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Institutional Section

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FIFTH ITEM ON THE AGENDA

Reports of the Committee on Freedom of Association

368th Report of the Committee on Freedom of Association

Contents

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Introduction

1. The Committee on Freedom of Association set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 30 and 31 May and 7 June 2013, under the chairmanship of Professor Paul van der Heijden.

2. The members of Argentinean, Colombian, Mexican and Norwegian nationality were not present during the examination of the cases relating to Argentina (Case No. 2942), Colombia (Cases Nos 2796, 2880, 2933 and 2935), Mexico (Cases Nos 2919, 2920 and 2981) and Norway (Case No 2943), respectively.

* * *

3. Currently, there are 163 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 38 cases on the merits, reaching definitive conclusions in 27 cases and interim conclusions in 11 cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

Serious and urgent cases which the Committee draws to the special attention of the Governing Body

4. The Committee considers it necessary to draw the special attention of the Governing Body to Cases Nos 2254 (Bolivarian Republic of Venezuela), 2445 (Guatemala), 2508 (Islamic Republic of Iran), 2609 and 2978 (Guatemala) because of the extreme seriousness and urgency of the matters dealt with therein.

Urgent appeals

5. As regards Cases Nos 2203 (Guatemala), 2318 (Cambodia), 2648 (Paraguay), 2712 and 2714 (Democratic Republic of the Congo), 2723 (Fiji), 2794 (Kiribati), 2807 (Islamic Republic of Iran), 2871 (El Salvador), 2902 (Pakistan), 2928 (Ecuador), 2932 (El Salvador), 2937 (Paraguay), 2946 (Colombia), 2948 (Guatemala), 2951 (Cameroon), 2954 (Colombia), 2957 (El Salvador), 2961 (Lebanon), 2963 (Chile), 2967 (Guatemala), 2973 (Mexico), 2974 (Colombia), 2975 (Costa Rica), 2985 (El Salvador), 2988 (Qatar), 2989 (Guatemala), 2992 (Costa Rica), 2993 (Colombia) and 2994 (Tunisia), the Committee observes that, despite the time which has elapsed since the submission of the complaints, it has not received the observations of the governments. The Committee draws the attention of the governments in question to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of these cases if their observations or information have not been received in due time. The Committee accordingly requests these governments to transmit or complete their observations or information as a matter of urgency.

New cases

6. The Committee adjourned until its next meeting the examination of the following cases: 3012 and 3013 (El Salvador), 3015 (Canada), 3016 (Bolivarian Republic of Venezuela), 3017 (Chile), 3018 (Pakistan), 3019 (Paraguay), 3020 (Colombia), 3021 (Turkey), 3022

(Thailand), 3023 (Switzerland), 3024 (Morocco), 3025 (Egypt), 3026 (Peru) and 3027 (Colombia), since it is awaiting information and observations from the governments concerned. All these cases relate to complaints submitted since the last meeting of the Committee.

Observations requested from governments

7. The Committee is still awaiting observations or information from the governments concerned in the following cases: 2177 and 2183 (Japan), 2516 (Ethiopia), 2620 (Republic of Korea), 2655 (Cambodia), 2684 (Ecuador), 2708 (Guatemala), 2726 and 2743 (Argentina), 2753 (Djibouti), 2761 (Colombia), 2882 (Bahrain), 2892 (Turkey), 2896 and 2908 (El Salvador), 2913 (Guinea), 2923 (El Salvador), 2925 (Democratic Republic of the Congo), 2929 (Costa Rica), 2979 (Argentina), 2982 (Peru), 2986 (El Salvador), 2995 (Colombia), 2999 (Peru), 3000 (Chile), 3001 and 3002 (Plurinational State of Bolivia), 3003 (Canada), 3005 (Chile), 3007 and 3008 (El Salvador), 3009 (Peru), 3010 (Paraguay) and 3011 (Turkey).

Partial information received from governments

8. In Cases Nos 2673 (Guatemala), 2713 and 2715 (Democratic Republic of the Congo), 2768 (Guatemala), 2797 (Democratic Republic of the Congo), 2811 (Guatemala), 2817 (Argentina), 2824 and 2830 (Colombia), 2889 (Pakistan), 2893 and 2897 (El Salvador), 2900 (Peru), 2924 (Colombia), 2927 (Guatemala), 2946 (Colombia), 2947 (Spain), 2962 (India), 2970 (Ecuador) and 3014 (Montenegro), the governments have sent partial information on the allegations made. The Committee requests all these governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

