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22nd sitting, 8 June 2016, 3.10 p.m.

Vingt-deuxième séance, 8 juin 2016, 15 h 10

Vigesimosegunda sesión, 8 de junio de 2016, 15.10 horas

Chairperson: Ms Cecilia Mulindeti-Kamanga

Discussion on individual cases (cont.)

Discussion des cas individuels (suite)

Discusión de los casos individuales (cont.)

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

Bangladesh (ratification: 1972) (cont.). **The Employer members** thanked the Government for the detailed information provided. They recalled that following this year's observation from the Committee of Experts, the Government had accepted a high-level tripartite mission to the country in April 2016; the High-level Tripartite Mission's report had been provided to the Conference Committee in advance of the discussion of the present case.

In its latest comments, the Committee of Experts had noted with interest the establishment of a helpline for labour-related complaints targeting the RMG sector in the Ashulia area. The Committee of Experts had also noted that the Bangladesh Labour Rules

were published in the *Official Gazette* on 15 September 2015 as part of the implementation of the BLA, and had welcomed the issuance of the Rules, trusting that they would assist in the implementation of the BLA in a manner fully consistent with the Convention. The Employer members joined the Committee of Experts in welcoming these positive developments and encouraged the Government to expand the operation of the helpline to other areas of the country.

With regard to the registration of trade unions, they noted that the High-level Tripartite Mission considered this process as heavily bureaucratic, and further recalled the concerns expressed by the Committee of Experts in respect to this overly complicated procedure. They urged the Government to establish standard procedures in order to ensure that the registration process would set out requirements of a purely formal nature and would not, owing to its bureaucratic nature, itself become an obstacle to the registration of unions.

In respect of the Committee of Experts' comments on the minimum membership requirements for forming a trade union, they stressed that these requirements must be viewed in the national context. It was also important, in this regard, to consider that a proliferation of trade unions could be counterproductive to the development of healthy industrial relations and economic growth. The Employer members further urged the Government to provide information to the Committee of Experts on the steps taken to amend the BLA since 2013.

They welcomed the initiative reported by the Government to provide training to workers and employers on the issue of anti-union discrimination, and asked the Government to continue with these capacity-building activities.

With regard to the issue of the EPZs, they noted that a situation of separate legislative frameworks for enterprises within and without the EPZs remained. The BLA applied to employers operating outside the EPZs, whereas a number of provisions of the EPZ Workers Welfare Association and Industrial Relations Act of 2010 collectively constituted a separate legislative scheme for employers operating inside the zones. The provisions of the Act, they

further noted, did not allow workers and employers to form organizations of their own choosing.

In respect to the EPZ concerns raised by the Committee of Experts, the Government had indicated that a draft of the EPZ Labour Act had been sent to the Ministry of Law for vetting prior to submission to Parliament. The Employer members noted that this draft law appeared to have been prepared with limited engagement of the national social partners, who indicated that they either were not consulted or were allowed very limited consultation in respect of this bill. They further noted that the High-level Tripartite Mission in its report had expressed concerns over the draft EPZ Labour Act, as it restricted the freedom of investor employers by requiring them to form central investors' associations, rather than organizations of their own choosing. While having noted the information supplied by the Government, to the effect that the above-noted dual legislative framework had arisen out of concerns to ensure the attractiveness of the EPZs to foreign investors, they urged the Government to ensure that the draft EPZ Labour Act allowed workers and employers to establish organizations of their own choosing, and to fully consult with the national social partners in this regard.

Finally, the Employer members asked the Government to provide information on the labour laws applicable to the special economic zones as the Committee of Experts had requested.

The Worker member of Bangladesh (Mr MAHMUD), explained that following the independence of Bangladesh in June 1971, the country ratified 29 ILO Conventions including Convention No. 87. In 2006, a new BLA was adopted and amended in 2013, with rules adopted in 2015 to implement the BLA.

Despite its claims of progress, the Government still denied workers their right to freedom of association in law and in practice as confirmed by the recent report of the ILO's High-level Tripartite Mission. Workers in all sectors in Bangladesh who attempted to

organize and form trade unions faced severe and, at times, violent retaliation from employers without the Government making any serious effort to hold accountable those who violate the law. Workers whose contracts of employment were terminated due to trade union activity were almost never reinstated, unless Global Unions undertake a lengthy international campaign against the global garment brands.

Therefore, he was deeply concerned with the Government's continued denial of the right of freedom of association to workers in EPZs. In spite of several revisions to the Bangladesh Labour Rules, no guarantees had been provided to ensure the right of workers to establish and join organizations of their own choosing without interference from public authorities, which would restrict this right or impede its lawful exercise. The draft law prepared by the Government in the current year of 2016 and submitted to Parliament in April 2016, maintained the same exclusion of workers in EPZs from its scope of coverage. It was further stressed that Workers' Welfare Associations were not unions, and collective bargaining in the EPZs was extremely rare. Moreover, workers who attempted to organize were dismissed, and prohibited by law from seeking the assistance of trade unions or non-governmental organizations outside of the EPZ.

The new implementing Rules of the BLA were two years overdue and of poor quality. While trade unions had been consulted, the executive decrees created new obstacles to the right of freedom of association. For example, Rule 81 empowered the "Worker Participation Committee" to elect the workers' representatives in the safety committees while RMG employers largely controlled the process of establishing Worker Participation Committees, and by extension Occupational Safety and Health Committees in light of Rule 82.

The trade union movement in Bangladesh believed that there was no alternative to free trade unionism to ensure sustainable development, maintain industrial integrity and uphold democracy. In this regard, social dialogue was seen as important and the only way to achieve the desired goals. However, the Government had appeared before the Conference Committee

both before and after the Rana Plaza disaster and continued to make promises that it did not uphold; the time has come to witness concrete results.

The Employer member of Bangladesh (Mr RAHMAN) provided supplementary information on the country so as to offer a holistic view of the case. In particular, he emphasized that, apart from being one of the most densely populated countries of the world, there were an additional 1.8 to 2 million youths every year joining the estimated 50 million economically active people in the labour market. Therefore the greatest challenge was not only to sustain the level of employment but also to create jobs for the millions who were joining the labour market and impart to them the right skills that would facilitate job search within the country and overseas. Recalling the fact that Bangladesh ratified 29 ILO Conventions within a year of its independence in 1971, the speaker indicated the full commitment of the country to safeguarding fundamental human rights, including freedom of association, and to ensuring compliance with international labour standards.

With job creation, a greater space had been shaped for trade union rights and appropriate amendment to laws. Citing the economist, Dani Rodrick, the speaker referred to a time dimension as a prerequisite condition for achieving progress towards implementation of the Convention and indicated that the Labour Act, as amended in 2013, was to be considered one of the measures taken in this direction. He also mentioned that the tripartite partners would be continuously reviewing progress in line with the recommendations of the recent High-level Tripartite Mission. The speaker recognized activities of the ILO country office in Dhaka, seen as essential for the implementation of the Convention and aimed at promoting decent work in Bangladesh, fostering tripartism and building capacities of the social partners.

Recalling the previous examinations and conclusions of the Conference Committee as well as the Committee of Experts, the Employer member brought attention to the issues raised in the last observations, specifically: the request to modify the Law governing EPZs allowing for full freedom of association, including to form trade unions and to associate with

trade unions outside of EPZs; harassment for participation in trade union activities; registration of union organizations without previous authorization; and excessive requirement for initial and continued union registration. He further noted that this case had not been the subject of a representation procedure under article 24.

In the light of the recent High-level Tripartite Mission, which was welcomed by all the constituents, the Employer member expressed his regret that this particular case had been shortlisted before the Mission had had the opportunity to share the findings in its report.

The speaker commended the amended Labour Law, which had been done through tripartite consultations. Considering that Rules under the Law had been published in September, barely eight months ago, he suggested that the stakeholders ought to be allowed to observe implementation of the law for a reasonable time before making another attempt for further amendments. He also believed that the complaints lodged by the International Trade Union Confederation (ITUC) would be verified through proper investigation by appropriate government agencies and further indicated that the registration process for trade unions had been made easy and open through the latest amendment to the Labour Law.

The Employer member underlined that trade unions and their leaders were protected under various provisions of the Labour Act, including, inter alia, complaints procedures, anti-union discrimination penalties and remedies for aggrieved workers.

