that its compliance with Convention No. 87 had been at the centre of debate for a number of years both in the Committee of Experts and the Conference Committee. In 1983 the Committee and the Employers' Committee had been divided into two parts. The first part dealt with legislative provisions relating to labour disputes and, in particular, the right to strike. As mentioned in previous years, the Employer members recalled that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention was adopted. The Employer members called that Convention No. 87 did not regulate the right to
tripartism as the best way of guiding relations in the production sec-
tor. He requested that the conclusions of the present Committee should reflect the fact that the draft law the Government had referred regretfully had no tripartite basis.

The Worker member of Norway, speaking on behalf of all the Workers from the Nordic group, fully supported what had been said by the Worker members. Guatemala, under the Penal Code, which could be used to impose prison sentences on the 12 cases of assault, battery, kidnapping, murder, torture and death threats against Guatemalan trade unionists and their families, which occurred between 1994 and 1995 and which were reported to the United States trade representative in January 1996, were still unresolved without conviction or retribution.

In conclusion, the ILO should do everything within its powers to ensure that the Minister's plans to bring about genuine compliance with Convention No. 87 in his country prevailed. He called on his own Government, since it had joined with regard ratified the modernization of Central American labour ministries, to actively engage with the Minister and the Guatemalan labour movement, to enhance the enforcement capacity of both the Guatemalan Labour Ministry and the trade union movement.

A Worker member of Colombia emphasized that the legislation of Guatemala contained unacceptable obstacles to freedom of association. He hoped that next year the promised new law regarding trade unions would address this and recalled the cases made by previous governments were never fulfilled. It was necessary to respect the rights of trade unions and to guarantee the development of freedom of association. Furthermore, the Government should guarantee that trade union activities would not be criminalized, and it should eliminate the existing situation of impunity. He recalled that a democracy without trade unions was a caricature and that unions should be strengthened in order to avoid the violent conflicts well-known in the country.

A Worker member of Uruguay indicated that it was clear from the reports of the Committee of Experts, the statements by the Worker members, and by a Worker member of Guatemala, that the situation in violation of article 8 of the Convention No. 98, concerning freedom of association, and 23 persons for criminal acts in relation to the conflict in the banana industry.

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The Committee had been informed that the Government might now show signs of understanding the gravity of the situation and that it would no longer tolerate the non-respect of Convention No. 87. Copies of amendments to the Labour Code to bring it into conformity with the Convention had in effect been forwarded to the Office very recently. However, promises to change existing laws had been given earlier — and not kept. It would be shameful to repeat this exercise again. It was therefore the responsibility of this Committee to inform the Government that it was not content with the practice into conformity with the Convention, and thus to ensure that the effective protection of the workers' rights are organized, bargain collectively and take part in industrial action. The Employer member of the United States pointed out that many of the issues raised by the Committee of Experts in its report last year were now before the Conference Committee without any final and satisfactory resolution. The Minister had made tremendous ef-
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Penal Code, in order to bring them into conformity with the re-
quirements of the Convention, had been sent by the President of the Republic of Kuwait to the Committee for adoption. The Com-
mittee indicated that it would be for the Committee of Experts to
examine the compatibility of these amendments with the provisions
of the Convention and trusted that these amendments would finally
allow the full application of this fundamental Convention to
Kuwait in 1952. The Committee was still concerned by the lack of concrete
progress in practice. The Committee expressed its firm hope that
the Government would send a detailed report to the Committee of
Experts attesting the amendments had been so as to allow an
assessment of real progress in law as well as in practice by
the following year. It recalled the importance it attached to triar-
tite consultations with regard to the application of the principles of
freedom of association.

Kuwait (ratification: 1961). A Government representative, re-
ferring to the Committee of Experts' comments, stated that his
country had been a democracy for almost 300 years. Its tenet was
equality and social justice and was founded on the principles of Is-
lam. He also noted that the Constitution of Kuwait was based
on international Conventions and that Kuwait was therefore commit-
ted to adopt the new draft law as soon as possible. The Gover-
ment explained that the delays in drafting the new legislation were due to
the fact that it was extremely detailed. The draft text was in fact
being studied by various committees, who were examining it in
depth in view of the application of the provisions of all groups. The
law would eliminate the requirement that a particular number of
workers or employers was needed to form workers' or employers'
organizations. This amendment was evidence of the Government's
commitment to the principles of freedom of association. The Com-
mittee representative indicated that he had a long list with him of all
the changes made in the draft text. While he did not wish to take up
the Committee's time by reading out this list, he assured the Com-
mittee that it was in accordance with the Committee of Experts' comments. In July 1999, new elections had been held for
the Kuwaiti National Assembly following a protracted election
campaign. In the interim, Kuwait had benefited from an ILO mis-
sion which had assisted technical assistance on the provisions of
the draft law, including principles established in international Con-
ventions and removing provisions from the draft text that were not in
conformity with those Conventions. The draft law would soon be
presented to the National Assembly for adoption. The Government
representative noted that Kuwait was committed to this manner and believed that his Government's efforts would bene-
fit Kuwaitis, noting that Kuwaiti society enjoyed true democracy,
freedom of the press, equality and genuine separation of powers.
Kuwait had improved the situation of domestic workers and national
legislation and now allowed these workers to form trade unions.
This change had been noted by the International Confederation of
Free Trade Unions (ICFTU), who had observed that migrant work-
ers in Kuwait were members of such unions. In fact, Kuwait had
reached the one-third of the membership in such trade unions. He explained that migrant workers were twice as numerous as Kuwaitis and asked the Committee to take the unique composition of Kuwait's population into account, pointing to the number of migrants and the diversity of cultures and religions in his country.

The Worker members noted that it was not the first time that
the Committee examined the question of the application of Conven-
tion No. 87 in Kuwait. As already noted, the Committee had in fact examined
various Conventions in the beginning of the 1980s and furthermore in 1992, 1995
and 1996. The long and detailed list of points raised by the Commit-
te of Experts evidenced that freedom of association was subjected
to severe restrictions in Kuwait. Additional violations of Conven-
tion No. 87 had been noted in 1992, 1995 and 1996. The Committee of Experts had also
expressed that the Committee of Experts had been wrong. In the
statement that the Committee of Experts had been wrong. In the
context of the discussion, it had been said that the country had had
difficulties resulting from the presence of nationals from many dif-
ferent countries. Even in a country which demonstrates a demo-
ocratic advantage over other countries, the exercise of freedom of
association and the full application of Convention No. 87 would entail
the establishment of ten unions within the same enter-
prise. Although it undoubtedly needed to attract a large number of women and men to work in the country, it was not enti-
olated to depriving them of almost all their rights. It was further also
incorrect to assume that a recognition of the freedom of association
would entail the establishment of ten unions within the same enter-
prise.
prise. Furthermore, such an assertion constituted an acknowledgment of the absence of freedom of association in Kuwait. A country as well as its constitutional and international obligations, had to take the necessary measures to bring legislation and practice into conformity with international labour standards. The Conference Committee might recall that the question of an ILO contact mission to Swaziland had been raised last year. The Committee had decided, after the Government representative had requested the Bill's progress, to leave in abeyance the debate on a contact mission until this year, if necessary. In view of the significant progress that had been made to give effect to the Act, debate on the matter would in his view no longer be necessary.

Prominent in last year's discussions in the Conference Committee had been concerns raised by the Committee of Experts relating to certain provisions of the Industrial Relations Act, 1996. The Committee noted the statement made by the Government representative according to which all the undertakings made by him today, would be fulfilled by next year. In view of this, it requested the Committee to provide the Committee with information on actual progress made.

The Worker members recalled that contradictions with Convention No. 87 had been established. They therefore urged the Government to remedy the situation. It should request the Government to report on the adoption of the draft law and supply a copy so that the Committee could determine what changes had been made.

The Committee noted the statement made by the Government representative and the discussion which took place thereafter. It noted with regret that the Committee of Experts had been commenting for many years now on the need for the Government to eliminate the many divergences existing between the legislation and the Convention. In particular, the Committee of Experts had urged the Government to take the necessary measures to abolish the distinction between Kuwaiti legislation and the provisions of the Convention. As in the past, the Committee must urge the Government to remedy the situation. It should request the Government to report on the adoption of the draft law and supply a copy so that the Committee could determine what changes had been made.

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Swaziland (ratification: 1978). A Government representative indicated that Swaziland was a staunch Member of the ILO. This was evidenced, amongst other things, by the regular payment of its annual contributions and its requests for ILO technical assistance which it ranked high. The ILO's response to these requests had always been positive and the relationship between the Organization and the member State had gone from strength to strength. It was on this basis that Swaziland had always subscribed to the Declaration and was pleased to report that the Bill had since been signed into law.

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Swaziland was fully aware that international labour standards were a vehicle for the attainment of social justice and democracy, which were fundamental in the workplace. Last year, he had addressed this Committee on efforts that had been made and were being made to pass the Industrial Relations Bill, 1998, into law. He was pleased to report that the Bill had since been signed into law. A copy of the Act had been communicated to the Committee of Experts. As the Committee might recall, the initial Bill had been elaborated by a tripartite committee. After winning government approval, the draft had been submitted to Parliament. In its wisdom, Parliament had introduced certain amendments, which had been incorporated into the present Act. The Government represented the Office to pass on a
The Employer members indicated that the Committee faced a dilemma with regard to its conclusions, since it only knew about the legislation that had been passed and that had remained a very serious case of non-compliance with the Convention. They recalled that a direct contacts mission had visited the country in 1996 following the invitation made by the Government during the discussion of the Convention in the Conference Committee. The mission confirmed the widespread harassment of the country's trade unions. This led the Government to draft a new Industrial Relations Bill with the assistance of the ILO which was consistent with Convention No. 87. However, the Bill had not been enacted as expected. In 1997, the Conference Committee had therefore expressed deep concern over the failure to enact the new legislative framework and the continuing harassment of trade unions in the country. The Committee had set its conditions to the enactment of the new legislation and to list one or another of the fundamental rights listed in the 1996 Industrial Relations Act and the provisions of the Convention. The Committee of Experts had identified 13 major discrepancies, including such fundamental issues as the exclusion of certain categories of workers from the right to organize: the establishment by the Government of a prescribed trade union structure and the power of the Labour Commissioner to refuse to register a union; severe limitations on the activities of federations, including an absolute prohibition; the establishment of a federation on the condition of not organizing or inciting any workplace action; severe restrictions on the right to hold meetings and peaceful demonstrations, and on the right to strike; excessive court powers to limit union activities and to cancel union registrations; an obligation to consult the Government prior to international affiliation. These discrepancies disguised the disinclination shown by the Government for many years towards its commitments under Convention No. 87. Not surprisingly, this disinclination had resulted in the sometimes brutal and violent harassment of workers and their representatives. Vivid accounts of events had been provided to the Committee by Jan Sithole, the Secretary-General of the Swaziland Federation of Trade Unions (SFTU). These had ranged from repeated arrests and detentions, to violent threats to his family, being stripped of his clothes and shaved in a cattle pen. Until the previous day, Jan Sithole had been unable to be a member of the Committee because his Government had refused to accept him as the Worker delegate of Swaziland, despite the fact that the Executive Committee of the SFTU, the largest union organization in the country, had elected him to represent the workers of Swaziland once again at the Conference Committee. This situation had been remedied only after it had been brought to the attention of the Committee. This extremely strange behaviour for a Government which was trying to convince the Committee of its sincerity and its commitment to fulfill its responsibilities under the Convention.

According to the SFTU Annual Survey of Violations of Trade Union Rights for the year 2000, harassment of unions continued in the country. For example, in October 1999, the entire National Executive Committee of the Swaziland National Association of Teachers (SNAT) had been arrested five days after it had organized a peaceful demonstration. Two months later, the government-controlled broadcasting and information services had banned the SFTU from broadcasting any announcements or other information unless it had been approved by the police in writing. Moreover, Jan Sithole remained under 24-hour surveillance.

The Worker members noted the statement by the Government representative that new legislation had been enacted by Parliament at the end of 1999, but that the King had refused to give it assent until certain revisions were made. They recalled that this draft legislation had been drawn up with the assistance of the ILO to ensure that it was in compliance with the Convention. However, more information was required concerning the final revisions of the text. There were reports that a liaison officer would be appointed by the King in every factory to ensure compliance with traditional values. This went hand in hand with a further amendment which set out the powers given to the works council to dismiss more employees, regardless of whether a trade union existed, to be chaired by the liaison officer. The Worker members called for further enlightenment from the Government representative as to the manner in which the works councils would be selected, expressing the concern that they would be selected by their employers. They nevertheless feared that this provision could be seen as a backward step compared with the previous law, which had provided for the establishment of works councils only in cases where there was no union. The amendment therefore created a dual structure at each workplace with equal bargaining rights for each structure, one chosen by the workers themselves and the other chosen by other means.