Observations received from governments

9. As regards Cases Nos 2265 (Switzerland), 2694 (Mexico), 2745 (Philippines), 2749 (France), 2869 (Guatemala), 2900 (Peru), 2922 (Panama), 2926 (Ecuador), 2936 (Chile), 2939 (Brazil), 2941 (Peru), 2949 (Swaziland), 2950 (Colombia), 2953 (Italy), 2955 (Bolivarian Republic of Venezuela), 2956 (Plurinational State of Bolivia), 2965 and 2966 (Peru), 2969 (Mauritius), 2971 and 2983 (Canada), 2987 (Argentina), 2996 (Peru), 2997 (Argentina), 2998 (Peru), 3004 (Chad) and 3006 (Bolivarian Republic of Venezuela), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

Withdrawal of a complaint

10. As regards Case No. 2806 (United Kingdom), the Committee notes that the complainant has expressed its desire to withdraw its complaint given that it will pursue the matters raised in the European Court of Human Rights.

Transmission of cases to the Committee of Experts

11. The Committee draws the legislative aspect of the following cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations: Dominican Republic (Case No. 2786), Guatemala (Case No. 2609), Indonesia (Case No. 2737), Ukraine (Case No. 2843).

Effect given to the recommendations of the Committee and the Governing Body

Case No. 2837 (Argentina)

12. The Committee last examined this case at its March 2012 meeting [see 363rd Report, paras 290–312], when it made the following recommendations:

(a) The Committee requests the Government to take the necessary steps to ensure that the ATE is not excluded from bargaining on the conditions of employment of workers of the Teatro Colón autonomous body.

(b) The Committee requests the Government to take the necessary steps – including amendments to the legislation if necessary – to ensure that responsibility for declaring a strike illegal lies not with the Government but with an independent body which has the confidence of the parties involved.

(c) The Committee requests the Government to keep it informed of the judicial decision with regard to the application for the lifting of the trade union immunity of the eight ATE officers sanctioned with termination and to indicate whether the allegations of suspension of other workers have been subject to judicial proceedings.

13. In a communication dated 26 November 2012, the Government sent the reply submitted by the Government of the Autonomous City of Buenos Aires (GCBA), which indicated: (1) with regard to recommendation (a), the GCBA confirms its commitment to include in collective bargaining all trade unions recognized on the basis of their membership, in accordance with international labour standards, and consequently the Association of State Workers (ATE) was involved in the negotiations held in respect of the City of Buenos Aires that resulted in the collective labour agreement concluded in 2010, which is applicable to all workers in the executive power; (2) with regard to recommendation (b), the recommendation has been noted and the possibility will be evaluated of setting up an independent body that can take responsibility for declaring strikes illegal or not; and (3) in a ruling issued in September 2012, the judicial authority denied the request of the administrative authority to lift the trade union immunity (protection that prevents dismissal) of one trade union official.

14. In a communication dated 22 March 2013, the ATE states that the Committee's recommendations were ignored, and it specifically alleges: (1) non-compliance with judicial rulings of 2008 and 2012 which provided that the Government of the City of Buenos Aires should continue to bargain collectively in the Teatro Colón and that the ATE should be involved; and (2) that although National Labour Court No. 76 ruled against the request to lift the trade union immunity of one trade union official, other courts, in violation of the National Constitution and international treaties, granted requests to lift the trade union immunity of two trade union officials (according to the complainants, these rulings were appealed and are currently pending before the National Labour Appeals Tribunal).

15. *The Committee takes note of all the information sent by the Government and the additional information provided by the ATE. In this respect, the Committee requests the Government to send its response concerning the additional information provided by the ATE and, in particular, to keep it informed about the result of the appeals relating to the lifting of the trade union immunity of two ATE trade union officials (Mr Máximo Parpagnoli and Mr Pastor Mora). Furthermore, the Committee requests the Government to keep it informed about the status of the five other trade union delegates who had also allegedly been the object of legal action to lift their trade union immunity.*

Case No. 2867 (Plurinational State of Bolivia)

16. The Committee last examined this case at its March 2012 meeting, when it made the following recommendations [see 363rd Report, paras 313–361]:

(a) The Committee invites the COB to send to the authorities the names of the persons who were assaulted, injured or taken into custody during the general strike and demonstrations held in April 2011 so that the Government can conduct an investigation without delay to determine responsibilities and, should excessive force prove to have been used, so that the perpetrators can be punished.

(b) The Committee expects that once the objections regarding non-compliance with the regulations of the Departmental Workers' Confederation of Santa Cruz have been settled, the decision will be issued, if appropriate, establishing the union leave entitlement of the union officers concerned.