The speaker strongly believed that the existing threshold of 30 per cent worker membership in an enterprise was realistic for union registration and lowering it would encourage a proliferation of unions without bringing any positive change to the bargaining strength. He also noted a particularity of the agricultural sector, 99 per cent of which was under small individual ownership and with a limited number of seasonal temporary workers.

With regard to the request of the Committee of Experts to amend a number of sections of the Bangladesh Labour Rules, the speaker pointed out that a one-size-fits-all approach

could not have been suitable and laws needed to be enacted in line with ILO Conventions as well as taking the socio-economic development of the country into account.

A draft law “Bangladesh EPZ Labour Act, 2016”, incorporating a provision for constitution of trade unions under the name of Shramik Kollyan Samity in the EPZs, was agreed by the Cabinet on 15 February 2016 and was expected to be enacted.

The speaker concluded by reiterating the need for time in a process of development and expressed his hope for further support and cooperation.

The Government member of the Netherlands (Mr KRAP), speaking on behalf of the member States of the European Union (EU), indicated at the outset that Albania, Iceland, Republic of Moldova and Norway also aligned themselves with his statement. He welcomed the Government’s acceptance of an ILO High-level Tripartite Mission in April 2016, and noted that progress on a number of issues had been achieved in the framework of the Sustainability Compact, which, inter alia, outlined concrete commitments in respect of freedom of association. For instance, an online registration system for trade unions had been established, as well as a helpline for cases of violence against trade unionists targeting the RMG sector in the Ashulia area. In respect of the latter, he encouraged the Government to expand the helpline nationwide and provide information on the follow-up given to the calls received.

These positive developments notwithstanding, serious issues remained in respect of the application of Convention No. 87. For example, the number of registrations of trade unions had dropped significantly in recent months, and a number of registered trade unions no longer operated in practice. In this regard, he called upon the Government to ensure trade union registration would be carried out in a transparent and expeditious manner. It was equally important, moreover, to ensure that unfair labour practices would be effectively investigated and prosecuted.

He also urged the Government to amend the BLA so as to, inter alia: (1) lower the minimum membership requirement of 100 workers for establishing an agricultural trade union; (2) ensure that the definition of “supervisor” was limited to individuals truly possessing managerial authority; and (3) lower the 30 percent minimum membership requirement for the establishment of a trade union.

He reiterated the call expressed by others in the Conference Committee for the Government to review the draft EPZ Labour Act, so as to ensure full freedom of association rights to workers in the said zones, as well as to indicate which labour laws were applicable to the special economic zones.

He concluded by affirming the EU’s commitment to continuing its intensive cooperation with the Government in the framework of the Sustainability Compact – in which Bangladesh, the United States, Canada and the ILO were partners – and urged the Government to take all the necessary steps to ensure a sound industrial relations system premised on respect for freedom of association.

Regrettant que la commission doive à nouveau discuter du respect de la convention n° 87 par le Bangladesh, **une membre gouvernementale de la Suisse (M^{me} GUGGISBERG)** a déclaré que la Suisse soutient la déclaration faite par l’Union européenne. Rappelant que l’an dernier, la Suisse a exprimé sa préoccupation devant les actes de violence et de harcèlement à l’encontre des syndicalistes, il est à espérer que les procédures en cours sont menées à bien et assorties de sanctions. Tout en soutenant les recommandations de la commission d’experts ainsi que les conclusions de la mission tripartite, deux points sont à relever.

Premièrement, constatant la diminution du nombre de syndicats, elle a demandé instamment au gouvernement de suivre les recommandations de la mission tripartite à cet égard et de développer des procédures normalisées pour un processus d’enregistrement simple et transparent pour les syndicats. Deuxièmement, l’importance d’une loi du travail

forte et cohérente est à souligner. Notant avec préoccupation les insuffisances concernant la liberté syndicale et la négociation collective dans les zones franches d'exportation (ZFE), elle a demandé au gouvernement de mettre en œuvre les recommandations de la mission tripartite en la matière.

The Worker member of Canada (Ms CLARKE-WALTER), jointly with the AFL-CIO, stated that labour reforms had been initiated by Bangladesh in the aftermath of Rana Plaza with the revision of the BLA being identified as a priority to create a solid foundation upon which safety in the RMG sector could be built. While the BLA was revised in 2013, the vast majority of the observations of the Committee of Experts relating to freedom of association had not been addressed.

Bangladesh had not lived up to its commitment to take into account the Committee of Experts' observations under the terms of the Bangladesh Sustainability Compact, to which the EU, the United States, Canada, Bangladesh and the ILO were parties. Under the Bangladesh Sustainability Compact, the Government of Bangladesh had agreed to pass executive decrees to implement the 2013 Labour Act. The executive decrees of concern had been passed after a delay of two years, and even then, the Bangladesh Worker member noted that the executive decrees had actually created new problems with regard to the exercise of freedom of association. For example, some workers, who did not actually serve in a managerial capacity, were categorized as supervisors under the executive decrees, and consequently excluded from the BLA's coverage. The executive decrees also failed to outline procedures for the resolution of unfair labour practices. Rule 202, in a general manner, restricted the actions that could be taken by trade unions.

The fact that the rules were so deeply flawed, despite the substantial ILO technical assistance, was further evidence that the Government of Bangladesh had no intention to respect the ILO supervisory system or the rights of its workers. The Conference Committee should hold the Government of Bangladesh accountable for its obvious lack of political will to comply with its legal obligations.

Canada had been called upon to use its leverage, as part of the Bangladesh Sustainability Compact, to promote compliance with the right to freedom of association in the “ready-made garment and knitwear industry” in Bangladesh, consistent with Canada’s commitment to improving conditions for workers in Bangladesh. Canada had also been urged to apply all the tools at its disposal to strengthen Bangladesh’s political will to advance workers’ rights and to achieve full compliance with Convention No. 87, in all sectors in the country.

The Government member of the United States (Ms GOODYEAR) indicated that the Government of Bangladesh had been requested to appear before the Committee every year since the tragic Rana Plaza building collapse in April 2013 and underlined that this year was the third discussion on freedom of association. Noting the increased attention of the Committee to this case in recent years, she pointed out a lack of progress in this regard and recalled last year’s statement of the United States Government regarding a decline in the rate of union registrations, obstacles related to the application process as well as significant and worrisome reports of unfair labour practices, which included violence against trade unionists and unfair dismissals.

Referring to the Committee of Experts’ recommendation that union registration should be a simple formality, she called on the Government to establish standard procedures for union registration that would be transparent and not subject to discretionary authority. Furthermore, she urged the Government to establish a system for the thorough and timely investigation of the mentioned unfair labour practices, and to provide for redress, including reinstatement.

Recalling the increased attention to the issue of freedom of association in Bangladesh’s EPZs since 1991 of both the Committee of Experts and the Conference Committee, the speaker reiterated that Workers’ Welfare Associations, as provided in the current and proposed law, were not equivalent to, or substitutes for, trade unions that were free to organize their own activities and to affiliate with other organizations outside the EPZs and

urged the Government to ensure that its laws would allow for full freedom of association in the EPZs, including private EPZs, and in future economic zones such as the planned special economic zones.

The speaker urged the Government to amend the Bangladesh Labour Act and its regulations in line with the Convention and observations of the Committee of Experts. She concluded by inviting the Government to take full advantage of the technical assistance from multiple sources and to implement the recommendations of the direct contacts mission, and of this Committee, without further delay.

The Worker member from IndustriALL Global Union (Ms KAIWAR) explained that her organization represented over 50 million workers in 140 countries in the manufacturing, mining and energy sectors with affiliates, inter alia, in RMG and shipbreaking which were the focus of the intervention. The issue of the refusal to register trade unions was particularly endemic in the RMG sector. While in the immediate aftermath of the Rana Plaza disaster and due to international pressure, new unions had been registered in the RMG sector, it had become increasingly difficult to do so over the previous two years. According to the data compiled by the Solidarity Centre in 2015, 134 applications for registration were filed with 61 unions granted registration and 148 rejected; and as of mid-April 2016, 13 applications were submitted with three approvals and 14 rejections. It was clarified that the sum of accepted applications and rejected ones did not add up to the total number of applications submitted, due to the fact that applications were kept pending from one year to the next. Moreover, the Government of Bangladesh made no progress in creating a database to track the registration process, and the Committee was urged to take note of this point.