Another amendment required the holding of a ballot before unions participated in peaceful protests and demonstrations on social and economic issues. The Worker members called for a Government representative to explain how this would be carried out in practice. It was unclear whether the union leadership could participate in or support a peaceful demonstration without submitting the question to a full vote of its membership. They feared that the amendment in fact raised the Contemnorable legal barrier preventing unions from participating in any form of national protest. Moreover, it appeared that the new legislation entitled anyone claiming loss because of a strike or protest, even in the event of a legal strike, to introduce a claim in a court of law against the union and against any individual accused of causing the loss. The Worker members added that there had been a lot of violence in Swaziland, much of it directed against the trade unions.

It would appear that the amendments to the new legislation meant that it was not in compliance with the Convention and in a number of respects might not be an improvement over the old law. This undermined the expression of goodwill by the Government representative. This was extremely disappointing, as it was a further indication of the disappointing response from the Worker members and no doubt for all the members of the Committee. Many important questions remained to be answered and the new legislation, complete with its amendments, needed to be submitted to the Committee for examination. Unless these questions had been answered, the Worker members called for an adoption without delay of new industrial relations legislation which was in conformity with the Convention and for an immediate end to the widespread harassment of trade unions in the country. Until such time as this had been achieved, they believed that the Committee should continue to express, in the strongest terms, its deep concern at the lack of progress made.

The Worker member of Swaziland strongly supported what the Workers’ spokesperson had already stated on this issue. All that the Government had said today should be viewed within the context of its determination, or lack of determination, to enact laws in compliance with the international labour standards it had voluntarily ratified and of which it had an intention to ratify in the near future. It was not enough to have a Government to comply with these standards both in law and in practice. Since 1996, Swaziland had appeared on several occasions before this Committee, and each year the Government had made resounding positive promises which it had never fulfilled. It should also be recalled that from 1996 to 1999 the Government had been a titular member of the Governing Body, the body entrusted with monitoring, advising and encouraging respect for human dignity and social justice, and that the failure of the Government to make, for the first time, a report that gave a true representation of the country's human rights violations against the Convention would be passed into law before June 1998. He recalled that, before this Committee in 1998, the representative of Swaziland had declared that this could be done prior to the dissolution of Parliament, which was due to occur, but, failing that, the Bill would be passed into law before the end of 1998. The Government had however failed to do this. Instead, the Council of Ministers had passed the Swazi Administration Order of 1998, which legalized forced labour, slavery and convict labor. Jan Sithole therefore feared that this omission was an attempt to evade the supervision of the Committee of Experts regarding Swaziland's application of Convention No. 29 in this year's report. He also indicated that there had been continued acts of violations of the Convention by the Government, including inter alia: political interference in shop-floor industrial relations issues by the Swazi National Council.
The amendments at issue included the introduction of: 29, 87 and 98, as reflected in the report before this Committee. The law, including provisions that grossly violated Conventions Nos. 29, 87 and 98, as reflected in the report before this Committee. This omission, undoubtedly demonstrated a deliberate and flagrant disregard for and undermining of the right to strike, as enshrined in the Constitution and in the International Labour Conventions. The only procedure that was available to the workers was the right to strike. If the Constitution of Swaziland did not sanction the right to strike, it would continue to have a problem in applying freedom of association in practice. He believed that it was on the basis of this that the Swaziland Labour Bill had been prepared by a national tripartite committee and the ILO. The development of the Bill and the agreement to its terms by the social partners constituted significant progress in this case, as noted by the Committee of Experts, which had found that all the previously identified discrepancies in the application of the Convention would be eliminated by the Bill. However, it was still necessary to ensure that the significant progress and signs of progress on each occasion appeared to occur only in the week preceding the Conference. While the implementation of the statute constituted progress which should be welcomed, there remained the divergencies between the 1996 Industrial Relations Act and the Convention. The Employer member of Swaziland welcomed the adoption of the long-awaited legislation in his country which, in his view, vindicated the position which he had taken the previous year that the ILO technical committee to the Government and a contempt of the highest order for the provisions of the Convention. He said that as long as Swaziland was ruled by the 1973 Decree, which had removed the Bill of Rights from the independence Constitution, it would continue to have a problem in applying freedom of association in practice. He believed that the ILO had advised that the Government refused to listen to any calls for conformity with the human rights-related Conventions. This arose from the fact that national legislation could not be in conflict with the Constitution. If the Constitution of Swaziland did not sanction the Bill of Rights, all human rights-oriented Conventions would clash with the Swaziland Constitution, since they were still suspended by the above-mentioned Decree. He finally stated that he was convinced that the provisions of the Bill were not satisfactory. Against this background, he declared he had no other choice but to propose that a high-level ILO mission be sent to Swaziland with a view to finding a longer term solution. At the same time, the Government undertook to address all the defective clauses and amendments within the shortest possible time.

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had been inserted by the Swazi National Council after the adoption of the legislation by Parliament. He called for a high-level ILO delegation to visit the country and the development of new industrial relations legislation, in compliance with Conventions Nos. 98 and 100, in consultation with the social partners.

The Worker member of the United Kingdom focused on the legislation to which the King of Swaziland had given his assent at the beginning of the week. At the heart of the problem lay the extraordinary fact that, at the beginning of the twenty-first century, Swazi law contained the last vestiges of feudalism. He feared that the national council and placed further severe limitations on the normal exercise of legitimate trade union activities, and particularly on the right to strike and to undertake strike activities, such as demonstrations.

He emphasized that section 40(13) of the new Act gave anyone the right to call a secret ballot prior to involvement in protest action. Moreover, the ballot had to be conducted by the Labour Advisory Board and not the union. This meant that, even if it wished to organize a national demonstration, and make an announcement and乃participation of the Workers' Union (SFTU) would have to ballot its entire membership, which was the equivalent of requiring it to hold a national referendum every time it wished to organize a demonstration. In a sectoral dispute, a ballot would have to include not just the workers in the bargaining unit, including non-union members.

He added that subsections 40(1)(b), (3) and (8) set out requirements for periods of notice which had the clear aim of preventing any action which took place 21 working days without the mediation of the Labour Advisory Board before the ballot could take place. In this respect, he noted that the Committee on Freedom of Association had considered that the imposition of a system of compulsory arbitration through the labour authority; if a dispute was not settled by other means, could result in a considerable restriction on the right of workers' organizations to organize their activities and might even involve an absolute prohibition of strikes, contrary to the principles of freedom of association. A further seven days' notice would have to be required before any action could take place. He noted in this respect that a national ballot could itself take a considerable amount of time to complete. Finally, another five days' notice had to be given before any action could take place. He therefore calculated that, therefore, it was only calls to demonstrate, a minimum period of seven weeks would be required.

Recalling discussions in the Committee in the early 1990s concerning legislation in his own country, he emphasized that the above complementary instruments and to early co-operation of the most important. He hoped that they were acting within the law. The Committee on Freedom of Association had stated that the legal procedures for dealing with a strike should not be so complicated as to make it practically impossible to declare a legal strike. In this case, the restrictions, which also affected the right to demonstrate, amounted to a denial of the right to peaceful protest.

With regard to the amendments to section 52, dealing with works councils and their coordination with trade unions, the Committee explained that employers were required to set up a works council where there was no union branch in the workplace. Under the previous legislation, when a union applied for recognition, the works councils would coexist with the trade union and would have the right to bargain wages and conditions for non-union members. The works councils were funded, chaired and their agenda set by the employer. The Swazi Workers' Union (SFTU) had been a member of the Board from 1996 to 1999 and could not plead ignorance of the extensive jurisprudence of the Committee on Freedom of Association regarding “Solidarismo”. It was extremely regrettable that the Government representative had stated that it was his intention to declare social justice to the workers of his country, he had been unable to maintain the amendments, proposed by the social partners, to the Industrial Relations Bill. The version of the legislation threatened to take away what little remained for the workers.

The concept of works councils, as set out in the new legislation, was outmoded and a sure way of undermining the effective role of workers' councils. It was therefore almost certain that the case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph. The case once again had to be placed in a special paragraph.
with the Convention. It would be necessary to remain very attentive to the case and continue to examine it. Focus should be maintained on the implementation of the provisions of Convention No. 87 through the new legislation. The visit by a mission, as proposed by the Worker members, might be able to shed further light on the matter. Finally, he emphasized the need for good governance which had not been supplied a priori to ensure that the Government fully supported the ILO Convention with regard to laws which had been repealed. Turning to the conclusion, they stated that it should include the statement of the Government representative indicating the Government’s willingness to submit the new law again to the national tripartite committee in the near future, so that it could examine, with technical assistance from the ILO, the conformity of the amendments with the provisions of the Convention. If necessary, amendments to the new law would be made. The results of this consultation should be provided in a report for further examination by the Committee of Experts. The Committee could then review this case again on the basis of the most recent information.

The Worker members recalled that they had proposed a high-level ILO mission to Swaziland in order to examine the application of the Convention. This proposal was an opportunity for the Government to show its good intentions. The fact that the Government was unable to accept this idea would have an impact on the manner in which Swaziland would be regarded in the international community. With regard to the Government’s suggestion that the 1998 Industrial Relations Act, as amended, be reviewed by the national tripartite committee, they recalled that the social partners had been entrusted with the complete revision of the labour legislation and could agree to a new Labour Code as quickly as possible. The revised legislation should then be submitted for consideration and consultation to the above-mentioned groups. He hoped that this demonstration of goodwill on the part of the Government would be noted in its conclusions so that the social partners would be taken into account by this Committee of Experts and the interests of the employers, workers’ organizations, associations, universities and all of the civil society interested in this subject, in order to collect information and opinions. The work of this Committee had just recently begun. After the text had been drafted by the national experts, it would be submitted for consideration and consultation to the abovementioned groups. He hoped that this demonstration of goodwill on the part of the Government would be taken into account by this Committee and would be noted in its conclusions so that the social partners could then launch into the process of reformulation of the labour legislation and could agree to a new Labour Code as quickly as possible. He hoped that the technical assistance of the International Labour Office could be extended to them. The legislative provisions under discussion did not originate with the current Government which was in the process of modernizing the legislation. He stressed that the Government had greatly appreciated the observations made, and the right of the Committee of Experts to examine the new Labour Code would be reflected in the text which would be sent to the National Assembly. He requested this Committee to include in the conclusions of the discussion the adoption of the new National Constitution and the electoral process which would be reflected in the election of the new legislative body,
the National Assembly. The Government reiterated its intention to find solutions to the pending legislative questions referred to in the Committee's comments and its freedom of association. Prior to the Committee's meeting, the Government had issued a series of standards on 8 March 2000 which had sought to restrain the right to collective bargaining, employment stabilization and other collective bargaining. The Government had declared that it was taking measures to bring the legislation into conformity with the Conventions, in reality it had issued decrees which violated articles 23 and 31 of the Constitution, as well as the rights of workers in the country, as well as employers and the workers. One of these decrees had suspended the process of negotiation of a collective agreement for oil workers and the national executive had taken on the power of establishing working conditions in the public sector. The Government had approved a new decree which suspended collective bargaining in the Federal District Government, as well as employment stability.

With these decrees, the Government had worsened the implicit denunciations made in the Committee of Experts' comments and had declared war on the trade union movement. He quoted a recent speech made by the Venezuelan President in which he had stated that there was little to be done, as the Government had been suspended, the stability of the status of employment had been suspended and the future legislation had been suspended. The Committee of Experts had emphasized the need for amendments in order to improve the situation. The Committee of Experts had referred to the adoption of a new Constitution. Most national constitutions provided however, that international treaties constituted actual limitations to the exercise of freedom of association. The case of Venezuela went back several years and this was the fifth time that the Committee examined the case, particularly if one took into account that the present Government had promised to respect the rights of workers and employers in the electoral process by maintaining the freedom of association. The Government should be persuaded not to favour the reviving of known and unfortunate practices in Latin America.