(c) The Committee requests the Government to take the necessary measures to ensure that the deducted pay is refunded without delay to those National CNS workers who did not take part in the strike of April 2011. Furthermore, the Committee requests the Government to take the necessary measures to ensure that responsibility for declaring a strike illegal does not lie with the Government but with an independent body which has the confidence of the parties involved, and to keep it informed of the outcome of the appeal filed by FENSEGURAL against Ministerial Decision No. 042 whereby the strike in the sector was declared illegal.

(d) With regard to the alleged dismissal of union officer Ms Fidelia Flores Gómez from the LAFAR Laboratorios Farmacéuticos enterprise, the Committee requests the Government to take steps to ensure that an investigation is conducted into the grounds for the dismissal and to keep it informed of the outcome.

(e) The Committee requests the Government to ensure the implementation of the order for the reinstatement of union officers Mr Hilder Alarcón Mayta and Mr Marco Antonio Herbas Córdova at the Wiled SRL Patisu Ltda enterprise.

(f) The Committee requests the Government to ensure the implementation of the order for the reinstatement of union officers Mr Mario Chipana Mamani, Mr Genaro Espejo Huanca, Mr Ramiro Saire Lliulli and Mr Lucio Apaza Nina at the Novara SRL enterprise and to keep it informed of the outcome of the appeal for *amparo* (protection of constitutional rights) reportedly filed by the persons affected.

17. In a communication dated 21 September 2012, the Government states the following with regard to the Committee's recommendations:

– With regard to recommendation (a), it is for the COB to send its observations on the matter. *The Committee takes note of this information and once again requests the COB to send to the authorities the names of the persons who were assaulted, injured or taken into custody during the general strike and demonstrations held in April 2011 so that the Government can conduct an investigation without delay to determine responsibilities and, should excessive force prove to have been used, so that the perpetrators can be punished. In the event that the relevant information is not sent, the Committee will not proceed with the examination of these allegations.*

– With regard to recommendation (b), the request for recognition of, and granting of union leave entitlement to, the executive committee of the Departmental Workers' Confederation of Santa Cruz, headed by Mr Mario Vidal Ojeda, has been brought to the attention of its parent body, the COB, led by Mr Juan Carlos Trujillo, and its entire executive committee, which is in the process of resolving the internal dispute, claims and other issues of its member organization. Once these internal matters have been dealt with and the COB has communicated the results of its own internal actions, the relevant ministry will proceed to issue the appropriate ministerial decision. *The Committee takes note of this information and expects that, once the objections*

regarding non-compliance with the regulations of the Departmental Workers' Confederation of Santa Cruz have been settled, the decision will be issued, if appropriate, establishing the union leave entitlement of the union officers concerned.

– With regard to the first part of recommendation (c), the general management of the CNS has sent note No. 903 of 16 August 2012, in which it reports that, in May 2011, the deductions made from those workers who could produce documentation to demonstrate that they had worked on the days when the dispute occurred were reimbursed. With regard to the second part, the preliminary draft of the new General Labour Act is planned to include procedures and conditions for declaring strikes illegal. Lastly, in connection with the appeal lodged by FENSEGURAL against administrative decision No. 042, it should be reported that, by means of administrative decision No. 086-11 of 27 May 2011, the appeal was rejected and all the provisions of administrative decision No. 042 were upheld. *The Committee takes note of this information and trusts that the amendments to the General Labour Act will take account of the fact that responsibility for declaring a strike illegal should not lie with the Government, but with an independent body which has the confidence of the parties involved.*

– With regard to recommendation (d), the Departmental Labour Office for La Paz reports that, according to verification activities carried out by the labour inspection services, Ms Fidelia Flores Gómez submitted her letter of resignation to the LAFAR Laboratorios Farmacéuticos enterprise voluntarily. The amounts corresponding to her social benefits were deposited with the holding unit of the Departmental Labour Office for La Paz. This amount was paid by cheque to the former worker and beneficiary in May 2011, thereby ending the employment relationship between the LAFAR Laboratorios Farmacéuticos enterprise and Ms Fidelia Flores Gómez. *The Committee takes note of this information.*

– With regard to recommendation (e), the Departmental Labour Office for La Paz has reported that, according to report No. V032/11, prepared by the labour inspection services, Mr Marco Antonio Herbas Córdova was reinstated in his post on 14 February 2011, while Mr Hilder Alarcón Mayta was paid his social benefits. *The Committee takes note with satisfaction of the reinstatement of Mr Marco Antonio Herbas Córdova. However, the Committee requests the Government to provide information on the reasons why Mr Hilder Alarcón Mayta has not been reinstated in his post, as requested.*