It also appeared from the data of the Solidarity Centre and the information provided by the affiliates of the Worker member (the National Garment Workers' Federation (NGWF), the Bangladesh Garment and Industrial Workers Federation (BGIWF), Bangladesh Federation of Workers Solidarity (BFWS)), that applications filed by independent unions

had a greater risk of being rejected even when they fulfilled all requirements. Ten of the Worker members affiliates submitted 61 applications in 2015, of which only 18 unions (with a total membership of 4,600) were registered and six applications remained pending with the JDL. The latter's refusal of registration for various reasons showed the difficulties created in the registration process. One illustrative case was an RMG factory (Hanwen) where the JDL had rejected the application for union registration on the grounds that some workers claimed as members had not been aware of the union, and because the office bearers and some of the members had not belonged to that factory. The reality was that some of the workers were issued backdated termination letters after the union filed for registration, and new workers had been recruited just prior to the scheduled inspection required before registration.

Therefore, the Committee was urged to take note that the JDL had absolute discretion in deciding applications for registration and that this issue was not addressed by the executive decrees issued under the BLA of 2013. Furthermore, the executive decrees of September 2015 made it mandatory to include the identity cards of all members whose names are part of the application for registration, giving rise to fears of harassment of union members.

Further to the aforementioned obstacles, employers were approaching courts to seek injunctions on unions which had actually been granted registration with the result of "*ex-parte ad-interim*" orders being issued. These orders had the effect of not allowing a union to function, even after being duly registered. A case in point was that of a garment factory (Donglian Fashion) where the Worker member affiliate, the Sommolito Garment Sramik Federation had been organizing. The workers formed a union and managed to register it on 29 January 2015. The management filed Writ Petition No. 1244/2015 in the High Court alleging that registration to the union had been granted unlawfully by the JDL. The union had not been made a party to the court proceedings. Instead, the High Court, after hearing the employer, had issued an order on 30 November 2015 staying the registration of the union

for six months pending the hearing of the Writ Petition. It was only following interventions from IndustriALL and affiliates in Japan, that there had been an agreement to withdraw the Writ Petition and to reinstate union activists who had been terminated earlier.

With regard to the shipbreaking sector, affiliates organizing in the Sitakund yards submitted that shipbreaking yards were difficult for unions to access. In addition, the deaths of workers in shipyards had led to unions focusing more on safety issues.

In conclusion, the Committee was urged to take note of the aforementioned issues that adversely impacted on workers' rights to organize.

The Government member of Thailand (Mr THONGPHAKDI) welcomed the on-going efforts of the Government of Bangladesh to promote compliance with Convention No.87, as well as its commitment to promote labour welfare, trade union rights and collective bargaining through labour law reforms and an increase of minimum wages. The Government should be given appropriate time to carry on its efforts.

The Worker member of the Philippines (Mr MATULA) recognized previous concerns raised by the Committee of Experts in relation to the issue of freedom of association in Bangladesh and failure of the Government to ensure the possibility for workers to exercise their fundamental rights in practice.

Observing a continuous lack of commitment to the rule of law, particularly with regard to anti-union violence, the speaker indicated that the leaders of a range of unions registered after 2013 had been suffering retaliation, in some cases violent; had been physically assaulted; and most had been illegally fired for trade union activities. He mentioned as well a slow responsiveness of the labour inspectorate.

The Worker member provided three examples of individual cases in support of the statements mentioned above. The first referred to an assault of the trade union president of a garment company, who was attacked, together with her husband, by several armed men in

August 2014. The second example illustrated the incidence of 60 workers being fired at the RMG Washing Plant with at least one being physically assaulted. The Sommilito Garments Sramik Federation (SGSF) affiliated union indicated that the retaliation had escalated once the union made a request to management in March 2014 related to collective bargaining negotiations. The speaker mentioned that the management had filed false criminal charges against union leaders. Finally, the third case related to the termination of 48 union members, including most of the leadership, by the management of a factory in September 2014. The speaker indicated that a peaceful protest outside the factory resulted in a clash with the police, summoned by the management, after which five workers, including the union president, underwent medical treatment.

The speaker referred to the report of the International Trade Union Confederation, IndustriALL Global Union and UNI Global Union containing more than 100 cases of anti-union discrimination in factories, where new trade unions had been registered and had been expressing criticism towards the Government for failing to guarantee freedom of association.

The Worker member urged, with due respect, the Government to align its laws and practices, and comply with its obligations under the Convention.

The Government member of China (Mr LU) commended the Government for having taken a number of positive measures to apply the Convention, such as having introduced amendments to the BLA and conducted training on anti-union discrimination. He also observed that workers in EPZs enjoyed freedom of association rights. The Government had made sincere efforts to fulfil its obligations under Convention No. 87, these efforts needed to be recognized and supported with technical assistance furnished by the Office.

Le membre travailleur de l'Allemagne (M. ZACH) a déclaré que la Confédération des syndicats allemands (DGB) souhaite aborder la question des violations persistantes de la liberté syndicale dans les ZFE au Bangladesh. La liberté de se constituer en organisation pour défendre ses intérêts est un droit universel, et la convention n° 87 est une des

conventions fondamentales de l'OIT. Ce droit doit être valable pour tous, mais il n'existe pas dans les ZFE du Bangladesh. Ces zones sont spécialement désignées comme des zones industrielles où les entreprises peuvent produire uniquement pour l'exportation. Pour ces entreprises, le travail et les lois sociales et environnementales ont été redéfinis, et le droit de s'organiser n'existe pas. Il est à noter que le même droit doit s'appliquer à tous, sur tout le territoire; les droits de l'homme ne doivent pas s'arrêter aux portes des ZFE.

Il est à relever que les associations de prévoyance des travailleurs sont une parodie de remplacement aux syndicats et ne peuvent les remplacer, étant donné qu'elles n'ont pas le même poids juridique qu'un syndicat et qu'elles peuvent être dirigées par un employeur. Ces associations ne peuvent donc jouir de la négociation collective, un employeur ne pouvant négocier une convention collective avec lui-même ou appeler à la grève contre lui-même. Bien que le gouvernement ait fait état d'un projet de loi sur le travail dans les ZFE, ce projet de loi ne respecte pas la liberté syndicale dans ces zones et, par conséquent, le problème de l'application du droit va augmenter.

L'année dernière, 403 millions de dollars ont été investis dans les ZFE, les financements sont donc présents. Dans ces zones, les travailleurs subissent des violences physiques, psychologiques et l'humiliation sur leur lieu de travail en raison de l'absence des droits des travailleurs. Ce serait une erreur de considérer le projet de loi sur le travail dans les ZFE comme un progrès. Suite aux événements dramatiques survenus dans le passé, l'attention du public sur les conditions de travail dans l'industrie du textile dans divers pays est très élevée. Pour conclure, un appel est lancé au gouvernement au moment où le gouvernement allemand prévoit d'investir au Bangladesh à travers l'établissement du Fonds Vision Zéro. Cela ne peut être possible que si la liberté syndicale est garantie pour tous les travailleurs au Bangladesh conformément aux conventions de l'OIT.

La miembro gubernamental de Cuba (Sra. LAU VALDÉS) indicó que la aplicación de buenas prácticas en materia de cooperación sería lo aconsejable y alentó al Gobierno a que continúe avanzando por el mismo camino, a través del diálogo, el intercambio de

información, la ayuda a la creación de capacidades, el reconocimiento mutuo de los avances logrados y de los retos por superar.

A member of UNI Global Union (Mr JENNINGS) stated that violations of freedom of association were all too common in both the garment and telecommunications sectors. In both sectors, the Government refused to register trade unions and workers were dismissed with impunity for trying to organize.

In respect of a trade union established by the employees of the nation's largest telecommunications company, he stated that the company had dismissed 163 employees, including seven union officers, the day after having learnt of the union's existence. The Government had also repeatedly refused to register the union and, after prolonged court proceedings, had appealed the Labour Appellate's court decision finding in favour of the union and ordering the latter's registration; a judgment of the appeal was still being awaited. Throughout these proceedings, he stated further, the company had maintained the untenable position that virtually all of its 3,000 employees could not form a union as they were all supervisors or managers.