The Worker member of France stated that the excessively detailed legislation and numerous contributory conditions imposed for the establishment and functioning of employers' and workers' organizations still constituted actual limitations to the exercise of freedom of association. The case of Venezuela went back several years and this was the fifth time that the Committee examined the case. The repeated undertakings by the Government to lift the abusive restrictions imposed on the freedom to organize had still not been fulfilled. The Committee of Experts had referred to the adoption of a new Constitution. Most national constitutions provided however, that international treaties constituted a superior legal standard. The actual problem concerned the implementing legislation. The case of Venezuela had referred to the adoption of a new Constitution. The Government representative, a draft law was to be submitted to the National Assembly, but the procedure could be time-consuming and the outcome was uncertain. At present, Convention No. 87 was still not entirely in-force and the Government could not be persuaded not to destroy the CTV (Venezuelan Confederation of Workers).
the full application of Convention No. 87. It was imperative that the Government really took seriously at last the requests of the Com- mittee of Experts. The present Government was committed to bring national legislation into conformity with the Convention. In order to do so it should take concrete and rapid measures in an area which concerned funda- mental rights and which constituted an essential principle of the ILO. As it was not possible to express itself about an urgent case in the past the Committee gave to a real and rapid change, this case should be placed in a special paragraph. Furthermore, the Government should be invited to carry out substantial changes by next year and to submit a report thereon to the Committee of Experts. The Worker member of the United States expressed support for the Venezuelan Government could send at the situation in the country with regard to Convention No. 87. The Committee of Experts’ comments pointed out several violations of the Convention relating to the Organic Labour Act, including unreasonable and unfair residency requirements and provisions for holding union elections in a special paragraph. However, it was precisely the results of the last election in Venezuela which had raised the question of whether the new Government should be met and respected as soon as possible in a manner which did not violate the fundamental rights necessary for the existence of employers’ and workers’ organiza- tions. Hence, he referred to the Committee of Experts for the most part originated in the recommendations which were being considered today. The existence of legislation which regulated an excessive zeal of the life of employers’ and workers’ organizations which the exclusionary and discriminatory nature of the National Labour Act was condemned today was lamentable. This attitude should be rectified and the recommendations of the Committee on Freedom of Association should be fully met. The Employer members had heard only general policy state- ments from the Government representative, who had once again talked of future elections. While the Committee of Experts’ comments made reference to the electoral situation, the Employer members saw no reason for the Government to wait seven or eight years before taking steps to request the current tripartite consultations. The Government representative had also referred to tripar- tite consultations. However, this statement had also been made to the Committee in 1998 and the Committee could not determine from the information provided in the course of the discussion in the present Committee, whether or not these consultations had in fact taken place. The Employer members expressed concern with the practical attitude of the Government, it considered contrary to the provisions of the Convention, the Government’s general statement that measures had not been taken to introduce changes in Venezuela, indicated that anyone who knew the current situation could confirm that these statements were the product of ignorance or of an agree- ment to tamper the image of the Government. To the Committee of Experts, as well as the information that had been provided in the course of the discussion in the present Committee, the Government had revealed continued violations by the Government. Contrary to what the Committee of Experts had expected after the recommenda- tions made in the past, the Government had not brought national laws into conformity with the requirements of the international labour Conventions. Furthermore, several sources had confirmed that new legislative initiatives had been taken which were contrary to ILO Conventions and in particular Conventions Nos. 87 and 98. The Worker members therefore invited the Gov- ernment to reassess its attitude and to indicate in its next report what measures it had taken to ensure conformity with the Conven- tions it had ratified, and in particular Convention No 87. In view of repeated observations and the total absence of follow-up to these observations, they agreed with the Employer members and other speakers in requesting that the conclusions of the Committee be placed in a special paragraph. The Worker members stated that the observations made by the Committee of Experts, as well as the information that had been provided in the course of the discussion in the present Committee,
The driving factor in the wage-debt dynamic was Presidential Decree No. 958/98 of 31 August 1998 “on additional measures for combating artificial increases in wage arrears”. The Decree was possible not only to slow the rate of increase in wage arrears over a period of one and a half years, but also to reduce the wage debt across the board by 92 million grivnas (1.4 per cent). At the same time the average wage arrears fell by 140 per cent, and wage arrears in the industrial sector, which formed the main object of the Decree, have nearly stabilized.

The chief impediments to the solution of the wage arrears problem were: the scale of the enterprises, extensive debts and creditor liabilities and the fact that operations can go on even though materials and labour may not have been paid or other financial obligations met. One of the main reasons for strained finances and the accumulation of wage arrears is, in our submission, the prevalence of unprofitable enterprises. All this makes it more difficult for enterprises to settle wage and mandatory pay-related contributions.

To a degree, articles 33 and 34 of the wage law, which link wages and compensation for unpaid wages to inflation, have also delayed the settlement of wage arrears.

II. Monitoring wage arrears payments

The steady increase in wage arrears has made the monitoring of compliance with labour legislation a high priority. The State Labour Inspectorate of the Ministry of Labour and Social Policy has accordingly focused on breaches of wage legislation, identifying underlying causes of those breaches, preventing further breaches and prosecuting offenders. The Labour Inspectorate is responsible for monitoring compliance with wage laws, and the Cabinet of Ministers governing the payment of wage arrears, indexation and compensation for late payment of wages. The Ministry of Labour and Social Policy reports to the Cabinet of Ministers on a quarterly basis.

Order No. 195/82 of 8 August 1999 by the Cabinet of Ministers, which responded to a presidential request of 4 August 1999 was issued in order to ensure the timely payment of wages in state-owned undertakings, to increase the volume of dividends paid on shares held by the State and to terminate the contracts of heads of enterprises who infringe wage laws. Pursuant to that Order, the State Labour Inspectorate investigated (September-December 1999) the payment of wage arrears in joint-stock companies in which the State held shares.

Inspections were made of 1,107 companies. In 934 of them (84.4 per cent) the State lacked a controlling interest and was, therefore, unable to exert a direct influence on the payment of wage arrears. Thanks to the work of the Labour Inspectorate progress was made: arrears in the amount of 43.5 million grivnas were paid, which in some undertakings constitutes full settlement of the wage debt. The conditions of payment of wages and wage arrears to employees of joint-stock companies in which the State holds shares are determined by the Cabinet of Ministers.

The main achievements of the Labour Inspectorate in 1999 were: the evaluation of the scale of wage arrears and the need to solve the wage arrears problem, the launch of State-led inspections of the mining sector, which, as a result, has seen long delays in the payment of wages, third-party claims, and lump-sum allowances. According to information supplied by the State Statistics Committee wage arrears as of 1 January 1999 amounted to 731 million grivnas, approximately 12 per cent of all wage arrears in Ukraine. Measures undertaken by the Government, ministries and other central and local executive bodies late in 1999 made it possible to reduce the increase of wage arrears in the mining sector. Statistical data indicated as of January 2000 a 6 per cent reduction in wage arrears, which came to 687.5 million grivnas. In keeping with resolution No. 1699 of 15 August 1999 by the Cabinet of Ministers the State Labour Inspectorate investigated the payments in kind of wages and wage arrears to the extent of 769 enterprises, which is approximately twice the number of enterprises where wage arrears were demonstrated.

The investigation showed that in a majority of undertakings in the sector the payment in kind of wages and wage arrears was exceedingly rare. A programme to reform mining sector undertakings and improve their financial position for the year 2000 has been drawn up. The programme was approved by resolution No. 1921 of 19 October 1999 of the Cabinet of Ministers. The programme is broad in scope and seeks inter alia to eliminate tensions associated with wage and social issues.

Wage arrears owing to employees in the agricultural sector have an adverse knock-on effect on wages throughout the country. This especially critical situation has arisen with the reorganization of collective agricultural enterprises. The State Labour Inspectorate has carried out a study of compliance with labour legislation in 427 collective agricultural concerns engaged in the reform process. It was established that employees of reorganized collective enterprises in the agricultural sector would receive land and property in partial settlement of wage arrears. In only 40 per cent of the reformed en-
terprises that were investigated had legal successors been designat-
ed. In the remaining 60 per cent the legal problems have yet to be resolved. For the remaining 20 per cent of the undertakings that were investi-
tigated (184 enterprises) had failed to reach a final settlement with their employees. As to the employees of reformed collective agri-
cultural undertakings, only one in five had received property in par-
tial payment or in full. For example, in the agricultural sector a programme of reform was drawn up which made the designation of a legal successor an essential feature of reforms in order to resolve wage arrears problems.

In 1999 the State Labour Inspectorate monitored compliance with labour law in 29,014 enterprises. This represents an increase of 42 per cent over 1998. Also in 1999 the Inspectorate conducted 15 inspections which paid special attention to the timely payment of wages. The work of the Inspectorate led to 82,200 proposals concerned with the settlement and prevention of breaches of laws. Heads of enterprises, institutions or other bodies which were found to have infringed labour laws were issued 26,000 administrative de-

The work of the Inspectorate led to 1,742 instances for failure to co-

Pursuant to Presidential Order No. 1-14-1834 of 29 December 1999 the Ministry of Labour and Social Policy and the Ministry of Justice have drawn up and submitted to the Parliament of Ukraine a bill amending the Criminal Code of Ukraine and the Code of Ukraine on Administrative Offences to increase the liabil-

Under the General Agreement for 1999-2000 the Government commit-
ted itself to settling all wage arrears owed by state-budgeted entities by the end of 2000.

III. Reform of the State Labour Inspectorate

The current structure of the Labour Inspectorate does not fulfil the requirements of the ILO in respect of the Inspectorate’s inde-
pendence from local executive authorities. For this reason, contrary to the provisions of the General Agreement for 1999-2000 signed by the Cabinet of Ministers of Ukraine, the Confederation of Em-

To this end, the Ministry of Labour and Social Policy of Ukraine has proposed the establishment under its authority of a new govern-
mental body, a Department of State Supervision of Compliance with Labour Legislation, based on the State Labour Inspectorate. By conferring governmental status on the new department, the Government would safeguard the legal function and independence with which it has associated with so important an institution as the State Labour In-

In addition, before the Conference Committee a Government representa-
tive presented the Ministry of Labour and Social Policy, indicated that his Government realized that the problem of wage arrears was an obvious incompatibility with Convention No. 95, which provided for the payment of wages on a regular basis in accordance with the legislation. He explained that the main reasons for that were the difficult economic and financial conditions in the country, due to radical structural transformations, the privatization of state proper-
ty, as well as radical transformations in the agricultural sector. The process of adaptation to the new conditions of the undertakings that had turned out to be more lengthy and complex than was initially expected. In such difficult conditions, the President and Government of Ukraine were vigorously pursuing measures to stabilize the economy. Nevertheless the steady growth in gross national product and increase in the industrial output in the second half of last year and earlier this year illustrated that the economy was gradually sta-

The Government representative stated that, thanks to the coor-
dinated efforts of his Government, employers and workers had wit-

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spectorate paid special attention to the observance of labour legis-
lation in collectively owned undertakings.

The presentation on wages stipulated that wages should be paid in legal tender. The payment of wages in the form of promissory
notes, vouchers or in any other form was prohibited. These provi-
sions fully complied with the requirements of Convention No. 95. Regarding the payment of wages in such form in those sectors where such payments were customary or desirable for the employees. In 1999, 13.6 per cent of the total amount of wages was paid in the form of cash. At the first quarter of 2000, such payments had been significantly reduced, amounting to 7.9 per cent. In 1999, the State Labour Inspectorate had monitored more than 29,000 enterprises. The work of the in-
spectorate had resulted in 26,000 administrative orders issued to heads of enterprises and institutions where infringements of labour laws were discovered. Penalties were imposed in 1,742 instances for failure to comply with the legitimate demands of state labour in-
spectors. The courts heard 2,299 cases of alleged administrative of-
fences and 1,349 decisions had been rendered calling for penal-
ties. Offending parties were ordered to pay penalties in the amount of 255,000 grivnas. As a result of the activities of the State Labour Inspectorate, wage arrears were settled in the amount of 885,800,000 grivnas. Finally, the Government of Labour and Social Policy and the Ministry of Justice had drafted and submitted to the Supreme Soviet of Ukraine a bill amending the Criminal Code of Ukraine to increase the liability of heads of enterprises for untimely or partial payment of wages. The bill was adopted at the first reading.

In conclusion, the speaker indicated that the process of stabiliza-
tion was based on the assumption that the final solution of the wage arrears depended on overcoming the economic crisis. At the same time, his Government counted on further cooperation in this matter with the ILO and its experts.

The Workers emphasized that non-payment of wages was a worldwide problem that affected millions of workers. It was thus normal that this question was once again on the agenda of this Committee. The implementation of Convention No. 95 by Ukraine had given rise to observations from Experts in 1994, 1995, 1996, 1997, 1998 and 1999 and had been discussed by this Committee in 1997. It then observed that, in spite of certain measures adopted, the situation had not improved. The failure to implement the Convention by Ukraine revealed a contradiction between national legislation and practice. If the comments of the Committee of Experts focused on the implementation of Article 12, paragraph 1, supplementary information was also requested re-
garding prohibition on the payment of wages in the form of vouch-
ers or coupons; regulation on payment of wages in kind; the rank of the employee as a privileged creditor for wages due in cases of bankruptcy; and the sanctions imposed for violations. The Commit-
tee of Experts had also emphasized the need to adopt efficient measures to prevent payment of wages by orders, from the enterprises. In this respect it must be noted that the situation had not improved but rather it had worsened. The Gov-
ernment's reply to observations of the Committee of Experts gave a contrasted impression; the changes in the situation since the last meeting of the Committee were not reflected in the information provided. The situation was not improving. The Government had not adopted any legal provisions or measures to prevent or control the practice of not paying wages on the basis of orders.

In the context of the stabilization and development of the market economy that were facing the same problems.

As regards the written information provided by the Govern-
ment, the Committee noted that the problem of wage arrears was only mentioned in respect of state-owned enterprises and collectively owned enterprises. In the view of the Committee, these problems existed in Ukraine or that such enterprises had no arrears in wage payments. The Employer members noted measures taken by the Government, including the supervision of wage arrears payments, in order to resolve the problem. These measures appeared to have led to a partial payment of wages. They further noted that under the terms of the General Agreement for 1999-2000 concluded between the Cabinet of Ministers, the Confederation of Employers and the trade unions, wage arrears would not be paid if the payment of wages at the end of 2000 in state-owned enterprises. The Employer members doubted however, that the problem of wage arrears could be resolved in the near future. This problem was closely related to the establishment of a functioning market economy. For this purpose, urgent measures were needed as such provisions for providing for workers' entitlement to the enforcement of the court decision concerning the pay-
ment of his or her wages which would be immediately exécutable by means of preliminary injunction. The problem could not be solved merely by establishing legal provisions but rather in creat-
ing sound economic and legal conditions in a country in order to enable it to establish a viable market economy. In order to achieve this objective, the ongoing existing elements of a centrally planned economy had to be relinquished quickly.