– With respect to recommendation (f), the *amparo* proceedings have been before the Civil Chamber of the Higher Court for District No. 1 since 9 December 2011. *The Committee takes note of this information. The Committee once more requests the Government to ensure the implementation of its own order for the reinstatement of union officers Mr Mario Chipana Mamani, Mr Genaro Espejo Huanca, Mr Ramiro Saire Lliulli and Mr Lucio Apaza Nina at the Novara SRL enterprise. With regard to the* amparo *claim brought by the union officers in question, the Committee regrets that such a long time has passed without a ruling being handed down in this regard by the courts. The Committee recalls that "justice delayed is justice denied" [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 105] and requests the Government to keep it informed of the outcome of these* amparo *proceedings.*

Case No. 2355 (Colombia)

18. The Committee examined this case at its March 2012 meeting [see 363rd Report, paras 33–37]. On that occasion, the Committee requested the Government: (1) as regards the allegations concerning the company ECOPETROL, to keep it informed of developments concerning the situation of five dismissed workers in Cartagena; moreover, noting that neither the complainant nor the Government had responded to its previous recommendation, the Committee: (i) invited the complainant to provide the Government with all information in its possession concerning the allegations that ECOPETROL SA, individually or otherwise, awarded benefits, increments or bonuses to non-union workers, thus encouraging disaffiliation from the union; and (ii) requested the Government to take the necessary measures to urgently carry out an independent investigation to determine the veracity of these allegations with all elements of information; (2) in relation to the refusal of the Chevron Petroleum Company to bargain collectively with the union, the appointment of a Compulsory Arbitration Tribunal and the appeal for annulment of the award instituted by the company and the union with the Supreme Court of Justice, to confirm that the appeal for annulment of the arbitral award filed by the company before the Supreme Court was rejected; and (3) to take the necessary measures, in consultation with the social partners, to submit a proposal to the legislature to amend national legislation (section 430(h) of the Labour Code) with a view to establishing the conditions for exercising the right to strike in the oil sector, with the possibility of providing for a negotiated minimum service, and with the participation of the trade unions, employers and public authorities concerned.

19. In a communication dated 28 May 2013, the Government states that the Special Committee on the Handling of Cases referred to the ILO (CETCOIT) began its work in relation to the complaint and the allegations concerning the company ECOPETROL in August 2012, with the continued participation of the Prosecutor-General's Office and the Ministry of Labour, and that, due to the work undertaken, the parties reached an agreement. The Government expresses thanks to the Director of the Department of International Labour Standards for all the support, technical assistance and guidance provided to the CETCOIT. The Government supplies a copy of the agreement reached, which states that it is considered essential to offer a final solution to the persons dismissed during the 2002–04 collective dispute, which will allow conclusion of the differences and achieve harmonious labour relations in a legal framework. In the agreement, the Workers' Trade Union of the Petroleum Industry (USO) further states that the complaint in Case No. 2355 in regard to ECOPETROL SA should be considered closed.

20. *The Committee notes this information with interest. Furthermore, the Committee requests the Government to confirm that the appeal for annulment of the arbitral award filed by Chevron Petroleum Company with the Supreme Court of Justice was rejected, as well as to indicate whether steps have been taken in consultation with the social partners to submit a proposal to the legislature to amend national legislation (section 430(h) of the Labour Code) so as to establish the conditions for exercising the right to strike in the oil sector, with the possibility of providing for a negotiated minimum service, and with the participation of the trade unions, employers and the public authorities concerned.*

Case No. 2676 (Colombia)

21. The Committee recalls that, at its June 2010 meeting [see 357th Report, para. 300], it made the following recommendations:

(a) With regard to the refusal of the Ministry of Social Welfare to grant the request for entry in the trade union registry of the trade union organization established on 2 April 2006 (ASCOTRACOL), the Committee points out that the trade union organization may, if it

so wishes, once the omissions and inconsistencies highlighted in the decisions concerned have been rectified, submit a new request for the entry of its founding charter, by-laws and executive committee in the register and requests the Government in that case to register the trade union organization immediately.

(b) With regard to the allegation that as soon as the administrative authority rejected the request for registration of the trade union, the company dismissed the members of the executive committee and 40 workers who had been involved in the union's establishment or had joined the union, a fact that was verified by the judicial authority in its rulings, the Committee requests the Government to take the necessary steps to have the dismissed workers reinstated if indeed they were dismissed for having established a trade union and, should reinstatement be impossible for objective and compelling reasons, the Committee requests the Government to ensure that the workers receive appropriate compensation, such as to constitute a penalty that acts as a sufficiently dissuasive and effective deterrent against anti-union dismissals. The Committee requests the Government to keep it informed in this regard.