On 7 February 2016, workers at the second largest telecommunications company submitted an application to register the union, called BLEU. This effort drew immediate acts of reprisal from the company, including the dismissal of a union activist and threats made against union members. Furthermore the Government had refused to register the union, although it enjoyed a membership rate of 35 per cent.

At a third telecommunications company, employees had managed to successfully register a union on 17 July 2014. However, shortly thereafter the company's management launched a campaign aimed at convincing members to leave the union. Additionally the union's treasurer was assaulted and dismissed, and on 27 March 2016 the Labour Directorate had informed the union that a case had been filed seeking the cancellation of the latter's registration.

He underscored that it was abundantly clear, thus, that the Government had no intention of ensuring respect for freedom of association.

The Government member of Sri Lanka (Mr WIMALAWEERA) observed that the Government of Bangladesh had made substantial steps to recognize freedom of association rights and improve work safety in export processing zones, and appreciated the measures taken to promote social dialogue among the stakeholders. He asked the Government to continue its efforts with the technical assistance of the Office.

The Government member of Canada (Mr LEWIS) commended the progress made to improve working conditions in the RMG sector and welcomed the information provided in the report of the High-level Tripartite Mission. The speaker indicated that freedom of association and collective bargaining, as fundamental elements of an effective labour relations system, needed to be further strengthened within the RMG sector and extended to other sectors of the economy, including export processing zones and special economic zones. In relation to the above, he called on the Government to reaffirm its commitment to transform the economically important RMG sector and to advance women's empowerment.

The speaker expressed concern in relation to the high rejection rates of trade union registrations in 2015 and 2016, despite an overall increase in registrations, and noted the High-level Tripartite Mission's finding regarding the related procedures and 30 per cent membership requirement that may have been seen as obstacles to trade union registration. He commended the Tripartite Mission's recommendations and appreciated the cooperation of the authorities and stakeholders with the Mission. Recognizing the achievements made, he underlined the need to ensure an open and transparent environment in which trade unions and workers' committees can freely and effectively fulfil their roles.

Regarding the BLA of 2013, he noted the Committee's request to make amendments in certain fundamental areas and urged the Government to work in a tripartite manner in order to bring forward amendments that are in conformity with the Convention. The

Government member concluded by reiterating the commitment of Canada to work with all stakeholders to improve safety and workers' rights in Bangladesh, in particular in the ready-made garments sector.

The Government member of India (Mr NAYAK) expressed appreciation regarding the follow-up made by Bangladesh on the main recommendations formulated by the Conference Committee in 2015 and for having accepted the High-level Tripartite Mission of April 2016. However, the report of the tripartite contact mission had been shared with Bangladesh only a few days after the admission of the case against it by the Committee, while the Government had been undertaking labour reform processes to harmonize its national laws with Convention No. 87, as well as other steps to improve workplace safety and compliance.

In this regard, reference was made to the specific measures initiated to strengthen enforcement by increasing recruitment of labour inspectors, investing in their training while enhancing regular inspections of RMG factories and increasing access to complaint mechanisms through the hotline. The Government had been actively engaged with the ILO and had availed itself of technical assistance in implementing many of the aforementioned measures, including the development of the Tripartite National Plan of Action on Fire Safety and Structural Integrity in the RMG Sector.

Bangladesh was also in the process of adopting a comprehensive Economic Processing Zone Labour Act to further protect labour rights, including the right to form associations in the export processing zone enterprises. The Government member trusted that the Committee would fully take into account the detailed responses provided by Bangladesh on its compliance with Convention No. 87, when finalizing its recommendations.

The Government member of Egypt (Mr NAZMY) noted the steps undertaken by the Government of Bangladesh to amend its Labour Act so as to ensure the protection of workers' rights in establishing and joining unions of their own choosing.

The Government of Bangladesh had also stressed its complete respect for international labour standards and its full commitment to Convention No. 87. Bangladesh was encouraged to pursue this course of action and to undertake additional steps in the framework of social dialogue, which guaranteed the participation of all parties. In this respect, it was hoped that the Office would provide the necessary technical support.

A Government member of Qatar (Mr AL-DOSARI) expressed his gratitude to the Committee and the Government of Bangladesh for the discussion and the detailed description of the measures taken. He welcomed the progress made.

A Government member of Malaysia (Ms THANGARAJOO) commended the Government for having accepted the tripartite high-level mission in April 2016. She stated that she shared the Government's view that the Conference Committee's decision to hear the present case was premature, given that the tripartite mission's work was still continuing. Nevertheless, the measures reported on by the Government signalled a strong commitment to protecting the rights and improving the welfare of workers. She called upon the Conference Committee to recognize these measures as progress made in the implementation of the Convention.

The Government representative of Bangladesh (Mr SHIPAR), thanked the members of the Conference Committee for their constructive comments.

With respect to the issues relating to EPZs, he stated that the social partners had been engaged in the drafting of the EPZ Labour Act. In March 2014, for instance, the Bangladesh Export Processing Zones Authority had consulted on that bill with representatives of workers' and employers' organizations in the EPZs. He underscored that the EPZ Act of 2010 ensured freedom of association and collective bargaining rights, and that 135 officials comprising 90 counsellors cum inspectors and 45 industrial relations officers were presently engaged in the EPZs to ensure compliance with the relevant laws.

Seven labour courts and one labour appellate tribunal had been designated to address disputes in the EPZs. A total of 161 cases had been filed with the EPZ labour courts since their establishment in 2011, of which 86 had been settled. Intensive training programmes were also being carried out by the Bangladesh Export Processing Zones Authority on issues falling under the Workers' Welfare Association and Industrial Relations Act, fire safety, health and hygiene safety, industrial relations, grievance handling procedures and social dialogue processes. In the period 2014–15 a total of 700 such programmes had been conducted.

Referring to paragraph 40 of the High-level Tripartite Mission report, he stated that his Government had accepted to initiate the implementation of the social dialogue project in the RMG sector, focusing on: (1) improving social dialogue; (2) collective bargaining; (3) dispute prevention and resolution; (4) conciliation; and (5) arbitration, with special consideration given to female employees. He added that the project would continue to provide training to build the capacity of labour officers to handle cases of anti-union discrimination, and establish a "Workers' Resource Centre" that would act as a centre of excellence for workers' training and awareness building.

On the registration of unions, he stated that the BLA had been amended to simplify the registration procedure. Moreover, an online registration system established with ILO technical assistance had also been established. He stated that in 2013, 64 trade unions had been registered, a figure representing 46 per cent of all applications. The rate of registration had been 42 per cent in 2014, and had dropped to 27 per cent in 2015. Nevertheless, the rate of registrations thus far was 64 per cent, and this increase was due to the awareness-raising measures the Government had undertaken.

With regard to the harassment of trade unionists, notably in the RMG sector, he stated that the enforcement agencies were always mindful of the need to ensure workers' welfare and handled reported cases in a manner consistent with national laws. In some cases, however, it had been trade unionists who had committed crimes by inciting violence in the

industrial sector, blocking roads or vandalizing factories. In such cases, it had been necessary for the authorities to act to protect property and restore order; nevertheless the authorities always acted cautiously to ensure their actions did not result in the harassment of trade unionists or the disruption of trade union activities.

In respect of trade unions in the telecom sector, he stated that at present there were two unions in one of the largest telecom companies in the country.

He stated that in paragraph 40 of its report the High-level Tripartite Mission had welcomed the progress the country had made by, inter alia, the creation of a labour complaint helpline, the establishment of an online registration system and the implementation of numerous training and capacity-building programmes aimed at improving industrial relations. The Mission, moreover, had noted that through these initiatives the Government had demonstrated its commitment to improving the freedom of association situation in the country. He concluded by affirming his country's readiness to work with the social partners, the ILO and all development partners in promoting freedom of association, in line with the national legislation and Convention No. 87.

The Employer members thanked the Government for the detailed information provided and encouraged further cooperation with the social partners and the ILO with a view to ensuring that social dialogue would lead to changes in law and practice.