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In conclusion, the Employer members emphasized the problem could not be solved by issuing a large number of decrees and regula-
tions but by establishing a legal framework which was oriented to-
wards enabling the country to establish a viable market economy. The Government should of course report on the measures taken in this respect.

The Worker member of Ukraine stated that the reasons for the ongoing non-payment of wages were primarily due to economic and legal reasons. The Government had not been able to establish statistics illustrating the problem but rather in creat-
ing sound economic and legal conditions in a country in order to enable it to establish a stable and transparent market economy. In order to achieve this objective, the ongoing existing elements of a centrally planned economy had to be relinquished quickly. The Government aimed at the stabilization and development of national industry; re-
direction of credit and investment policy of the State towards long-
term perspective; conduct of efficient structural policies; in-
crease in efficiency of privatization and management of state prop-
erty; improvement in tax collection; and strengthening of state control over the observance of labour legislation. These measures would permit the radical resolution of the wage arrears problem.

The Worker member of Ukraine expressed the concern that wages were not paid on time. He also noted that the Federation of Trade Unions of Ukraine had repeatedly submitted its proposals to the Government aimed at the stabilization and development of national industry; re-
direction of credit and investment policy of the State towards long-
term perspective; conduct of efficient structural policies; in-
crease in efficiency of privatization and management of state prop-
erty; improvement in tax collection; and strengthening of state control over the observance of labour legislation. These measures would permit the radical resolution of the wage arrears problem.
Furthermore, at the insistence of the trade unions of Ukraine, the Government and the employers of Ukraine committed themselves to take action and strengthen the enforcement of wages in the General Agreement for 1999-2000. Finally, the trade unions of Ukraine had repeatedly carried out nationwide protests to ensure the prompt payment of wages. However, these efforts were inefficient, and it was for this reason that the trade union of Trade Unions of Ukraine had again submitted a representation to the ILO. The speaker pointed out that the mere fact that this Committee was discussing this problem had obliged the Government to do more actively to address the issue. Hence, two weeks ago, the President of Ukraine, speaking to a congress of enterprises, had said that the fact that Ukraine was not observing its obligations to workers and that it had to explain its position to the Government was a scandal and that it had urged employers to ensure prompt wage payments. Moreover, pursuant to the meeting of the heads of the Tripartite Commission with the Prime Minister of Ukraine, an agreement was reached that wage arrears would be paid by the end of 2000. The speaker trusted that this would be achieved.

The Worker member of Denmark, speaking on behalf of Nordic workers, supported what had been stated by the Worker members at the other Committee. He pointed out that the report of the Committee was not to have been the case. The efforts undertaken by the Executive were proven to be ineffective. It was further mentioned in the Committee of Experts' report that the level of fines was very low and increased only in the case of so-called persons responsible for the fact that when examining violations of labour legislations tend to undermine the culpability of those responsible because of the difficult financial situation and to make inappropriate de-scissions in view of partial tensions caused by such violations.

This Committee had received further written information from the Government. According to this information, in the last four months of 1999, there should have been a steady decline in the level of unpaid wages. On the other hand, the Government stated that inspections were carried out in 1,107 companies. Unfortunately, the State lacked a controlling interest in many of these companies and was unable to exert a direct influence on the payment of wage arrears. Moreover, an ILO press release dated 25 April 2000 contained information that 17 companies had refused to participate in a survey which was carried out in 1999 covered a representative national sample of 690 firms employing 583,679 workers and found that over 50 per cent of all salaries remained unpaid. The survey appeared to have been designed to be a difficult situation in paying their wages. With this information, it was quite understandable that the Committee of Experts urged the Government of Ukraine to continue its efforts to take all possible measures to prompt payment of wages. This should be reflected in the Conference Committee's conclusions.

The Worker member of Japan pointed out, that despite the explanations given by the Government representative, the situation of Ukrainian workers had actually deteriorated. The average wage of a Ukrainian worker was US$36 per month which meant that most of the Ukrainian population was living below the poverty line. Furthermore, the average wage of public sector workers was much less than in other sectors of the economy. For example, the wage for nurses was US$15 per month and that for doctors was US$20-25 per month. Although the Government representative had indicated that average wages had risen by 140 per cent, prices had increased at a much higher rate. Finally, although the Government had promised to settle all wage arrears owed by state-owned entities by the end of 2000, this Committee should not forget the same promise at a much higher rate. Finally, although the Government had promised, would increase criminal liability of employers for the non-payment of wages. Hence the speaker believed that the problem of non-payment of wages was not to be resolved at this stage.

The Employer members indicated that this issue had been examined and discussed extensively. With regard to the statement by the Government representative concerning the difficult budgetary situation of the State, the Employer member of Ukraine had said that the combination of all the measures taken and promised by the Government would solve the problem of wage debt. In fact, this problem of wage debt was being encountered in a number of countries which were undergoing a transitional period from a centrally planned to a market economy and was not being resolved due to the absence of properly coordinated measures. In the report of the Committee of Experts for example, there was a list of 12 countries where the wage debt was a very serious problem in 1999. This problem was aggravated by a lack of action on the part of the authorities concerned. Hence, although the Government referred to problems pertaining to the state budget to explain the current situation, in fact it was simply a question, his Government intended to decrease the wage debt to an absolute minimum. However, 65 per cent of the wage debt was to be found in the private sector. His Government was trying to seek a solution to this problem in consultation with the social partners. Finally, his Government was urgently trying to ensure that the situation concerning the payment of wages to all employees and avoidance of any wage arrears in the future so that the requirement of Convention No. 95 was fully met. Despite the difficult economic situation in which his Government found itself, it was determined to take steps to ensure the prompt payment of wages. However, these efforts were insufficient, and the problem of wage arrears was continuing to increase. As a result, the Government should be urged to take the appropriate measures rapidly.

The Government representative indicated that his Government would take measures to remedy this situation. The Ukrainian Government should take strong measures against companies whose tax debt to the State is comparable to the whole amount of unpaid wages in the public sector. Attention should also be paid to companies registered in tax havens, in which every year transferred sums equivalent to a year's unpaid wages. He was surprised to hear the suggestion of the Employer member of Ukraine that unions should share the responsibility of wage arrears because the establishment of private companies.

The Worker member of Zimbabwe asserted that the problem of wage arrears was very serious and not at all for workers. More than 50 per cent of workers were affected by this problem in Zimbabwe and the average worker had not received his wages for three months of wages. Moreover, it appeared that the problem of wage arrears was continuing to increase. As a result, the Government should be urged to take the appropriate measures rapidly.

The Worker member of Ukraine asserted that the problem of wage arrears was very serious in the public sector. The Government should settle all salary arrears by the end of 2000. Last-
had advocated the implementation of a fair and transparent tax system. This was an important element to be taken into consideration in the legal framework which needed to be established in the country. While agreeing that the responsibility for non-payment of wages lay with the employer, they pointed out that the establishment of such a system of liability would only constitute a short-term emergency measure which would not resolve the root cause of the wage debt problem. In order to resolve the problem, the Government needed to take overall measures in order to establish a certain legal and socio-economic order in the country and not just take measures with a legal basis, although they had a very specific purpose. It was important not to overlook the very central issue, i.e. the context in which the problem originated which was the lack of a functioning market economy.

The Committee took note of the written and oral information given by the Minister of Labour and Social Policy and the subsequent discussion which took place. Noting the information regarding the volume of outstanding wage arrears, the Committee expressed its deep concern about the continuing violation of the Convention and the serious situation experienced by millions of workers in Ukraine. According to the information provided by the Minister, the number of workers whose wages were not paid on time had decreased; however, the figures revealed that, whereas in certain sectors there had been some improvement, in others the situation had become even worse. The Committee considered that, even though the adoption of legislative texts contributed to resolving the problem of wage arrears, there were structural problems, in particular the poor economic structure and financial conditions, and the generalized debts of enterprises, for which the Government had to resort to other types of measures. Furthermore, the Committee strongly recommended as one of the labour inspection reforms that was proposed in the Government's own recognition, was critical for handling this serious matter. The Committee insisted therefore, that the Government pursue actively its efforts with a view to implementing the reforms in respect of labour inspection. The Committee urged the Government to continue, with the assistance of the Office, to adopt effective measures to ensure the application of the Convention, not only for the regular payment of wages, but also for the prohibition of payment in the form of promissory notes, coupons or allowances in kind and the treatment of workers as privileged creditors in the event of bankruptcy, as well as effective penalties for any violation thereof. The Committee requested the Government to submit a detailed report for this year's meeting of the Committee of Experts, providing information on any measures taken, in particular the labour inspection reforms. The Committee asked the Government to communicate detailed statistical data allowing the exact effect of all the measures taken to be evaluated.

Convention No. 98: Right to Organise and Collective Bargaining, 1949

Australia (ratification: 1973). A Government representative stated that the Government was surprised that this Committee, given its charter to examine the more serious matters raised by the Committee of Experts, had not sought to have the Committee of Experts on his Government's application of Convention No. 98. In his Government's view, the observations of the Committee of Experts went to technical issues regarding the interplay between the Convention's provisions and the federal legislation. In particular, the Committee of Experts had not been provided with the necessary material regarding its determination that in view of the poor economic structure and financial conditions, the Committee's assessment that the Government was surprised that this Committee, given its charter to examine the more serious matters raised by the Committee of Experts, had not sought to have the Committee of Experts on his Government's application of Convention No. 98. In his Government's view, the observations of the Committee of Experts went to technical issues regarding the interplay between the Convention's provisions and the federal legislation. In particular, the Committee of Experts had not been provided with the necessary material regarding its determination that in view of the poor economic structure and financial conditions, the Committee considered that, even though the adoption of legislative texts contributed to resolving the problem of wage arrears, there were structural problems, in particular the poor economic structure and financial conditions, and the generalized debts of enterprises, for which the Government had to resort to other types of measures. Furthermore, the Committee strongly recommended as one of the labour inspection reforms that was proposed in the Government's own recognition, was critical for handling this serious matter. The Committee insisted therefore, that the Government pursue actively its efforts with a view to implementing the reforms in respect of labour inspection. The Committee urged the Government to continue, with the assistance of the Office, to adopt effective measures to ensure the application of the Convention, not only for the regular payment of wages, but also for the prohibition of payment in the form of promissory notes, coupons or allowances in kind and the treatment of workers as privileged creditors in the event of bankruptcy, as well as effective penalties for any violation thereof. The Committee requested the Government to submit a detailed report for this year's meeting of the Committee of Experts, providing information on any measures taken, in particular the labour inspection reforms. The Committee asked the Government to communicate detailed statistical data allowing the exact effect of all the measures taken to be evaluated.
tract from those provisions of the Act which had previously been accepted as complying with the Convention. It was true that the Act now provided for machinery to facilitate individual bargaining as an alternative to collective bargaining where that was what the parties wanted. His Government believed that, having regard to national conditions in Australia, this was consistent with Article 4 of the Convention.

In this regard, his Government noted that Article 4 did not impose an unqualified obligation to promote collective bargaining. Article 4 required measures for the encouragement and promotion of collective bargaining to be taken where necessary and that such measures were to be appropriate to national conditions. His Government drew attention to the following features of the Australian industrial relations system:

- at the federal level, Australia had a formal industrial relations system for almost a century and at the state level for longer than that;
- participation in the formal system was voluntary: workers, employers and their representative organizations were free to negotiate and make agreements outside the formal system;
- the formal system had and continued to be, based on collective bargaining and, AWAs must be underpinned by awards. The ILO had accepted for many years that awards were instruments made through a process of collective bargaining;
- in the terms of Article 4, the system continued to provide machinery for the negotiation of collective agreements while also providing for individual bargaining for those who did not wish to bargain collectively;
- there were penalties for coercing a person to enter into an AWA;
- collective bargaining remained the norm in Australia — almost 2 million employees were covered by collective agreements made under the Act, compared with approximately 90,000 employees covered by AWAs;
- if the number of employees covered by awards was taken into account, then some 6 million Australian workers were covered by arrangements made by collective bargaining compared with 90,000 covered by individual agreements;
- Australia had mature, sophisticated and well-resourced trade unions and employer organizations able to inform members of their rights and obligations and to represent them in collective bargaining or individual bargaining with equal facility;
- an employee who chose to bargain individually could arrange to be represented by a trade union during negotiations.