22. At its June 2011 meeting, the Committee took note of the Government's statements that: (1) the Territorial Directorate of Atlántico of the Ministry of Social Welfare certified that "there is no current" request to register a trade union, nor any registered trade union associated with the enterprise COOLITERIAL; and (2) judicial decisions have been handed down that are adverse to the complainants and that the Government is respecting and complying with the exercise of the duties and responsibilities specific to the separation of public powers. Given the above information, the Committee requested the Government to: (a) confirm that the trade union has not submitted a new request to be registered; and (b) provide the text of the judicial decisions on the alleged dismissals, which, according to the Government, have been adverse. While awaiting this information, the Committee maintains its previous recommendations [see 360th Report, paras 37–39].

23. In a communication of 24 July 2012, the Government reports that ASCOTRACOL went through the registration process again and, by means of documents Nos 151, 152 and 029 of 11 July 2012, the organization, its executive committee and its by-laws were registered. Furthermore, the Government has provided a copy of the judicial rulings rejecting the requests for reinstatement, along with documents declaring procedures terminated as a result of conciliation between the parties. *The Committee takes note of this information; in particular, it notes with interest that ASCOTRACOL has been registered.*

Case No. 2818 (El Salvador)

24. At its June 2011 meeting, the Committee made the following recommendations on the matters still pending [see 360th Report, para. 634]:

> The Committee again requests the Government, in consultation with the most representative workers' and employers' organizations, to accelerate the procedure for amending the legislation, ensuring that it fully guarantees respect of the principles of freedom of association for municipal employees, and expresses the firm hope that in the very near future the SITESMUES will be able to represent employees of several municipal authorities.

25. In its communication of 15 February 2012, the Government states that it is continuing to take a tripartite approach to the process of amending and reforming the Civil Service Act by ensuring that measures aimed at guaranteeing and protecting the labour rights of municipal workers are incorporated.

26. *The Committee takes note of this information and requests the Government to keep it informed of developments in the social dialogue process undertaken. The Committee hopes to see progress in the near future and reminds the Government that it may avail itself of the ILO's assistance to that end.*

Case No. 2292 (United States)

27. The Committee last examined this case at its November 2011 meeting when it noted with interest the information provided by the Government that Transport Security Officers (TSOs) had been provided with a framework for engaging in collective bargaining over certain issues and that an election to determine union representation for TSOs was to take place in March and April 2011 [see 362nd Report, paras 53–57]. The Committee requested the Government to keep it informed of developments in this regard.

28. In its communication dated 11 October 2012, the Government informs the Committee that the Transport Security Administrator issued a determination entitled "Transportation Security Officers and Collective Bargaining" which provides for a representation election and if a union is elected, sets out a process for a collective bargaining framework unique to the Transport Security Administration (TSA) that does not conflict with its mission to protect public security. It permits TSOs exclusive representative to bargain collectively over issues including: the performance management process to the extent not otherwise excluded; the awards and recognition process; the attendance management process; certain shift and annual leave bidding; the shift trade policy; the transfer policy; the process for work status change from full time to part time and vice-versa; uniforms and uniform allowance not including relevant security requirements; and parking subsidies. The determination also commits to establish a dispute settlement resolution system for employees and commits to allow the exclusive representative to suggest modifications to the system. The American Federation of Government Employees (AFGE) was elected by the TSOs as their exclusive representative in a run-off election held from 23 May to 21 June 2011. The AFGE was certified by the Federal Labor Relations Authority as the exclusive bargaining representative of the TSOs on 23 June 2011. The parties reached a tentative collective bargaining agreement which was submitted for ratification by AFGE members during the period of 1 October–9 November 2012. In its communication dated 23 January 2013, the Government adds that the contract, which has a duration of three years, was ratified on 9 November 2012 by a vote of 17,236 to 1,774.

29. *The Committee notes this information with satisfaction.*

Case No. 2841 (France)

30. The Committee examined this case at its November 2011 meeting, when it made the following recommendation [see 362nd Report, para. 1043]:

> The Committee requests the Government to ensure that, in the future, in cases where a non-essential service is paralysed, but there is justification for taking measures to ensure a minimum operational service, the workers' and employers' organizations concerned are involved in the decision-making process, and that measures are not implemented unilaterally.