They urged the Government to ensure the establishment of the standard operating procedures that would guarantee that the trade union registration process requirements were not overly bureaucratic and were not constituting an obstacle to such registration. They further urged the Government to ensure that the law governing EPZs allowed for freedom of association, providing employers and workers the right to establish and join organizations of their own choosing. They also requested them to provide further information about the way Rules pursuant to the BLA were applied in law and in practice.

The Employer members called for implementation of the recommendations of the High-level Tripartite Mission without delay and urged the Government to make real and meaningful progress in this regard.

Recalling the issues raised in their opening statement on this case, they urged the Government to achieve progress in relation to all the issues discussed through constructive social dialogue.

The Workers members recalled their experience in the country, as part of the ILO High-level Tripartite Mission, that the Government was making it nearly impossible for workers to organize or join a union. Workers were threatened and intimidated by management, and at times by police, local thugs and political operatives. In some cases, these threats turned into dismissals or into severe beatings. Some union activists were forced to sign blank pages, which were then turned into resignation letters. The labour inspectorate or the police did nothing to stop this, or to punish an employer, or to get a worker back on the job and/or to compensate for the harm. There appeared to be no labour justice for workers. Workers in all sectors were denied their right to form unions. The Government either delayed or denied new union registration by using tactics such as disqualifying the signatures for the slightest mismatches, and by constantly invoking requirements that were not in the laws. The Government had failed to comply with nearly every international commitment. It had ignored the observations of the Committee of Experts, the conclusions of this Committee, the Bangladesh Sustainability Compact, and even its trade obligations. Every year, they told the Committee that they would do better, but returned the next year without complying with the conclusions. This was not due to the lack of technical assistance or resources, as the ILO and numerous international donors had made welcome investments in industrial relations, but simply because there was no will. The speaker urged the Government to comply with the conclusions made by the Committee in 2015 as well as with the recommendations of the recent ILO Tripartite Mission. They requested that the conclusions of the Committee be placed in a special paragraph.

The Government representative (Mr SHIPAR, Ministry of Labour and Employment) reiterated that the report of the High-level Tripartite Mission had just been received and needed to be examined and discussed with relevant authorities and the social partners. At this stage, where there was a need to continue this dialogue, he saw no rationale behind the proposal of a special paragraph in this case.

(...)

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

Cambodia (ratification: 1999). A **Government representative (Mr HOU)** stated that Cambodia fully respected the right to strike while violent actions during strikes were prohibited. He pointed out that the right to strike provided by the Convention was subject to domestic law. According to article 37 of the Constitution, *“the right to strike and to non-violent demonstration shall be implemented in the framework of law”*. While exercising the right to strike, the workers should respect the strike procedure as provided for by domestic laws. The exercise of the right to strike shall not cause any harm to the public order of the country. He confirmed that no worker was arrested without any abuse consisting of criminal acts, such as destroying public or private property or causing bodily injury to others. The number of registrations of newly established trade unions kept increasing every year. In 2015, the Ministry had registered 237 new enterprise-based trade unions. As of today, 16 union confederations, 100 union federations, 3,434 unions at enterprise level as well as eight associations of employers had been registered. The Ministry of Education, Youth and Sports organized annual, quarterly and monthly meetings with the representatives of teachers. As of 2014, 121 NGOs and associations had signed the Memorandum of Understanding for the collaboration of the Ministry. Teachers were not prohibited from joining a strike or demonstration so long as the exercise of this freedom complied with national procedure such as the requirement for providing minimum services which was in line with the principle of ILO standards. Teachers and civil servants were free to form associations of their own choice

under the Law on Association and Non-Governmental Organization (NGO Law) which aimed at ensuring the protection of rights and freedom of every citizen to form associations and non-governmental organizations for protection of their legal interests and protection of public interests. This freedom was also guaranteed under section 36 of the Law on Common Statute of Civil Servants and section 37 of the Law on Education 2007.

Referring to the murders of the trade union leaders, the speaker indicated that the Special Inter-ministerial Committee established for the investigation of these cases was diligently working with a strong commitment to bring the real perpetrators to justice. Considering the crucial nature of the case, it was necessary to spend an adequate time for the investigation process in order to ensure a fair and just conclusion. He hoped that the Committee and all stakeholders would recognize the Government's commitment in this regard.

The speaker regretted the incident that took place in early January 2014. However, he clarified that this incident was a riot, which was instigated by some politicians by using minimum wages as propaganda, and did not fall under the strike definition as provided by international labour standards. The demonstrators blocked public streets at midnight, hailed the burning bottle of gasoline and destroyed private and public properties with an estimated damage of around US\$75 million. The Government had to take action to restore peace and stability. He stated that a detailed report on this matter would be submitted to the Committee by September 2016.

A specialized labour court, in accordance with the provisions of the Law on Organization of Courts 2014, was being developed and would be operational in the near future. The Government, with the technical assistance and support of the ILO, was working on the draft Law on Labour Procedure of Labour Courts. The tripartite consultation on this draft would take place by the end of 2016. The draft Trade Union Law was intended to protect the rights and interests of workers and employers, guaranteeing the right to collective bargaining between workers and employers, improving industrial relations, and ensuring

employment and national development. The entire drafting process took almost ten years and during this period, a long series of bipartite, tripartite, multilateral, and public consultations had been conducted.

An implementation review of this new law was also included in the Government's agenda to address any issues found during its implementation. In conclusion, he expressed the commitment of his Government in ensuring freedom of association through the implementation of all legislation and requested strong collaboration from the social partners in this regard.

The Employer members (Mr MACKAY) noted that this case had been examined six times by the Committee, the last time in 2014; that the Committee of Experts had made observations in this regard every year since 2007; and that the case had also been examined by the Committee on Freedom of Association (CFA). This case identified the need to look at the manner in which the Committee received and processed information. Until recently, this case had focused on a list of issues as opposed to focusing on the observed breaches of the Convention and evidence of progress, or lack thereof, on the part of the Government. The report of the Committee of Experts had observed the divergent information provided by workers' organizations and the Government regarding a number of issues and had recalled the necessity of a climate free from violence, pressure or threats to exercise freedom of association. These divergences made it difficult for the Committee to make concrete conclusions and, unless these divergences were reconciled with Cambodia's obligations under the Convention, the Committee would simply continue to request more information, which should be avoided. The citation by the Committee of Experts of CFA conclusions regarding the trials held following the murder of a trade unionist some time ago illustrated the need to focus on conformity with Conventions and accountability for their implementation. The Employer members, while emphasizing that they did not condone violence of any nature towards workers, unions or employers, wondered how the concerns of the CFA regarding the criminal process applied to someone convicted of murdering a

trade unionist were relevant to the consideration by the Committee of matters of freedom of association.

With regard to the freedom of association matters which had been the subject of earlier recommendations, they noted that the Committee had previously been informed that the Government had set up three committees to investigate a number of acts of violence during strike actions in 2014 over minimum wages, among other issues. The Employer members noted the Government's indication that it would provide the conclusions of these committees, which were still unknown, by the end of 2016. They also noted that progress had been made in addressing the concerns on the fragmented and disaggregated resources of the judicial process, including the availability of trained adjudicators. The Government had been providing training to adjudicators and had set up specialized labour units within the various levels of the judiciary, which should provide the necessary specialized focus and experience necessary for labour issues to be expeditiously and effectively resolved. However, this was a work in progress. The new Trade Union Law existed against a background of complaints about poor treatment and harassment of trade unionists, apparent restrictions placed upon the establishment of new unions and in the context of the significant increase of new trade unions in the country in recent years. Both of these issues clearly needed to be managed. They noted that the Trade Union Law dealt in large part with the issues about which concern had been expressed and called upon the Government to fully implement the Law as soon as possible, in addition to providing a copy to the Committee of Experts. Unless evidence of non-compliance with the Convention could be uncovered, in which case such issues could be submitted to the Government for response, they deemed that the Committee should consider this particular issue as resolved.