Against that background, his Government maintained that, in the language of Article 4, national conditions in Australia meant that the current legislation was consistent with the Article. His Government found support for that view in the preparatory work for Convention No. 98. The text of Article 4 which emerged from the first discussion referred to measures to “encourage and facilitate” the parties to engage in collective bargaining. During the second discussion, the word “encourage” was replaced by the words “encourage and promote” which had a somewhat different connotation. It was clear that in adopting these words, the text followed a draft proposed by the Government member of the United Kingdom during the second discussion of Article 4. The preparatory work contained the statement of the representative of the Government of the United Kingdom who stated that “the object of this Article should be to lay down the obligation to encourage the progressive development of collective bargaining, having regard to the actual conditions of the country in question”. He suggested a change of terminology which seemed to him more appropriate to the object in view. He therefore proposed, as a sub-amendment, the following draft of Article 4: “Measures shall be taken as appropriate and necessary to encourage and promote the progressive development of collective bargaining, including the regulation of conditions and terms of employments on the one hand, and workers’ organisations on the other, with a view to the regulation of terms and conditions of employments by means of collective agreements.” The representative of the United Kingdom had referred to “the actual conditions of the country in question”. The actual conditions in Australia made it unnecessary to continue to promote and encourage collective bargaining. As explained earlier, the reasons for this were presented earlier by the speaker.

The Committee of Experts stated that the Workplace Relations Act gave primacy to individual over collective relations. That was true only to a very limited extent and, in any case, was largely a matter over which the parties had constitutional control. Article 4 preserved over a collective agreement only where either: the collective agreement expressly permitted the AWA to prevail; or the collective agreement was made while an AWA was still in operation and had not passed its specified expiry date; or the AWA was made after the collective agreement had passed its specified expiry date. In all other circumstances, the collective agreement would prevail; that was: a collective agreement would prevail over an AWA made during the life of the agreement and which was inconsistent with the agreement, unless the agreement expressly permitted an inconsistent AWA to prevail; or a new collective agreement would prevail over an existing AWA that had passed its specified expiry date.

Those provisions, in effect, gave the parties the wish to enter into an AWA would prevail over a collective agreement or vice versa. In his Government’s view, they could not be said to give individual agreements primacy over collective agreements except where that was the wish of the parties.

It should also be noted that AWAs were subject to the so-called “no disadvantage test”. This meant that an AWA must be tested against an award or other law of the Commonwealth or a state that was relevant to the employment of the worker to be covered by the AWA. With some specified exceptions, the AWA must not result in a reduction in the overall terms and conditions of employment of the employee as provided for in the relevant award or other instrument.

In summary, under the Workplace Relations Act:

- collective bargaining was provided for;
- collective bargaining continued to be the norm in Australia;
- a substantial majority of Australian workers were covered by collective agreements;
- a worker negotiating an individual agreement might be represented by a trade union;
- as a general rule, an individual agreement could not disadvantage a worker by reducing the terms and conditions of employment that workers would otherwise be entitled to.

In those circumstances, his Government believed that the provisions of the Article concerning individual agreements were consistent with Article 4 of the Convention. As the speaker had stated earlier, these and other matters raised in the observations of the Committee of Experts were technical in nature, their technicality making clear a need for the Government to continue to report on all relevant Conventions. It did record, however, that it was disappointed that such dialogue to date had been through the publishing of observations rather than the alternative, and in his Government’s view, more appropriate, direct request approach.

The Worker members indicated generally that Convention No. 98 was not about tolerating collective bargaining but promoting it. In 1998, some members of this Committee had criticized the Committee of Experts for having made its observations too quickly without having all the relevant information and in particular, the observations of the Government. Two years later, in addition to the comments of the Australian Chamber of Trade Unions (ACTU), the Australian Chamber of Commerce and the Government’s detailed observations, relevantly based, on 1997, the Committee of Experts had thus concluded that the exclusion (or potential exclusion) of AWAs from the coverage of the industrial relations system for almost a century and at the state level for longer than that; the formal system had and continued to be, based on collective bargaining and, AWAs must be underpinned by awards. The ILO had accepted for many years that awards were instruments made through a process of collective bargaining; the reasons for this were presented earlier by the speaker.

As explained earlier, the reasons for this were presented earlier by the speaker.
mittee of Experts remained of the view that the Act gave primacy to individual over collective relations through the AWA procedures. Furthermore, a number of the views expressed in the document related to workplace/enterprise-level bargaining where the Act provided for collective bargaining. The Committee of Experts had therefore once again requested the Government to take steps to review and amend the relevant provisions so that collective bargaining could be allowed, but encouraged, at the level determined by the negotiating parties.

The Worker members assumed that the members of the Committee of Experts were competent and impartial, yet the Government rejected both the observations and the recommendations of the Committee of Experts, just as it did two years ago. In 1998, the Government had said that some of the concerns expressed by the Committee of Experts, with the Committee of Experts this year, they noted that different aspects of the legislation. The Government then had been very confident that, viewed in the light of their proper context, the arrangements criticized by the Committee of Experts would not de- 

The Worker members addressed the issue of how this case had been dealt with by the Government. In any event, if the Government did not do anything, the Committee of Experts would repeat its observations as long as there was no change in the situation. Moreover, if the Government had not understood the point of view of the Worker members, they were also confident that the Committee of Experts had made an extra effort in understanding the Australian case. On the other hand, by constructive tripartite discussion and collaboration, not necessarily purely of a legal nature in this Committee, in order to contribute to the finding of solutions for problems identified by the Committee of Experts. Indeed, the Committee of Experts and the Government to put an end to this deadlock, in this respect the Committee of Experts would repeat its observations concerning the provisions which had been the subject of the Committee of Experts' comments. To this end, dialogue and contact with the Government and the supervisory system was characterized on the one hand by careful, impartial, independent, objective and legal analysis and interpretation of all relevant points by a group of eminent experts in law from around the world, including experts on the other hand, through the use of appropriate terminology, such as the term “dialogue pour progresser” as was often said by the former Belgian spokesperson for the Workers' group, Mr. Jef HOUTHUYS.

Two years ago the Worker spokesperson had expressed concern about the tone and approach of the Australian Government with regard to dialogue in this case. That tone was polemical and inflammatory and did not suggest any openness to different viewpoints and opinions from the Government's own representatives. The Worker members had heard the same tone and approach today and they deeply deplored it. The Worker members were confident that the Committee of Experts had made an extra effort in understanding the Australian case over the past two years. They were also confident that the Committee of Experts had understood the particular situation and the intellect of its Australian member who probably knew the situation in her own country well. Therefore, they could not accept the argument that the Committee of Experts had not understood the Australian context correctly. Nor could they understand the reaction of the Government. In any event, if the Government did not do anything, the Committee of Experts would repeat its observations as long as there was no change in the situation. Moreover, if the Government had not understood the point of view of the Worker members, they were also confident that the Committee of Experts had made an extra effort in understanding the Australian case. On the other hand, by constructive tripartite discussion and collaboration, not necessarily purely of a legal nature in this Committee, in order to contribute to the finding of solutions for problems identified by the Committee of Experts.

Since the Worker members were seeking ways and means for the Government to put an end to this deadlock, in this respect the Government could seek out comparisons in other countries' approaches, like New Zealand, which had tried similar policies in the past. The Worker members also were confident that the Committee of Experts remained of the view that collective bargaining could help all parties to analyse the situation in the workplace. The supervisory system was characterized on the one hand by careful, impartial, independent, objective and legal analysis and interpretation of all relevant points by a group of eminent experts in law from around the world, including experts on the other hand, by constructive tripartite discussion and collaboration, not necessarily purely of a legal nature in this Committee, in order to contribute to the finding of solutions for problems identified by the Committee of Experts. Indeed, the Committee of Experts and the Government could seek out comparisons in other countries' approaches, like New Zealand, which had tried similar policies in the past.

The Worker members noted a violation of the Convention according to which national courts had agreed on this point. Hence, the Employer members recalled that in many countries enterprise-level bargaining was preferred to sectoral-level bargaining. However, this situation had not been criticized by the Committee of Experts. The Employer members then referred to the position of the Committee of Experts on the relationship between enterprise-level bargaining and collective bargaining. In this regard, they recalled their initial statement in the general discussion in respect of globalization where they had emphasized the importance of the Committee of Experts' comments. To this end, dialogue and contact with the Government and the supervisory system was characterized on the one hand by careful, impartial, independent, objective and legal analysis and interpretation of all relevant points by a group of eminent experts in law from around the world, including experts on the other hand, by constructive tripartite discussion and collaboration, not necessarily purely of a legal nature in this Committee, in order to contribute to the finding of solutions for problems identified by the Committee of Experts.

The Employer members recalled that the Committee of Experts had expressed concern over failed bargaining. However, this situation had not been criticized by the Committee of Experts. The Employer members then referred to the position of the Committee of Experts on the relationship between enterprise-level bargaining and collective bargaining. In this regard, they recalled their initial statement in the general discussion in respect of globalization where they had emphasized the importance of the Committee of Experts' comments. To this end, dialogue and contact with the Government and the supervisory system was characterized on the one hand by careful, impartial, independent, objective and legal analysis and interpretation of all relevant points by a group of eminent experts in law from around the world, including experts on the other hand, by constructive tripartite discussion and collaboration, not necessarily purely of a legal nature in this Committee, in order to contribute to the finding of solutions for problems identified by the Committee of Experts.

The Employer members noted that the Committee of Experts had requested the Government to amend the Act to ensure that collective bargaining would not only give preference to collective agreements over individual agreements, but whether or not workers could choose freely the level at which negotiations with the employers could take place. Moreover, in general, individual agreements should be allowed if workers and employers agreed on this point. Hence, the Employer members had noted that, as a violation of the Convention in the respect referred to Article 4 of the Convention according to which national conditions should be taken into consideration in the implementation of the Convention. Hence, Article 4 of the Convention did not give preference to collective agreements over individual agreements or sectoral-level bargaining over enterprise-level bargaining.

With regard to discrimination based on the negotiation of multiple business agreements, they stated, based on the wording of the comments by the Committee of Experts, that the Committee of Experts had requested the Government to acknowledge a clear violation of the Convention on this point. The request for additional information in order to ascertain the compatibility of national practice, and not only legislation, was an important means for investigating the application of the Convention in this respect. The Employer members noted that the Government's representative's statement that the Committee of Experts had not requested information concerning the impact of the relevant provisions in practice, for it was of crucial importance to ask for such information in the event that there was disagreement on the protection provided by such provisions. The request for additional information in order to ascertain the compatibility of national practice, and not only legislation, was an important means for investigating the application of the Convention in this respect. The Employer members noted that the Government's representative's statement that the Committee of Experts had not requested information concerning the impact of the relevant provisions in practice, for it was of crucial importance to ask for such information in the event that there was disagreement on the protection provided by such provisions. The request for additional information in order to ascertain the compatibility of national practice, and not only legislation, was an important means for investigating the application of the Convention in this respect.
the integrity of the Committee of Experts and did not understand the supervisory processes. He cautioned that the Government's response would need to be taken into account in drawing up the conclusions of the Committee.

The Worker member noted that, in ratifying Convention No. 98 and in undertaking to follow the principles set forth in the 1998 Declaration, which enshrined the principle that employees and employers had the right to negotiate, and to collectively bargain, the Australian Government undertook to encourage and promote the principles of the Convention. Australian legislation did not comply with the essential requirements of the Convention. Therefore, a number of reasons could be given as to why the Government was unable to determine the level at which collective bargaining could take place. Lawful industrial action was only available in support of single-enterprise bargaining and not collective bargaining situations across multiple workplaces. Any action on the part of workers to defend their rights across multiple workplaces was unlawful. Moreover, individual agreements were given primacy over collective agreements. The speaker noted that, two days ago, a government agency had stated that individual agreements "could over-ride award provisions". He clarified that award provisions were in fact collective agreements. He considered this to be a deliberate strategy for the promotion of individual agreements, noting that the Government had not been clear that the Government was not in compliance with the Convention.

The speaker expressed his concern at the gap in understanding of the supervisory processes between the Committee of Experts and the Australian Government. In his experience, he agreed with the Employer members' suggestion that, to further a spirit of dialogue and cooperation and to provide an opportunity for increased understanding between the ILO and the Government, serious consideration be given to having the ILO conduct a visit to Australia. Such a visit might provide a way forward and permit the Committee of Experts and this Office to better comprehend how the legislation was being applied in practice in the country.

The Employer member of Australia expressed his support of the statements made by the Employer members and the Government representative. He agreed with the Government representative that the Committee of Experts was mistaken in its understanding of some aspects of the Australian Workplace Relations Act. While the Government had already provided detailed explanations on this point, he hoped that the Committee of Experts would take these clarifications into account. He also concurred with the Government's statements on the fact that Australia's legislative system was based on certain basic principles, some of which continued to apply in full and some of which had been modified. He focused on three aspects of this legislation. First, workers continued to enjoy full rights under the Australian Workplace Agreement Act and preferred the advantages of the Agreement over collective bargaining and urged the Committee of Experts to take those statements into consideration. The Australian labour relations system had traditionally relied on collective negotiation. Second, the system was in a period of change through the Australian system of voluntary registration. Second, the legislation was not in compliance with the requirements of Article 4 of the Convention. He characterized the legislation as a short-term solution that did not serve the interests of either employers or workers. Third, the provisions of the Australian Workplace Agreement Act had failed to consider the point of collective bargaining and the Opposition requested by the Committee of Experts to guarantee the encouragement and promotion of collective bargaining. He expressed the hope that the Government would soon be able to report progress in this regard.