31. In its communication of 6 September 2012, the Government indicates that: (1) there have been no new situations in France involving the paralysis of a non-essential service, as labour disputes since 2011 have not included any protests comparable in nature, scope or duration to those staged against pension reform in October 2010; (2) the disputes which have occurred have been in limited geographical and occupational sectors and none of them have resulted in the paralysis of any service as a whole, as was the case in the oil sector in October 2010; (3) consultation is still a preferred method when determining the right to strike in France, as recommended by the Committee; and (4) for example, by means of Act No. 2012-375 of 19 March 2012, the French legislature recently adopted provisions relating to the right to strike in passenger air transport, which explicitly call for consultation before the start of any dispute; the Act establishes machinery for social dialogue aimed at preventing the exercise of the right to strike; the employer and the

representative trade unions are encouraged to hold negotiations with a view to signing a framework agreement that establishes a dispute prevention procedure and promotes the development of social dialogue; under this agreement, strike action is only a possibility after negotiations between the employer and the trade unions; the framework agreement lays down rules for determining the structure and operation of the negotiations prior to any dispute.

32. *The Committee takes due note of this information.*

Case No. 2361 (Guatemala)

33. The Committee last examined this case at its November 2011 meeting [see 362nd Report, paras 1081–1097] and made the following recommendations:

(a) With regard to the collective dispute in the Chinautla Municipal Authority, the Committee notes that, according to the Government, two certificates were issued, which were forwarded to the district office of the Public Prosecutor and to the First Criminal Court of the First Instance for Crimes against the Environment, and the proceedings are under way. The Committee requests the Government to keep it informed in this regard;

(b) With regard to the allegations of SINTRAMUNICH, according to which the Chiquimula Municipal Authority dismissed or requested the termination of the contracts of employment of several workers (in particular members of the union) and made the payment of wages conditional on resignation of the workers, despite the existence of two judicial proceedings on a "collective dispute of a social and economic nature", the Committee recalls that it requested the Government to take the measures necessary to reinstate those workers who were dismissed without the authorization of the court, in defiance of a judicial decision on a "convocation to collective bargaining" which prohibits any termination of contracts without judicial authorization, with payment of the wages due, and to keep it informed in this respect and to inform it of the decision of the Conciliation Tribunal. The Committee requests the Government to indicate without delay whether the workers who were dismissed without the authorization of the court have been effectively reinstated in their posts and have received wages and other benefits due to them; and

(c) With regard to the collective bargaining process between the Chiquimula Municipal Authority and SINTRAMUNICH, the Committee requests the Government to keep it informed of the follow-up given to the direct negotiation of the list of demands and to send it a copy of the decision handed down by the Conciliation Tribunal.

34. In communications dated 8 February and 8 March 2013, the Government provides information on the role of the National Civil Service Authority and on the collective bargaining process between the Municipality of Chiquimula and SINTRAMUNICH, indicating that the Labour, Social Welfare and Family Court of First Instance ordered the formation of a Conciliation and Arbitration Tribunal. On 27 July 2011, that tribunal held its conciliation hearing, which resulted in the approval of the entire collective agreement on working conditions signed by both parties, valid from 1 August 2011 to 1 August 2013.

35. *The Committee notes this information with interest. As regards recommendations (a) and (b), the Committee regrets that the Government has not sent the requested information and once again requests it to provide this without delay.*

Case No. 2737 (Indonesia)

36. The Committee last examined this case, which concerns allegations of acts of anti-union dismissal and the refusal by the Hotel Grand Aquila to comply with reinstatement orders, including numerous orders and recommendations from the Bandung Manpower Office and

its mediator directing the hotel management to reinstate, with payment of wages, nine officers and 119 members of the Independent Trade Union (SPM) Hotel Grand Aquila and the recommendation dated 7 April 2010 from the National Commission on Human Rights concerning the labour dispute between the SPM and the hotel management in which the National Commission recommended to the President of the Republic of Indonesia to instruct the relevant government official in the labour affairs department to immediately resolve the problems through the mechanism of existing law, whether civil or criminal, and to order a direct monitoring by government officials to ensure that workers' rights to freedom of association at the hotel in Bandung are ensured and protected, at its May–June 2012 meeting. On that occasion, the Committee once again urged the Government to take, without further delay, all necessary measures to enforce the recommendations and orders issued by the Bandung Manpower Office concerning the reinstatement of officers and members of the SPM at the Hotel Grand Aquila in Bandung. If reinstatement was not possible due to the time that had elapsed, the Committee requested the Government to ensure that these workers were paid adequate compensation so as to constitute a sufficiently dissuasive sanction against such acts. It further requested the Government to indicate concrete steps taken to implement the recommendations of the National Commission for Human Rights in relation to the present case and to indicate any court action taken by the District Attorney of Bandung or any sanction taken in relation to the alleged infringement of freedom of association rights by the hotel management. It requested the Government to keep it informed in this respect [see 364th Report, paras 54–58].