Concerned about the restrictions the Government had sought to place upon the engagement of union officials, specifically the literacy requirement which seemed to constitute a form of prior authorization contrary to Article 2 of the Convention, the Employer members urged the Government to review this and any other potential anomalies before it

sought to give full effect to the Law. Noting that the Committee of Experts had requested information on any progress regarding the drafting of the guidelines on the operation of the Labour Court and the Labour Chamber, they suggested that the Government provide a brief report to enable any potential inquiries into the implementation of its various facets. Considering the journey of Cambodia to democracy, the steps it had recently taken were very significant, namely the introduction of a specialized labour judiciary and the Trade Union Law, and it was therefore possible to consider Cambodia as a case of progress despite it not being characterized as such. The ILO had recently held consultations in the country regarding labour courts and the related institutions and a process of consultation with the social partners had also begun. The Employer members considered that a reasonable time period should be given to Cambodia before it was asked to report in detail on the progress made with regard to the Committee's recommendations, which did not preclude raising issues of breach of the principles of freedom of association. They recommended that the Government be requested to provide a brief update on: (i) its activities with regard to the three investigative committees, as promised by the Government for December 2016; (ii) the establishment, resourcing and training of the labour jurisdiction, while taking note of the active work done and the assistance of the ILO in that regard; and (iii) the implementation of the new Trade Union Law, taking into account the Committee's remarks in this regard.

Les membres travailleurs ont regretté que, en dépit des appels réitérés de l'OIT, du Haut-Commissariat des Nations Unies aux droits de l'homme, des syndicats, de grandes enseignes mondiales de l'habillement et d'organisations de la société civile, le gouvernement ait décidé d'adopter une loi profondément régressive qui viole la convention à bien des égards. S'ajoutant à celle concernant les organisations non gouvernementales, extrêmement restrictive et susceptible d'être appliquée aux syndicats du secteur informel qui ne sont pas reconnus au titre de la législation du travail, elle manifeste une hostilité croissante envers les syndicats et la société civile. Les violations de la liberté syndicale sont nombreuses et sans la moindre conséquence. En mai 2016, dans une déclaration commune, trois rapporteurs

spéciaux des Nations Unies ont indiqué: «Nous sommes [...] préoccupés par les actions entreprises par les autorités cambodgiennes en vue de dissuader la tenue de manifestations pacifiques ou de les disperser, et d'arrêter quiconque proteste contre ce qui est vu comme une persécution croissante de la société civile par le gouvernement et contre les restrictions injustifiées des libertés fondamentales dans le pays.» De profondes réformes sont donc nécessaires.

En ce qui concerne la loi sur les syndicats, les membres travailleurs ont rappelé que ceux-ci n'ont été consultés qu'une fois pendant le long processus de rédaction – sans que leur avis n'ait été pris en considération. Ils ont rappelé également les critiques qui soulignaient qu'elle serait utilisée pour étouffer le mouvement syndical indépendant du pays, alors même que celui-ci se mobilise pour obtenir une revalorisation salariale et des améliorations des conditions de travail. L'OIT a attiré l'attention du gouvernement à plusieurs reprises sur «plusieurs préoccupations et lacunes» et le bureau du Rapporteur spécial des Nations Unies pour le Cambodge a pointé du doigt plusieurs dispositions, dont certaines violent la propre Constitution du pays. Les membres travailleurs ont mentionné:

- i) l'article 3 qui exclut diverses catégories de travailleurs du champ d'application de la loi, y compris les fonctionnaires, les enseignants, les travailleurs informels et les travailleurs domestiques;
- ii) l'article 14 qui interdit aux syndicats de conclure des accords juridiques avant d'être enregistrés;
- iii) l'article 17 qui exige des syndicats qu'ils fournissent un niveau excessif d'information au gouvernement au sujet de leurs finances et de leurs activités, sous peine de voir leur enregistrement annulé;
- iv) l'article 20 qui impose aux dirigeants syndicaux des critères illégaux d'âge et de niveau d'alphabétisation, et les soumet à des contrôles radicaux d'antécédents criminels susceptibles de disqualifier des personnes ayant eu des activités syndicales légitimes; et
- v) l'article 29 relatif aux requêtes en dissolution d'un syndicat sans préciser clairement qui peut déposer de telles requêtes.

Quant aux sanctions encourues par les employeurs en vertu de la loi, elles sont bien trop faibles pour être

dissuasives. Ils ont appelé le gouvernement à corriger la situation afin que la loi soit conforme aux conventions de l'OIT.

Au sujet des violences perpétrées à l'encontre de manifestants en janvier 2014, qui ont fait cinq morts, des dizaines de blessés graves et ont entraîné des arrestations sans fondement, les membres travailleurs ont déploré l'absence de sanctions et ont demandé une enquête indépendante et crédible sur ces événements. Ils ont soutenu la demande que la commission d'experts adressée au gouvernement de rendre publics les résultats et conclusions des enquêtes. Citant des exemples concrets, ils ont indiqué que la criminalisation de l'activité syndicale dissuade les syndicats d'organiser des actions librement. En ce qui concerne le recours illicite aux contrats à durée déterminée, qui est commun dans certains secteurs, ils ont souligné que le Comité de la liberté syndicale a rappelé que «les contrats à durée déterminée ne doivent pas être utilisés de manière délibérément antisyndicale et que, dans certaines circonstances, l'embauche de travailleurs par le biais de contrats à durée déterminée renouvelés pendant plusieurs années peut constituer un obstacle à l'exercice des droits syndicaux». Or ce type de contrats est utilisé précisément à cette fin dans le secteur de la confection. Malgré le rappel à la loi du Conseil d'arbitrage, celle-ci n'est pas appliquée et le gouvernement a tenté à maintes reprises de déstabiliser ce conseil.

Les membres travailleurs ont détaillé un exemple de violation de la liberté syndicale dans une société de transport qui illustre selon eux l'absence grave de droits au Cambodge: deux dirigeants syndicaux ont été arrêtés pour avoir entrepris une manifestation pacifique demandant la reconnaissance d'un syndicat et le respect de sentences arbitrales, des poursuites pénales étant même engagées contre des dirigeants syndicaux qui n'étaient pas sur les lieux, et les dirigeants de l'entreprise refusant de mettre en œuvre les décisions du Conseil d'arbitrage. Ce comportement doit cesser, et le gouvernement est instamment appelé à mettre un terme à la répression et à respecter la liberté syndicale.

The Worker member of Cambodia (Mr TEH) stated that they were pleased that the Trade Union Law, which was in line with international labour standards, had been adopted

after significant formal tripartite consultations. He considered that the procedure for the establishment of the specialized Labour Court, which was carried out with the support of the ILO and after tripartite consultation, would take significant time and requested that sufficient time be given to pursue these processes. The speaker highlighted the challenges with the Cambodian Union Movement in enabling a healthy and respectful industrial relations environment, such as: (i) the existence of a fragmented union movement that was not representative; (ii) the multiplicity of unrepresentative unions that led to infighting and illegal behaviours among unions (this created great conflict within enterprises in particular because unions were not representing workers, rather personal agendas); (iii) outside interference of unions in enterprises they were not representing (in particular, outsourcing interference often results in intimidation and interference disrupting the workplace, and exploiting and threatening workers); (iv) minority unions exploited the law for personal gain precisely because they were not representing the interests of workers; and (v) the inability to use collective bargaining agreements effectively and to realize their benefits for workers, employers and industry. Referring to the comments made by the Committee of Experts in 2016, he stated that the unions also had the responsibility to ensure that freedom of association was exercised in a climate that was free from violence, pressure or threats of any kind. Unions should exercise their rights within the laws of the country and should be held accountable, if their actions were illegal. The minimum wage negotiations of 2014 were turned into political demonstrations that ended in violence. Employers did not support violence of any kind, and those who had committed crimes must be held accountable, regardless of whether or not they were an employer or worker. The protection of freedom of association for civil servants and teachers was stipulated under section 36 of the Law on Common Statutes of Civil Servants and section 37 of the Law on Education. He hoped that the Government would continue to report to the Committee on progress made and urged it to do so through the inter-ministerial committee responsible for reporting on ILO matters.