The Worker member of New Zealand cited, as a contribution to the consideration of the Australian case, the Employment Contracts Act enacted by her country in 1991 as an example of the negative impact that the Australian legislation would have on workers. The Employment Contracts Act did not take into account the principles of collective bargaining and favoured individual over collective agreements. Some jobs in Australia were in fact being advertised as AWA-only jobs, which prevented workers from collectively bargaining at all. In light of the ACTU study and other information available, it was clear that the legislative framework was not in compliance with the requirements of Article 4 of the Convention. He emphasized that the legislation as a short-term solution that did not serve the interests of either employers or workers. The provisions of the Employment Contracts Act had failed to consider the point of collective bargaining and the Australian legislation had a similar effect in that the AWA could not be displaced, even if the collective agreement established terms and conditions of employment that were preferable to those contained in the individual agreement.

The Worker member of Finland supported the statements made by the ILO representatives in the particular sector concerned. Her comments focused on the Australian Workplace Agreement, which had been introduced with the aim of limiting the rights of trade unions to bargain collectively. In New Zealand, the enactment of the Employment Contracts Act had reduced the coverage of collective bargaining agreements. He considered that the Australian legislation had a similar effect in that the AWA gave precedence to individual agreements over collective agreements. Under the Workplace Relations Act, an AWA, which was essentially an individual agreement, took precedence over collective agreements in the particular sector concerned. The AWA could not be displaced, even if the collective agreement established terms and conditions of employment that were preferable to those contained in the individual agreement.

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The Worker members interpreted the clause “where necessary” in Article 4 to mean that promotional activities might not be necessary in countries where the collective bargaining system was highly developed. They did not consider this to constitute a flexibility clause, but requested the Committee of Experts to clarify this point and the former one in its future comments on this case.

The Australian system was admitted by the Worker members saw no reason for Australia to be treated differently from other countries. In response to the Government’s statement that the impact of the legislation would not be seen for a few years, the Worker members agreed with the Employer members that there were two factors in compliance, law and practice, and there must be balance between the two. First, the correct legislation must be in place and then the courts could examine its application in practice. There was no reason for changes in legislation unless there were court judgements since the Committee of Experts had identified contradictions with the Conventions and called for the law to be amended now.

The Worker members requested that the Committee’s conclusions recommend that the development of law and practice in Australia be monitored. Responding to the Employer members’ statement that there were grey areas in the Committee of Experts’ comments with respect to legislation, the Worker members stated that the Committee of Experts’ comments were unambiguous and on three out of five points stated that the Government must amend its legislation. With regard to the Committee of Experts’ references to Australian Workplace Agreements and its statements expressing concern on the wording of the Workplace Relations Act, 1996, the Worker members acknowledged that there might be some nuances in the Committee of Experts’ comments not categorically calling for changes in the law, but insisted that it was clear that the Government must amend its legislation.

The Worker members indicated their disagreement with the Employer members’ statement that a preference expressed in the law for collective bargaining did not mean that employers were free to choose before recruiting a single employee which organization they wished to bargain with, threatened the workers’ right to set up organizations of their own choosing. It was for the social partners alone to choose which level to bargain at (local, national or by sector), and the Government had no business favouring one or the other. By the same token, the Government should not interfere with, and much less, prohibit agreements on strike pay that employers and workers might reach.

The Government representative indicated his Government’s wish to continue the dialogue with the Conference Committee, particularly in light of the Committee’s implementation of the provisions. But by narrowing the scope and modalities of collective bargaining, the Government had failed to live up to its commitments. Collective bargaining was a fundamental principle of the Organization and had been enshrined in the 1998 Declaration. An important part of the Declaration of Experts mission to Australia could shed light on the matter and help ensure that worker representatives were better protected and collective bargaining effectively promoted.

The Worker representative agreed with the Worker member that the Convention did not mean tolerate, and that the word “promote” was in the Convention. However, he indicated that the word “promote” had to be considered in context, and that context was the measures appropriate to national conditions, where necessary. Having regard to the totality of Article 4, he considered Australia was in compliance with that provision of the Convention.

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The Government representative rejected the statement made by the Worker member of Australia that his Government intended any disrespect to the Committee of Experts, noting that Australia had willingly appeared today before the Conference Committee to continue the dialogue on the points raised. However, he considered that more information and ongoing dialogue was necessary and committed his Government to providing all assistance required to towards this end.

The Worker members, in response to the Government representative’s statements, indicated that the Australian Government apparently considered the reference in Article 4 of the Convention to “measures appropriate to national conditions” and “where necessary” to constitute a flexibility clause. While some Conventions contained clauses allowing for flexible interpretation, Convention No. 98 had no such clause. The Government apparently considered this clause to mean that if such measure was not necessary, it should not be obligated to promote collective bargaining. This was a misconception on the part of the Government.

They stated that this kind of reasoning stressing the uniqueness of the national situation, as well as the situations which might be judged by a universal standard, reminisced them of the same arguments made by then communist governments that they should be measured by a different standard because their labour relations systems were different from those of capitalist systems. Some developing countries had also put forward this argument.
ties covered by the provisions concerning anti-union discrimina-
tion, as well as giving primacy to individual contracts over collective
relations through the Australian Workplace Agreements pro-
cedure. The Committee expressed the firm hope that the Govern-
ment would supply a detailed report to the Committee of Experts
on the application in law and practice of the Convention and on any
measures taken. The Committee recalled to the Govern-
ment that the International Labour Office was available to dialogue with all
the parties concerned on all the issues raised in the Experts’ com-
ments. The Committee expressed the firm hope that the Govern-
ment would continue to maintain a, maintained a constructive dialogue with the
supervisory bodies of the ILO and remain in cooperation with the
Office in this respect.

Panama (ratification: 1966). A Government representative re-
called that the Committee of Experts had indicated in its observa-
tion that the conciliation procedure provided for by Legislative
Decree No. 3 of January 1997, applicable to export processing zones,
could impede the application of Article 4 of the Convention.
He explained that the above provision had only sought to strength-
en voluntary bargaining through the creation of a special commis-
sion to examine disputes. Time periods had been set for the proce-
dures referred to the commission. These consisted of ten days to
contest the allegations, 20 days to reach a negotiated solution and, if
the parties did not reach an agreement, the commission had five
days to present them with a proposed solution. During this period,
the parties could not engage in any further bargaining and, if they
considered it appropriate, refer the matter to an arbitration tribunal. Arti-
cle 4 of the Convention did not prohibit the determination of peri-
ods of time which, in the present case and in the view of the
Government, were of a reasonable length and did not impede vol-
untary negotiation. With a view to gaining a better understanding of
the observation made by the Committee of Experts, the Govern-
ment might wish to have recourse to the competent services of the
Committee of Experts, the Committee of Experts, the Committee of
Committee of Experts, the Committee of Experts, the Committee of
Experts, taking into account national circumstances.

With regard to the second matter raised by the Committee of
Experts concerning the four amendments which should be made to the
Labour Code, the Worker members referred to the Committee on Freedom of Association by an employers’ organization, he re-
flected the important demonstrations which had occurred in his
country when the previous Government had submitted draft re-
forms to the Labour Code to the Legislative Assembly. On that oc-
casion, Panamanian society had been shaken by violent demon-
strations, which had even caused the death of workers. The new
Government had taken office in September 1999 and had not yet
obtained its own parliamentary majority through which it could adopt legislation reforming the Labour Code. For legislative re-
forms to be successful, effective consultations and the consent of
the social partners was needed. If one of the parties was opposed
to the reform, it was of no avail for a government to endeavour to un-
dertake such a reform in order to force its application through
labour legislation. In view of the above, he requested the Commit-
tee to take into account in its conclusions the fact that the Government
to continue the dialogue with the ILO’s supervisory bodies. He added that in order to achieve results suitable for those bodies, it was indispensable for the social partners in Panama
to be in agreement with the objectives in question.

The speaker added that the Government had transmitted the conclusions of the Committee on Freedom of Association to over
100 organizations. In reply, the great majority of workers’ organiza-
tions had clearly indicated their opposition to the reform. The em-
ployers’ organizations had not replied to the Government to this
date.

He added that there also existed in Panama a bipartite body of
workers and employers, the Labour Federation, which might be an
appropriate forum for promoting dialogue with a view to resolving the
points at issue. If the matter could not be settled by negotiation,
Finally, he urged the Committee to take into account the sincere
commitment of his Government to make every effort to enable the
representative organizations of employers and workers to reach an
agreement, through dialogue and concerted action, on the basis of
which the Government could submit draft legislation which includ-
ed the points raised in the Committee of Experts’ observation.

The Employer members recalled that both Employers and
Workers had been invited to submit cases to the Committee on Fre-
dom of Association alleging violations of freedom of association.
With regard to the case of Panama, they explained that there were
two issues to be examined.

The first issue addressed by the Committee of Experts in its
comment consisted of the conciliation procedure of 35 working
days in export processing zones, in accordance with Decree No. 3
of January 1997, which had been considered by the Committee of Ex-
erts as being too long for a conciliation procedure and likely to
hinder the application of Article 4 of the Convention. The Employ-
er members pointed out in this connection that the Convention did
not contain any provision specifying time periods and that in many
countries conciliation procedures were longer than 35 work-
ing days.

The interesting part of the case concerned the second issue on
which the Committee of Experts had commented. In this respect, they
endorsed the opinion expressed by the Committee of Experts that
the International Labour Office had referred to the opinion expressed in the conclusions of Case No. 1931 of the Committee on Freedom of Association regarding the need to amend some of the provisions of the Labour Code which were contrary to the right to organize and bargain collec-
tively. The provisions which had been criticized permitted the imposi-
tion of arbitration at the request of one of the parties to the collec-
tive dispute; the section which restricted the composition of the representatives of the parties to the collective bargaining procedure; the section which provided for disproportionate penalties in the en-
vironment of withdrawal of one of the parties from the conciliation procedure; and the section providing for disproportionate penalties in the case of failure to reply to a summons of claims. The Employ-
er members agreed with the Committee of Experts that these provi-
sions of the Labour Code needed to be amended.

The Employer members indicated that the case was particular in
another respect. The conclusions reached on the case by the Com-
mittee on Freedom of Association contained a point concerning the
issue of strike pay which had not been taken up in the comments of
the Committee of Experts, even though the latter had referred to the
conclusions of the Committee on Freedom of Association in their
entirety. Considering the reason for such an omission, the Em-
ployer members believed that it might have been due to a more
formal reason, since the right to strike had always been examined
under the Convention by the Committee on Freedom of Association which had not, however, dealt with the issue under examina-
tion last year. Nevertheless, the same issue, namely the question of strike pay being a matter of negotiation and not of
legislation, had been raised during the morning sitting of the Con-
ference Committee in the context of the cases concerning Article
98 in relation to the application in law and practice of the Convention and on any

Turning to the statement by the Government representative to
the effect that amendments to the legislation under examination
were not possible due to the absence of consensus in the tripartite
committee established for that purpose, the Employer members pointed out that it was the constitutional obligation of the Government
to ensure the application of the provisions of ratified Conventions.
The absence of consensus in a tripartite committee could not suffice as an excuse in this respect. In conclusion, the Employer members
expressed the view that, although short, the case contained many
interesting aspects.

The Worker members recalled that the observations of the Com-
mittee of Experts concerning the specific point raised by Panama had
ferred to government interference in the resolution of collective
disputes in export processing zones. A Decree of 1997 on dispute
resolution in export processing zones provided for the setting up of a
tripartite consultative commission and had set out a procedure for
labour disputes. This Decree permitted the dismissal of workers
who engaged in a strike without following the required procedures.
This procedure imposed a 35-day waiting period before workers
were entitled to strike. The Decree provided for an arbitration
process which would make it impossible to strike. The Worker members therefore asked the Government to amend the Decree in order to reduce the time
period laid down for conciliation, with a view to bringing it into conformity with the provisions of the Convention.

The Worker members also referred to the other point raised by
the Committee of Experts concerning Act No. 44 establishing standards to regulate and modernize labour relations, adopted on
12 August 1995. This Act had been examined by the Committee in
ference Committee in the context of Case No. 1931. With
reference to the observations made by the Committee of Experts
and the Committee on Freedom of Association, the Worker mem-
bers noted that it appeared to them that it was not restrictive of
the autonomy of the organizations engaged in collective bar-
gaining could be restored. They insisted on a tripartite solution to this
question. It was essential that the Government consulted not
only with workers’ organizations, but also with employers’ organi-
izations in the process of amending this legislation.