37. In its communication dated 25 October 2012, the Government indicated that as concerns the appeal to the Supreme Court from the group of 59 workers unsatisfied with the decision of the Industrial Relations Court as to the monetary amount to be paid to the dismissed workers (double wages payment), the Supreme Court has rejected the plaintiffs' claim for a payment equivalent to double wages payment, and ordered the employer to give compensation in accordance with Article 156(4), paragraphs (a), (b) and (d) of Act 13 of 2003 on manpower: "Compensation shall cover: (a) annual leave, which has not yet been taken and has not yet been voided; (b) fares or expenses for going home for worker/labourer and their family to the place where the worker/labourer is recruited; (d) other matters as stipulated in the Working Agreement, company's regulation or Joint Working Agreement". The Government further indicates that it has been implementing and monitoring the recommendations of the National Commission for Human Rights in accordance with the procedures and mechanisms of prevailing laws and regulations to ensure protection of workers' rights at the Hotel Grand Aquila, particularly trade union rights. The Government also reiterates that a review of Act No. 21 on Labour Union (2000) is being conducted, with the involvement of the stakeholders concerned.

38. *The Committee notes the information provided by the Government. The Committee recalls that this case concerns the dismissal of 128 workers immediately following the formation of a trade union at the Hotel Grand Aquila in Bandung. The Committee understands from the Government's communication that the Supreme Court has upheld the decision of the Industrial Relations Court concerning the dismissals, rejecting the plaintiff's claim (group of 59 workers) seeking compensation in the form of a payment equivalent to double wages, and has ordered the employer to compensate in accordance with Article 156(4), paragraphs (a), (b) and (d) of Act 13 of 2003 on manpower, which amounts to the traditional compensation for the termination of an employment contract. The Committee observes that the Industrial Relations Court had previously concluded that there was no evidence of violation of freedom of association with regard to the dismissal of these workers and more specifically, no evidence that their dismissals were a direct consequence of the formation of a trade union at Hotel Grand Aquila. According to the Court, the dismissal of these workers is to be qualified as a "labour dispute". The Committee further observes that this Court has also concluded that the National Commission for Human*

Rights has exceeded its authority in issuing its recommendations and that therefore they are not legally binding. In these circumstances, taking due note of the findings of the Supreme Court and the Industrial Relations Court as regard the character of the dismissals (not anti-union discrimination but a labour dispute), the Committee takes due note of this information and requests the Government to provide clarifications concerning the meaning of a labour dispute and to indicate whether the legislation affords protection in this regard.

39. *The Committee further recalls its previous recommendation that the Government take steps, in full consultation with the social partners concerned, to amend its legislation to ensure comprehensive protection against anti-union discrimination, providing for swift recourse to mechanisms that may impose sufficiently dissuasive sanctions against such acts. The Committee trusts that the review of legislation ongoing will establish appropriate mechanisms in this regard, and requests the Government to provide information on steps taken in this regard to the Committee of Experts on the Application of Conventions and Recommendations.*

Case No. 2754 (Indonesia)

40. The Committee last examined this case, which concerns allegations of anti-union dismissals from the company PT. Dok Dan Perkapalan Surabaya resulting in difficulties of the SEKAR-DPS trade union to operate, at its May–June 2012 meeting. On that occasion, the Committee recalled that a mediator of the Manpower Office of Surabaya City recommended that the suspension of workers following their participation in the October 2009 strike be revoked and back wages be paid and once again requested the Government to keep it informed of any follow-up to this recommendation [see 364th Report, paras 50–65].

41. In its communication dated 16 January 2013, the Government indicates that based on the monitoring report of the labour inspector obtained from PT. Dok Dan Perkapalan Surabaya, the seven workers suspended following their participation in the October 2009 strike were reinstated.

42. *The Committee notes this information with interest and trusts that the back wages have been paid to them in accordance with the recommendation of the mediator of the Manpower Office of Surabaya City.*

Case No. 2301 (Malaysia)

43. The Committee last examined this case, which concerns the Malaysian labour legislation and its application which, for many years, have resulted in serious violations of the right to organize and bargain collectively, including: discretionary and excessive powers granted to authorities as regards trade union registration and scope of membership; denial of workers' rights to establish and join organizations of their own choosing, including federations and confederations; refusal to recognize independent trade unions; interference of authorities in internal union activities, including free elections of trade union representatives; establishment of employer-dominated unions; and arbitrary denial of collective bargaining, at its March 2012 meeting [see 363rd Report, paras 171–177].