The Worker member of Cambodia (Mr THORN) recalled that Cambodia had ratified 13 ILO Conventions. Convention No. 87 had been ratified in 1999. Even though many laws were in force, which ensured trade unions' rights, law enforcement was still challenging. Independent trade unions still faced serious problems including murder, arrests, detention, union discrimination and interference in their activities. He recalled the murder in 2004 of three trade union leaders, Chea Vichea, Ros Sovanareth and Hy Vuthy. Since then, murders had not stopped. In 2013, five workers had been killed. He also mentioned various cases in which trade union leaders had been injured, prosecuted, imprisoned or dismissed without reinstatement or compensation. Legal justice was rarely found in cases of discrimination of independent union leaders and members. The Law on the Organization of the Courts had been adopted in 2014 without consultation with unions. The Law on Forming the Labour Court was in the drafting process. The Government was encouraged to start consultation with the unions on this law. Regarding unfair dismissal of trade unionists, 80 per cent of workers were employed under fixed-term contracts which were used by the employers to terminate workers easily if they joined independent unions. Women workers were easily dismissed if pregnant. The speaker also recalled that in some cases, political parties and companies interfered with the activities of trade unions, thus these unions could not be regarded as independent and autonomous, in violation of Article 3(2) of the Convention. Moreover, the Trade Union Act adopted in May 2016 was still very restrictive for trade unions: the quorum required for voting for a strike was 50 per cent plus one of the total members. Trade unions were also required to send financial reports to the Ministry of Labour. Also, the involved parties had the right to audit trade unions' finances and dissolve unions. The Government was urged to take the necessary measures to: (i) ensure that trade unions were free from the threat of murder, violence and interference; (ii) guarantee that fair, independent and transparent investigations of the previous murder cases were carried out, perpetrators were punished and victims compensated according to the law; (iii) ensure that charges filed against the leaders of the six national trade union centres were dropped; (iv) stop employers from prosecuting independent unions; (v) stop interfering in the activities of

trade union organizations and protect trade unions from employers' interference; (vi) work in collaboration with trade unions to amend the Trade Union Act in compliance with ILO standards; (vii) provide for a duration of fixed-term contracts of not less than two years to avoid discrimination against trade unionists and pregnant women workers; (viii) ensure that the new Labour Court would have a tripartite composition and be independent, professional, efficient and ruled by consensus in deciding labour cases, and that access to it would be quick and free of charge. The ILO should assist the Government through a tripartite mission to address these issues.

The Government member of the Netherlands (Ms VERRIJZER), speaking on behalf of the European Union and its Member States, and stating that Albania, Iceland, the Republic of Moldova and Norway aligned themselves with the statement, indicated that they attached great importance to human rights, including freedom of association, and recognized the important role played by the ILO in developing, promoting and supervising international labour standards. The Government was urged to ensure that trade union rights be fully respected and trade unionists able to engage in their activities in a climate free of intimidation or risk. In this regard, they hoped that the special investigative committee, established in June 2015 to resolve a criminal case regarding the three murders of Chea Vichea, Ros Sovannareth and Hy Vuthy, would keep the national employers' and workers' organizations informed on a regular basis of the progress of its investigation. Noting the recent adoption of the Trade Union Law, they expected the Government to implement it in a fair and impartial manner, and called on the ILO to assess that all its provisions were in compliance with the Convention. Encouraging the Government to include civil servants, teachers and domestic workers in the scope of the new law, they called upon the Government to: (i) provide the information requested by the Committee of Experts on the measures taken or envisaged to ensure that the rights of these groups were fully ensured under the Convention; (ii) avail itself of the technical assistance of the ILO; and (iii) comply with its reporting obligations.

The Government member of Thailand (Mr WONGSINSAWAT), speaking on behalf of ASEAN member States, welcomed the information provided and the progress made by the Government. Expressing appreciation for the adoption of the Trade Union Law, he encouraged the Government to effectively implement it. He also commended the commitment and efforts of the Government to establish labour courts in the near future and to develop a minimum wage law, in compliance with international labour standards. Emphasizing the commitment of the Government to strengthen social dialogue in the country, he urged the Conference Committee to take into account the significant progress made.

The Government member of the United States (Ms MORENO) expressed concern about the persistent limitations on the right to freedom of association and the lack of protection for workers' rights in Cambodia. She referred to the allegations included in the Committee of Experts' recent observations regarding ongoing impediments to the registration of new independent trade unions, and the persistent intimidation of teachers from joining trade unions. Genuine freedom of association could only be exercised in an environment that was free from violence, pressure, and threats of any kind. While noting the information provided by the Government on the work of the three committees (the damages evaluation committee, the Veng Sreng road violence fact-finding committee, and the minimum wages for workers in apparel and footwear sector study committee) that were established in the wake of the serious episodes of violence, deaths, and arrests of workers in 2014, she remained concerned by allegations of ongoing arrests and detentions of workers engaged in demonstrations. She echoed the Committee of Experts' request for additional information on the conclusions and recommendations of the three committees and urged the Government to take all necessary measures to prevent violence against trade unionists, including through full and expeditious investigations and prosecutions of perpetrators. Since 2008, the ILO had engaged with the Government and its social partners in drafting a Trade Union Law. Despite numerous consultations and recommended revisions over the years, the

Government had adopted the Trade Union Law in 2016, which appeared to fall short of compliance with international labour standards. The main concerns were: (i) the exclusion of certain categories of workers from the right to join unions; (ii) the high threshold requirements for strike ballots; (iii) excessive and burdensome audit requirements, and unclear provisions regarding the relevant parties that may request an audit of union activities; (iv) the ability of courts and the Ministry of Labour to interfere in the dissolution of trade unions, which should instead be determined by the union's statute and bylaws; and (v) the lack of sufficiently dissuasive penalties for non-compliance. She urged the Government to submit a copy of the Trade Union Law for the review of the Committee of Experts in 2016, and to take immediate action with the technical assistance of the ILO and in full consultation with the social partners to address issues of non-compliance with the Convention.

The Worker member of Australia (Mr ROBERTS) recalled that under article 36 of the Cambodian Constitution, Khmer citizens shall have the right to form and to be members of trade unions. Although that could be considered a decent starting point for a legally guaranteed right to freedom of association, the reality was that in recent years there had been a multifaceted, sustained and even deadly attack on the rights of workers to associate and organize. One indicator of the deteriorating situation was the uneven application of criminal law. There had been violent attacks, even murders of trade union leaders. However, in most cases, perpetrators had gone unpunished. Nevertheless, criminal law had been invoked repeatedly and enthusiastically by the Government against workers and trade union leaders. No fewer than six leaders of the national trade union centres had been charged for intentional violence and damages after the 2014 strike. The President of the Cambodian Labour Congress was currently under court supervision which restricted him from taking part in protests or approaching workers in designated areas, leading strikes and demonstrations or changing home address. Up to 198 other criminal cases involving workers and unions mostly in the textile and clothing industry, were also pending. According to an analysis of the new Trade Union Law by the United Nations High Commissioner for Human Rights in

Cambodia, there were a number of key areas where the application of criminal law held direct implications in the ability of people to form and join trade unions. These included: (i) the mandatory requirement that trade union leaders must declare that they had never been convicted for any criminal offence; and (ii) the capacity for the new Labour Court to dissolve entire trade unions where individual officers were found to have committed an offence or even serious misconduct. Any political effort to criminalize unionization and to invoke criminal law as a blunt instrument to repress union organization would only damage Cambodia's international reputation. The Government was urged to reject that approach.

The Worker member of the Republic of Korea (Ms RYU) recalled that the Committee on Freedom of Association had indicated in its report adopted in March 2016 that fixed-term contracts should not be used deliberately for anti-union purposes and could be an obstacle to the exercise of trade union rights. Many garment factories had built an entire workforce of workers employed through repeatedly renewed fixed-duration contracts (FDCs) of short duration. While violating the Labour Law, this phenomenon was widely permitted in practice and was increasing. The legal implications of employment under FDCs were numerous, including fewer rights and benefits for workers, easier dismissal and shorter notice periods, difficulties in proving anti-union retaliation, reduced compensation upon termination of contract and limited access to maternity leave benefits. The use of FDCs created great instability for workers, who reasonably feared that their contracts would not be renewed if they failed to obey the employer or if they joined a trade union. Also, in a situation where the majority of contracts were FDCs, it was difficult to identify trade union leaders, who would not be able to complete a two-year term. The one-year work experience required by the labour legislation for trade union leaders could be hard to accrue under FDCs. A Memorandum of Understanding (MOU) in the garment industry had been signed in 2012 between the Garment Manufacturers' Association in Cambodia (GMAC) and several trade unions, which included a commitment to reach a separate agreement on this issue. However, no negotiations had been initiated on this matter. Therefore, supporting the recommendation

of the Committee on Freedom of Association, the speaker urged the Government to take all appropriate measures to promote these negotiations with a view to reaching an agreement on the use of FDCs and ensuring that workers in the garment industry are able to exercise their trade union rights freely.