The Worker member of Panama noted that the Labour Code in his country established a time limit of 15 days for conciliation dur-
ing a negotiation process and that this had been extended by a Gov-
ernment Decree to 35 working days in export processing zones. It 
was important to state clearly that this right to strike was a matter that the 
Government had already explained in the conclusion of the Conference Com-
mittee. They emphasized that the Government was obliged to respect 
its international obligations and, in the present case, had to comply with 
the legislation requested by the supervisory bodies. He therefore could 
not fully understand the possibility for the parties to engage in direct 
negotiation or have recourse to arbitration. He therefore could not fully 
understand the comment made by the Employer member of Panama in support of the Government’s request to the Committee to allow it to continue 
the process of negotiation with a view to achieving consensus. He in-
formed the Employer members that his Government was not en-
ouraging the fixing of matters not in dispute in order to avoid pro-
cessing strike pay, which would inevitably lead to prolonged 
strikes and the deepening of the social conflict. He therefore recommended 
that the Committee should emphasize that such solutions could 
not be used as an excuse by the Government for failing to comply 
with the recommendations of the supervisory bodies to be given to the request made by the Committee of Experts by means of 
consultations certainly had to take place, this could not be used as 
arguments for the establishment of strike pay and the refusal of the 
Government to take into account the Labour Code principle of 
in dubio pro operario, whereby in the event of doubt the most favourable outcome 
for workers should always be sought. He stated that the reform pro-
posed by the Committee of Experts would be in addition to the five 
other reforms which had previously been imposed upon the work-
ners, resulting in a deeper crisis, increasing the unemployment rate 
and eliminating the rights which they had obtained. He also rec-
ers and employers in the event of conflict, but left open the 
possibility for the parties to engage in direct negotiation or have 
recourse to arbitration. He therefore could not fully understand the 
request of the Committee of Experts in this respect. Moreover, he 
emphasized that all the matters raised would be included in consul-
tations with workers’ and employers’ organizations so that no effect 
could be given to the request made by the Committee of Experts by means of consensus.

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could be given to the request made by the Committee of Experts by means of consensus.
With regard to the question of EPZs, he informed the Committee that an amendment had been proposed to repeal the provisional article 138 of the Constitution of 1985 on the abrogation of compulsory arbitration, which had only been imposed for a ten-year period, there would be no restriction on the collective bargaining rights of workers employed in EPZs. He emphasized the importance of this to the involvement of workers’ and employers’ organizations in formulating and implementing the measures envisaged by Convention No. 144. In fact, a bill on the establishment, working methods and principles the Economic and Social Council had proposed for consultations with the social partners and was currently on the agenda of the Council of Ministers. When enacted, the draft bill would give a legal status and strengthen and institutionalize the social dialogue in order to reach the highest level of practice which had already been in effect since 1995 under several government circulars. In conclusion, he informed the Committee that an Agreement for Cooperation between the ILO and Turkey would be signed very soon, which would provide for the continued good cooperation between the ILO and the Turkish constituents with regard to the promotion of the four strategic objectives of the Organization.

The Employer members noted that the Committee had discussed the issue of the right to organize for public servants, which had been made in Turkey since the early 1980s in respect of the basic requirements of the Convention. In this respect, the Employer members stated that the Government should be requested to continue to provide information on this matter. They also expressed frustration at the lack of progress in the adoption of the Bill on public servants’ rights to organize and bargain collectively, which had been stalled for many years. The Committee of Experts had proposed for a ten-year period, there would be no restriction on the collective bargaining rights of workers employed in EPZs. He emphasized the importance of this to the involvement of workers’ and employers’ organizations in formulating and implementing the measures envisaged by Convention No. 144. In fact, a bill on the establishment, working methods and principles the Economic and Social Council had proposed for consultations with the social partners and was currently on the agenda of the Council of Ministers. When enacted, the draft bill would give a legal status and strengthen and institutionalize the social dialogue in order to reach the highest level of practice which had already been in effect since 1995 under several government circulars. In conclusion, he informed the Committee that an Agreement for Cooperation between the ILO and Turkey would be signed very soon, which would provide for the continued good cooperation between the ILO and the Turkish constituents with regard to the promotion of the four strategic objectives of the Organization.

The Employer members welcomed the establishment of a tripartite committee with a mandate to examine labour legislation and to propose amendments where necessary. In this respect, the Employer members stated that the Government should be requested to continue to provide information, in particular on measures taken to remove any discrepancies which still might exist between existing legislation and the requirements of the Convention.

The Worker members thanked the Government representative for the information provided and his willingness to discuss the case in an open and frank manner. They hoped that this positive attitude would also be translated into the legislative process, which had been discussed on many occasions in the past, offered both gratifying and frustrating aspects. It was gratifying when significant progress was made, such as the ratification of Convention No. 87 in 1993. However, it was also frustrating when progress failed to materialize. This tension had been reflected in the observation by the Committee of Experts. With regard to the application of Articles 1 and 3 of the Convention dealing with anti-discrimination, the Committee of Experts had noted that it was clear that some progress had been achieved, but had requested the Government to report on the adoption of the new legislation promised in its previous report. Unfortunately, the Government representative had indicated that the Committee of Experts, a number of legislative restrictions on collective bargaining remained which had been in place for many years and which had conflicted with the principles of the Economic and Social Council had been prepared to examine the existence of legal provisions which were not applied. In this respect, the Employer members were of the opinion that it was more important to note that such collective bargaining was indeed carried out in practice, rather than to examine the existence of legal provisions which were not applied. As to the constitutional provision stipulating that no more than one agreement might be concluded for an establishment or enterprise was the arbitrary manner in which the amount of such indemnities was paid, the Worker members welcomed the progress which had been achieved, but had requested the Government to come into full compliance with the Convention. With regard to the question of the right to organize for public servants, he informed the Committee that an amendment had been proposed to repeal the provisional article 138 of the Constitution of 1985 on the abrogation of compulsory arbitration, which had only been imposed for a ten-year period, there would be no restriction on the collective bargaining rights of workers employed in EPZs. He emphasized the importance of this to the involvement of workers’ and employers’ organizations in formulating and implementing the measures envisaged by Convention No. 144. In fact, a bill on the establishment, working methods and principles the Economic and Social Council had proposed for consultations with the social partners and was currently on the agenda of the Council of Ministers. When enacted, the draft bill would give a legal status and strengthen and institutionalize the social dialogue in order to reach the highest level of practice which had already been in effect since 1995 under several government circulars. In conclusion, he informed the Committee that an Agreement for Cooperation between the ILO and Turkey would be signed very soon, which would provide for the continued good cooperation between the ILO and the Turkish constituents with regard to the promotion of the four strategic objectives of the Organization.
Convention in general. While welcoming the spirit of dialogue shown by the Government representative, they emphasized that it was necessary to remove all the remaining obstacles to the effective operation of collective bargaining. They also urged the Government to give serious consideration to accepting the ILO's offer of technical assistance to facilitate the elimination of the remaining obstacles to the application of the Convention.

The Worker member of Turkey also thanked the Government representative for the information provided, but recalled that the application of the Convention by Turkey had been examined by the Committee on 15 occasions since 1986. Although the power of the working people in his country was very effective in mass demonstrations, marches, rallies and industrial reaction, the problems relating to the legislation persisted because this power was not directly reflected on political arena. He further said that the Unions Act did not provide effective protection against anti-union discrimination, since the onus of proof rested with the victim. Moreover, the number of clandestine workers in Turkey was widely estimated at over 4.5 million, with another 750,000 illegally employed. The right to strike was cancelled. Despite the Government's claim that strike action was encouraged by the recent decisions, industry-wide collective agreements had been issued, they had not yet been honoured. The application of the Convention by Turkey had been examined by the Committee in the years to come. He therefore urged the Government to take the necessary measures to eliminate the discrepancies between national law and practice and the Convention.

The Worker member of Sweden, speaking on behalf of the Nordic Worker members of the Committee, referred in the first place to the prohibition on compulsory arbitration in EPZs. For many years, the Turkish system of trade unions was based on the principle of whether they worked at the local, regional or national level. She also drew attention to the health of the citizens. Due to the fact that the unions had ensured that strikes did not cause such harm, the body had not needed to take such a decision. She therefore emphasized that the recognition of collective bargaining rights did not automatically endanger society. She pointed out that there were different ways of securing the right to bargain collectively and the right to strike, while avoiding negative consequences in areas defined by the ILO as being essential services. For example, in her own country, an independent body had been established, composed of the parties concerned to strike action. Any compensation given by some trade unions. He also drew attention to the health of the citizens. The application of the Convention by Turkey had been examined by the Committee in the years to come. He therefore urged the Government to take the necessary measures to eliminate the discrepancies between national law and practice and the Convention.

The Government representative recalled that, unlike some other countries, the Turkish system of trade unions was based on the registration of trade union members. This tradition had a long history and had been based on the principle of compulsory registration for such categories of private workers as nurses, teachers, gardeners, clerical workers and train operators, who were deprived of many basic rights and freedoms. In Case No. 1989, the Committee on Freedom of Association had called upon the Government to refrain from having recourse to intervention in the bargaining process for public servants. However, over a year after these recommendations had been issued, they had not yet been honoured.

Turning to the question of compulsory arbitration, with special emphasis on EPZs, he pointed out that the ILO supervisory bodies had limited the prohibition on the right to strike to essential services in the strict sense of the term. In this respect, he emphasized that the petroleum, public utilities, transport and food and education sectors were not essential within the meaning given by some trade unions. He also drew attention to the statement by the Worker member of Turkey that the repeal of the 10 per cent requirement might cause tension and emphasized that, while the Government was willing to repeal this measure, it was first necessary to achieve consensus among the social partners before doing so. He added that, although collective bargaining was undertaken freely in Turkey, the process was often slow. It had been found that the 60-day limit had been breached. However, this limit did not mean that negotiation could not continue subsequently. He also reaffirmed that trade unions could have access to EPZs, including the right to organize and to collective bargaining. However, if disagreement along vertical lines was imposed with a view to preventing strikes. Once again, the provisions respecting compulsory arbitration in EPZs were due to be repealed.

With reference to the statement made by the Worker member of Turkey concerning job security, he explained that cases of disciplinary
were in practice referred quite commonly to the courts and gave rise to judicial awards. He added that the Constitution provided that there would be no more than one agreement concluded for an establishment or enterprise within a given time span. He explained that the dual system of industry versus establishment-level bargaining which had existed before 1983 had led to various difficulties and administrative problems that the conclusion of collective agreements under the pretext of industry-wide authorization. He stated, as recalled by the Committee of Experts, that industry-wide bargaining did exist in practice and that collective labour agreements concerning areas which were essential for the life of the community. As the Committee pointed out again, that the Committee of Experts had been concerned cooperation between the ILO and the country which covered four strategic areas. He mentioned in this respect two pieces of draft legislation which he would refer to the ILO once the response of the social partners had been received with a view to improving the text and having it translated. He added that a draft agreement had been reached concerning cooperation between the ILO and the country which covered four strategic areas.

He recalled that his country had a fairly well-developed industrial relations system and noted that many unions were active among public servants’ trade unions and engaged in collective bargaining in the municipalities. However, the social balance agreements had encountered problems in view of the legislative changes on the statute book. He explained that legislation was being drafted to promote free collective bargaining between civil servants’ associations and state employers. The Committee expressed the firm hope that such legislation would be adopted in the near future so as to ensure that Article 4 of the Convention was applied as well as to resolve some of the issues which had impeded the improvement of national legislation as regards the collective bargaining rights of public servants, including those engaged in the administration of the State. While recognizing the important role played by workers, including public servants, with the sole possible exception of workers engaged in the administration of EPZs, he reiterated his Government’s commitment to international labour standards and its appreciation of the valuable guidance and advice provided by the Committee of Experts and the implementation of the provisions of Conventions. He addressed the observations made by the Committee of Experts on the implementation of the Convention point by point.

With respect to the observations on the Pakistan Essential Services (Maintenance) Act, 1952, the Government representative noted that it applied to those employments or categories of employment which were essential for securing the defence or the security of Pakistan and for the maintenance of supply services which were essential to the life of the community. As the Committee had noted, the application of the Act had been made very restrictive. It was important to note that the Act’s application to only six services was a reduction from an initial list of ten categories of establishments or areas of work. The restrictions remaining in only six categories of establishments were truly essential to the life of the community. The Government, in its desire for social dialogue and fairness, had provided for the conduct of negotiations between employers and workers, who were prohibited from terminating or suspending workers. In all cases where employers had terminated or suspended workers, the workers had been reinstated by the Commission, which was the relevant regulatory authority. The primary objective of the Act was to avoid any industrial conflict and breakdown of the establishment or in-
dustry which could endanger the life and welfare of the country. In normal circumstances, the provisions of the law were rarely en-
forced. Moreover, it was frequently observed that the employment, human resources development and industrial rela-
tions, with ILO participation and attendance by the social partners. The recommendations made by the Conference had been adopted by consensus. In summary, the current organization of the labor movement, with ILO participation and the involvement of the social partners, was moving resolutely to implement international labour standards, in line with the recommendations made by the Committee of Experts.

Turning to the issue of the repeal of the West Pakistan Press and Publications Ordinance, 1962, the Government representative stated that the Ordinance was placed before the Tripartite Committee to Consolidate, Simplify and Rationalize Labour Laws, 1996. The Government representative noted that all provisions of the law were in the process of being enacted in view of the recommendations by the Committee of Experts. The Ordinance was being drafted with the aim of fulfilling the requirements of the Convention and complying with the comments of this Committee and would be provided to the Committee when finalized. He hoped that this would end the comments on this point.