The Government member of Canada (Mr LEWIS) strongly encouraged all member States to respect the terms of the Convention and recalled that it was for governments to ensure that freedom of association be exercised in a climate that was free from violence, pressure, or threats of any kind. While some positive steps had been taken overall, further action was required and information had to be provided, as highlighted by the Committee of Experts. The concerns on the Trade Union Law were mainly related to insufficient protection of the right of all workers and employers to freely set up organizations of their own choosing, and of the right of these organizations to decide on their internal matters without interference. In this regard, the Government should reopen discussions through social dialogue and within the National Assembly with a view to revising the law. He also expressed disappointment about the Law on Association and Non-Governmental Organizations (LANGO), which was restrictive of civil society, as its application to occupations not covered by the Trade Union Law could violate the Convention. Finally, looking forward to the conclusions and recommendations of the Cambodian committees regarding the 2014 incidents of violence, he emphasized the urgent need to ensure the effectiveness of the judicial system as a safeguard against impunity, and an effective means to protect workers' rights during labour disputes.

The Worker member of the Philippines (Mr MATULA) identified with the widespread anti-union discriminatory practices experienced by workers in Cambodia. Union and federation members and leaders who were independent and critical of employers were increasingly becoming the target of harassment, discrimination and unfair dismissals by their employers. Since the end of 2013, 867 worker members of the Cambodian Labour Confederation (CLC) had been dismissed due to their union membership and activities, and

only 67 of them had been reinstated. The rejection by employers of the arbitration award on reinstatement, in addition to the lack of government will with regard to enforcement, was seriously undermining the unions freely chosen by workers. The speaker gave the example of the November 2014 strike at the Siem Reap Airport, a ten-day protest during which replacement workers had been hired and following which seven union leaders were terminated for organizing the strike. Airport management had asked the union's deputy chair to stop addressing complaints against the company and had offered to reinstate him in exchange for his cooperation. Instead of rectifying the unfair dismissals, the Ministry of Labour requested the employer to give monetary compensation to the dismissed union leaders, who to this day had not been reinstated and were unemployed.

The Worker member of Japan (Mr YOSHIDA) expressed concern that section 29 of the Trade Union Law guaranteed the right to “concerned parties” or 50 per cent of the total members of a union to take the initiative of filing for dissolution of the trade union to the Labour Court. In the interest of industrial relations, the dissolution of a trade union should only be taken as a last resort, and after exhausting other possibilities with less serious effects for the organization as a whole. Moreover, the dissolution of a trade union should be dealt with according to the provisions of the union's constitution and bylaws. The provisions of LANGO concerning the mandatory registration for all domestic and international associations, unfettered discretion by the Ministry of Interior over registration, and the requirement of “political neutrality” applicable to all associations and organizations, constituted a violation of the right to freedom of association. He urged the Government to consult with the trade unions and to consider the revision of these laws so as to be fully consistent with the Convention.

The Government representative thanked the ASEAN colleagues, in particular Thailand, for their support and encouragement for better freedom of association in Cambodia. He noted all the constructive comments made by their respective representatives of employers and workers as well as other Government delegates which could serve as

valuable inputs to achieve their ambitious agenda in building a future with decent work. The Government had been working actively in developing a strong legal framework through the adoption of laws and regulations. The Trade Union Law was recently adopted, its implementing tools were being developed, while the Law on Labour Procedure of Labour Courts was in the drafting process. The Government was working closely with the ILO Better Work Programme called Better Factories Cambodia to improve and strengthen labour inspection to ensure better working conditions. For further improvement of the effective implementation of international labour standards, as well as national laws and regulations, the participation and collaboration of all parties concerned were a necessity. While reiterating its commitment to fully complying with the reporting obligations, he assured them that a detailed report would be submitted to the Committee by September 2016.

The Worker members indicated that the members of the Committee could only encourage the Government to make rapid progress on the path towards freedom of association. However, they had heard from many delegates, and especially from the Worker member of Cambodia, a description of the situation which remained very serious. They recalled that, concerning the murders of Chea Vichea, Ros Sovannareth and Hy Vuthy, the Committee on Freedom of Association had had to resort to the exceptional use of paragraph 69 of its Procedures for the examination of complaints alleging violations of freedom of association in order to invite the Government to meet and provide missing information. The Government accepted this invitation to provide information in May 2015. Noting that more than a year had passed, they emphasized the importance to reply to the requests made. The question of impunity was of the essence.

They recalled that Cambodia had been under the constant supervision of the Committee since 2006 for the application of this Convention, of the Worst Forms of Child Labour Convention, 1999 (No. 182), or for its failure to report. Every year, the issues remained the same: unpunished acts of violence against trade unionists (including murder); anti-union dismissals; harassment and intimidation by state officials; prohibition of the right to free

speech and assembly; and a legal framework which was not in compliance with the Convention. Fixed-duration contracts, the subject of the Committee of Experts' observation of 2015 and the conclusions of the Committee on Freedom of Association in 2016, were routinely used to frustrate trade unions. These problems were compounded by a politicized judiciary that did not guarantee justice. They reiterated their concerns that, despite the intervention of the ILO, the UN, the Global Unions, and the global garment brands, the Government had missed yet another opportunity to pass a law compliant with the Convention and had instead adopted one which contained numerous provisions in violation of the Convention. When workers had peacefully protested once the bill was passed, they had been attacked and assaulted.

Global brands had joined workers on repeated occasions to express concern with the negative environment in the country for workers. The country could and should immediately change course and establish an enabling legal environment for the full exercise of the right to freedom of association, which should also be ensured in practice. The Worker members called on the Government to: (i) bring the Trade Union Law into full conformity with the provisions of the Convention, in cooperation with the social partners and with the further technical assistance of the ILO; (ii) ensure that teachers and civil servants, as well as workers in the informal economy who were not covered by the trade union legislation, were fully ensured of their rights under the Convention; (iii) conduct full and expeditious investigations into the murders of the trade union leaders mentioned in the Committee of Experts' report and prosecute not only the perpetrators but also the instigators of these crimes; (iv) ensure that the Special Inter-Ministerial Committee kept the national employers' and workers' organizations informed on a regular basis of the progress of its investigations with a view to promoting social dialogue and putting an end to the impunity surrounding the acts of violence against trade unionists; (v) conduct an independent investigation into the episodes of violence perpetrated against trade unionists on 3–4 January 2014, including injuries and deaths, and prosecute both the perpetrators and the instigators of these crimes; (vi) ensure

that workers were able to engage freely in peaceful public demonstrations; (vii) drop criminal charges against trade union leaders for their participation in peaceful demonstrations; and (viii) ensure the application of Arbitration Council decisions with respect to fixed-duration contracts, limiting the combined time employed under these contracts to two years. In light of the lack of progress since this Committee last heard this case, and given the multiple times this case had been before the Committee in recent years, they urged the Government to accept a High-level Tripartite Mission in 2016.

The Employer member (Mr MACKAY) recalled the history of this case and the concerns raised by the Workers with regard to the lack of progress on some of the issues discussed and the changes initiated by the Government. On the other hand, the Government had provided information on the recent initiatives it had taken, including: (i) the introduction and ongoing implementation of the new structure for the labour courts and labour chambers, and its commitment to the development of these institutions; (ii) the introduction of training and resources in the labour courts and labour chambers; and (iii) the adoption of the Trade Union Law and its commitment toward effective implementation. They echoed the Workers' call for the expedited completion and implementation of these initiatives, but considered that considerable progress had already been made and that Cambodia should be given latitude to prove it could bring these initiatives to a rapid and successful conclusion, namely the completion of the investigations of the three committees into the 2014 murders, due to be completed this year; the completion of the guidelines and the manner in which they would operate; and the effective implementation of the Trade Union Law through an approach which balanced workers and employers. They believed the country should be given leeway but urged the Government to provide a report to the Committee, as soon as possible, on the actions it had taken to fully implement the initiatives it had undertaken.

(...)

The sitting closed at 6.25 p.m.

La séance est levée à 18h25.

Se levantó la sesión a las 18.25 horas.