Turning to the issue of the repeal of sections 101-103 of the Merchant Shipping Act, the Government representative noted that the Ordinance was in the process of being enacted in view of the comments of the Committee of Experts. The Ordinance was being enacted in view of the comments of this Committee and would be provided to the Committee when finalized. He hoped that this would end the comments on this point.

In respect of the repeal of sections 54 and 55 of the Industrial Relations Ordinance, 1969, which had been placed before the Tripartite Committee to Consolidate, Simplify and Rationalize Labour Laws, 1996, to which the Committee of Experts had referred, the Ordinance was being enacted in view of the comments of this Committee and would be provided to the Committee when finalized. He hoped that this would end the comments on this point.

Turning to the Security of Pakistan Act, 1952, and the Political Parties Act, 1962, the Government representative noted that the comments of this Committee had been brought to the attention of the competent authorities. He reiterated that any punishment imposed under these acts would only be implemented after a fair trial in a court of law. He assured the Committee that the Government was making every effort to defend and prove his or her innocence.

The Government representative asked the Committee to note that the Government had made an honest effort to address and comply with the comments of the Committee. The initiative was moving resolutely to implement international labour standards, not only making efforts to apply ratified Conventions, but also moving to ratify fundamental human rights Conventions, such as the Worst Forms of Child Labour Convention, 1999 (No. 182). He noted that the tripartite structure was in the process of being strengthened and that the social partners remained actively involved. All observations had been placed before the tripartite partners for their views. The Government had recently organized a conference on employment, human resources development and industrial relations, with ILO participation and attendance by the social partners. The recommendations made by the Conference had been adopted by consensus. In summary, the current organization of the labor movement, with ILO participation and the involvement of the social partners, was moving resolutely to implement international labour standards, in line with the recommendations made by the Committee of Experts.
provisions of the Pakistan Essential Services (Maintenance) Act, 1952, prohibited employees, in several sectors of the public service, from leaving their employment, even by giving notice, without the consent of the employer, subject to penalties of imprisonment that might involve compulsory labour. The Government had affirmed for several years, and in particular in the context of the discussions in the Committee on Application of Convention No. 29, that this law could be applied for only a limited time and that these provisions were necessary to secure the defence or security of the country and the maintenance of such supplies or services that were essential to the life of the community. In practice, however, it was applied permanently and in situations in which no case could be considered as exceptional. The Committee of Experts had also recalled that in order to be able to invoke the essential services exception, there was risk of being a danger for the community and not only a disturbance. The current practice in Pakistan which deprived a great number of its workers from the freedom to terminate their unlimited contracts with a reasonable notice period, was a violation of one of the fundamental labour rights. This was clearly a case of unacceptable forced or obligatory labour. The Worker members had asked that an end be put thereto not only in law but also in practice.

The Merchant Shipping Act was also contrary to Article 1(c) and (d) of Convention No. 105. According to this Act, penalties involving compulsory labour might be imposed on seafarers in relation to various breaches of labour discipline. The 1996 Merchant Shipping Bill, which also provided for the replacement of the sanctions on peaceful expressions of religious beliefs or which may involve compulsory labour, was a violation of Article 1(a) of the Convention. The Worker members had noted the oral information provided by the Government representative. They requested that this information be transmitted to the Committee of Experts to enable it to examine the current situation on the ground.

The Government had asserted that religious discrimination was prohibited by law and that there was no such discrimination. In practice, however, there were several examples of serious violations of religious minorities’ rights as well as of assassinations and forced labour imposed on certain persons due to their religious beliefs. The legal basis used to sentence persons to a punishment which could be imprisonment accompanied by compulsory labour was sections 298(c) and 298(C) of the Penal Code. According to the information at the end of 1999, 30 Ahmadis had been imprisoned only on account of their beliefs. The explanations provided in the past by the Government had been ambiguous. On the one hand, it had stated that there was no religious discrimination in the application and to Pakistani law, and that there was no such discrimination in practice. On the other hand, it had declared that it had taken legislative and administrative measures to limit the exercise of religious practices. However, the Government, these represented a threat to security and public order. The Committee of Experts recalled that the Convention prescribed sanctions on peaceful expressions of religious beliefs or which were addressed, more generally, or exclusively, to certain social or religious groups (irrespective of the breach committed). The Worker members supported this view and emphasized that the Government should, without further delay, put an end to existing discriminatory practices. In view of the provisions of the Convention, the Committee of Experts, instead of awaiting the recommendations of the Tripartite Commission on the Consolidation, Simplification and Rationalization of Labour Laws, with respect to the Merchant Shipping Act, the Essential Services Ordinance, 1963, and the Political Parties Act, 1962, the Government should provide full details in writing to the Committee of Experts. As to the matter of certain religious groups it stated that Pakistan was not to blame; however, the Government or the workers concerned should be able to find acceptable solutions.

In conclusion, it considered that there was evidence of positive social dialogue and political will on the part of the Government. The speaker hoped that the Government would share his belief that workers should not be deprived of their rights to collectively bargain and organize. He added that these rights should be protected in order to respect the interests of nations. The Government should reach an agreement with workers through social dialogue instead of imposing the restrictions cited in the Committee of Experts’ comments. Noting that Pakistani workers had demonstrated that the Government’s goal of economic and social development, he expressed the hope that the Government and the social partners could establish and maintain a constructive social dialogue.

The Worker member of Italy, responding to the Government representative’s statements regarding the Ghazi Barotha Hydro Power Project, pointed out that the main obstacles to the development of the project were the delays caused by the Water and Power Development Authority (WAPDA). These delays comprised the appropriation of necessary land, and delays in the payment of millions of dollars from the World Bank which stayed in the hands of WAPDA instead of being passed on to the contractor for the project. In fact, just before the Government started construction of the project, the contractor had already been paid for technical assistance in order to bring the law into conformity with its obligations. The former Government had restricted the funding of the project, the contractor had declared its intent to cease construction due to problems in its relationship with WAPDA. Another obstacle to the project was the contractor middlemen, who continuously threatened the worker representatives and the trade union. The Italian contractor had also refused to negotiate with the workers for approximately one-and-a-half years. In these circumstances, the company and WAPDA asked the Government to seek solutions together with the social partners. In particular, it was agreed that the Government should provide the social partners with the technical assistance necessary to develop joint industrial relations training with the union representative of the project.

The speaker noted that, thanks to the collaboration between the Italian and Pakistani trade unions, an agreement was reached to reinstate the union as bargaining agent and to develop joint industrial relations training with the union representative of the project. Noting that a dialogue had been initiated to reach an agreement between management and the workers, she indicated that the Italian and Pakistani unions welcomed this new contractor policy and expected that it would have a positive impact in the future.

She stated that Convention No. 105 was continuously violated by public and private employers in Pakistan in various sectors. With regard to the Pakistan Essential Services (Maintenance) Act, 1952,
she noted its application in state enterprises, including oil and gas production, electricity generation, airlines, ports and EPZs. She characterized the act as an undermining of the fundamental trade union rights established by the ILO core Conventions and the UN Declaration of Human Rights. The Government had arbitrarily applied the Act to productive plants or building sites at the request of employers. The Act had been invoked repeatedly with regard to the Ghazi Baroanta Hydro Power Project due to pressure from contractors. She asserted that the Act was not used to protect state security, but to suppress the implementation of labour legislation and to wholly deny workers the right to organize and bargain collectively to defend their interests against company abuses. The Act had also been applied in regard to the Daewoo project, where its application had been requested and granted for purposes of “social peace.” The union had been forced into a lengthy appeal process in the labour courts, to no avail. The Act had also been applied in various production plants, including plants producing chemicals for agricultural and for military use.

Turning to the issue of bonded labour, she noted that there was widespread use of debt bondage in Pakistan, including in the agricultural sector. This practice violated not only Convention No. 105, but also Conventions Nos. 138 and 182. The strong power of landlords and practices into conformity with the provision of Convention No. 105, but did not intervene even after receiving complaints — posed the major obstacles. She cited Amnesty International’s comments that bonded labourers, including children, were often under the power of powerful figures such as landlords, many of which occupied high positions in the Parliament or in provincial institutions and held sway over local officials and police. She urged that action be taken to end bonded labour in cooperation with the social partners, other organizations and with ILO assistance.

The Government representative expressed his appreciation to all members of the Committee for their comments. In response to the statements made by the Worker member of Pakistan, he noted that the Pakistani trade unions had shared the common goal of social and economic development with all the Pakistani trade unions. He noted the points of the Worker member of Pakistan and complemented the Government for restoring workers’ rights in the trade union.

Responding to the comments of the Worker member of Italy on the issue of bonded labour, he stressed that Pakistan was committed to eliminating child labour, bonded labour and debt bondage in the country. The Government wished to progressively eliminate all forms of child labour and had recently enacted a law that would specifically address the various forms of child labour in Pakistan. He noted that this problem was linked to poverty, and was a problem which had been inherited by the current Government. The Government had established a benefit fund of 100,000 rupees for the education and rehabilitation of bonded and child labourers and had also launched a project whose objectives were to utilize multiple strategies to eliminate child labour.

In response to the statements made by Employer members, the Government representative confirmed that he would submit in writing to the Committee of Experts all statements made in this Conference.

The Worker members expressed the wish that the oral information provided by the Government representative be examined by the Committee of Experts. They declared they were very concerned by this case as it concerned not only a single contradiction with the provisions of the Convention, but a whole series of laws and practices allowing for recourse to forced labour. A prerequisite was to have the political will to improve the situation. Technical assistance from the ILO could also help the Government to bring law and practice into conformity with the provision of Convention No. 105. A major point in the statement made by the Government representative was the importance given to social dialogue and tripartism. It was in fact essential that solutions to violations of the Convention be found with the participation of the social partners.

The Committee took note of the information supplied by the Government representative and of the discussion which ensued. It noted that this was a case that had been examined by the Committee of Experts for nearly 40 years, and which had been discussed in the Conference Committee several times over the past years. The Committee regretted that very little improvement in compliance with the Convention had been achieved in the areas pointed out by the Committee of Experts over many years, including particular legal restrictions on termination of employment and on striking, as well as on the expression of certain political and religious views, enforceable with sanctions of imprisonment involving compulsory labour, and on the imposition of penalties involving breaches of labour discipline by seafarers. The Committee noted the Government’s explanation concerning various measures envisaged or undertaken. It hoped that all of this information as well as further details and copies of the new legislation would be provided in the Government’s next report to the Committee of Experts. The Committee urged the Government to take, without delay, all the necessary measures to bring the law and practice into conformity with the Convention, which it had ratified. However, it pointed out that the enforcement of the Convention was a duty shared by all, a duty to which all had access, and which was indispensable. She cited the non-cooperation experienced by the Committee of Experts, the refusal of the Vietnamese Government to allow the Committee to inspect conditions of work in the country, and the decision to condemn both by the Committee of Experts.

With reference to Article 1(a) of the Convention, concerning punishment aimed at censoring political or ideological views opposed to the existing system, the Committee of Experts had commented on the Newspaper Act, 1976, which contravened ILO Conventions. Funding had been secured for a labour law reform project, which would cover amending traditional labour legislation and other laws which impinged on labour issues, such as those which contravened ILO Conventions. Moreover, she emphasized that the Government was committed to compliance with all the ILO Conventions. Funding had been secured for a labour law reform project, which would cover amending traditional labour legislation and other laws which impinged on labour issues, such as those which contravened ILO Conventions. Moreover, she emphasized that although it did not punish persons who themselves refused to participate in such schemes, even if it had done, it would still have been in conformity with the Convention because in practice the self-help schemes fell under the exceptions to the definition of forced labour set out in Articles 2(2)(d) and 19(1) of Convention No. 29. Moreover, she apologized for not having submitted cases concerning the application of these sections to the Committee of Experts. This failure had been partly due to the Government’s own difficulties in collecting the information, partly due to the difficulty in accessing the records of lower courts throughout the country, which was where such cases were heard.

With regard to Article 1(c) concerning the use of forced labour as a means of labour discipline, the relevant provisions were Conventions 176 and 284 of the Penal Code, as amended by the Economic and Organized Crime Control Act, 1989, as well as the Merchant Shipping Act, 1967, she explained that these texts had to be seen in the special circumstances of a whole series of difficulties that the country had experienced. At that time, her country had had a socialist economy, in which the major commercial and business entities had been state-owned or run as parastatal organizations. Such enterprises had been managed and losses were sometimes incurred in circumstances which seemed to stem from deliberate acts of sabotage and plunder. The aspect of negligence had been introduced because it had been difficult for the investigative machinery to prove that the acts had been wilful. In the subsequent years, due to the privatization and the State divesting itself from the operation and management of such enterprises, these provisions would soon be rendered redundant. Nevertheless, they were among the texts which were due to be reformed. She added that the Merchant Shipping Act was a relic of the colonial past which only remained on the statute books due to the slowness of the reform process.

With reference to Article 1(d) concerning the use of forced labour as a punishment for desertion, the relevant provisions could not apply before employers could lock out their employees. In conclusion, with regard to Zanzibar, as indicated in previous reports, consultations were continuing with the Government of Zanzibar and the Committee of Experts would be informed as soon as results had been achieved.