44. On that occasion, as concerns the legislative issues raised by the Committee, noting that the Government had referred to engagement sessions with social partners to further improve the Industrial Relations Act (IRA) and the Trade Union Act (TUA), the Committee trusted that social dialogue had already begun with a view to addressing the Committee's long-standing recommendations, and requested the Government to keep it

informed of any progress in this regard. As regards the situation of 8,000 workers in 23 manufacturing companies whose representational and collective bargaining rights were allegedly denied, noting that the Government indicated that it was not in a position to provide the information requested as there was no record on this matter, the Committee once again requested the complainant to indicate if these workers were currently represented by one or more trade unions and, if so, if they were able to exercise their rights to collective bargaining and conclude collective agreements. The Committee trusted that this situation would be addressed without delay so as to ensure that these 8,000 workers were duly represented by the union of their choice and could exercise their right to collective bargaining.

45. In its communication dated 6 December 2012, the Government reiterates that it is in the process of amending the IRA and the TUA, still engaging the social partners for their comments and inputs. The Government however underlines that the proposed amendments do not intend to revamp the main process of recognition and collective bargaining as the amendments to these provisions had been dealt with in 2008. As regards sections 9(5) and 9(6) of the IRA, the Government once again reiterates that the existing legal redress by way of judicial review to the High Court and a further right of appeal to the Federal Court are sufficient and it intends to maintain the current provisions.

46. *The Committee takes due note of this information. Noting with concern the Government's indication that it does not intend to revise the main process of recognition and collective bargaining, the Committee expects that the Government will nevertheless address rapidly its long-standing recommendations, summarized in its previous examination of the case, in full consultation with the social parties concerned. The Committee cannot but recall that it has commented upon the extremely serious matters arising out of the fundamental deficiencies in the legislation on many occasions over a period spanning 19 years.*

47. *As regards the situation of 8,000 workers in 23 manufacturing companies whose representational and collective bargaining rights were allegedly denied, the Committee observes with regret that the complainant has not provided the information requested and recalls the importance of receiving full information to enable the Committee to carry out a full and objective consideration of the matters before it in full knowledge of the facts. In these circumstances, it will not pursue the examination of those matters.*

Case No. 2717 (Malaysia)

48. The Committee last examined this case, which concerns allegations that the British American Tobacco (BAT) company reclassified existing posts within the company in order to prevent employees who were members of the British American Tobacco Employees Union (BATEU) from retaining their union membership, at its March 2012 meeting. On that occasion, with regard to its long-standing recommendations on legislative reform (previously raised in Case No. 2301), the Committee once again urged the Government to take the measures to amend the Trade Union Act of 1959 (TUA) so as to ensure that all workers, without distinction whatsoever, enjoy the right to establish and join organizations of their own choosing, whether at primary level or by grouping together workers from different workplaces or cities. As regards the Industrial Relations Act (IRA), the Committee urged the Government to take the necessary measures so as to ensure that: (1) the definition of managerial and supervisory staff is limited to those persons who genuinely represent the interests of employers, including, for example, those who have the authority to appoint or dismiss; and (2) managerial and supervisory staff have the right to establish their own associations for the purpose of engaging in collective bargaining, and firmly expected the Government to inform it in the near future of concrete measures taken to amend the IRA in view of the above principles. In the meantime, the Committee expected that the BATEU would be able to work and function freely. The Committee

urged the Government to make every effort to consult with the company and the trade union concerned so as to determine the supervisory staff genuinely representing the interests of employers which could be excluded from the BATEU's union membership [see 363rd Report, paras 178–183].

49. The Government submitted its observations in a communication dated 6 December 2012. With regard to the Committee's request to amend the IRA, the Government reiterates its intention to maintain the present arrangement as status quo. With regard to the consultations with the company and the trade union concerned so as to determine the supervisory staff genuinely representing the interests of employers which could be excluded from the BATEU's union membership, the Government once again reiterates that it has been decided by the Department of Trade Union Affairs and Industrial Relations (DGTU) that the BATEU cannot represent workers employed under BAT (Malaysia) Sdn. Bhd. subsidiaries and does not have any *locus standi* regarding issues relating to the scope of membership and that therefore the Department of Industrial Relations (DIR) is not able to conduct an investigation to determine the scope of membership by virtue of the above decision. The Government further indicates that the DGTU has approved the amendments on the scope of membership of the National Union of Tobacco Workers (NUTW). The widening of the membership scope allows the employees of BAT and ex-members of the BATEU to join and be members of the NUTW.

50. *The Committee notes the Government's indication that the DGTU has approved the amendments on the scope of membership of the NUTW and that the widening of the membership scope now allows the employees of BAT and ex-members of the BATEU to join and be members of the NUTW. The Committee deeply regrets that the Government did not follow-up on its recommendation to make every effort to consult with the company and the trade union concerned (BATEU) so as to determine the supervisory staff genuinely representing the interests of employers which could be excluded from the BATEU's union membership, pending the introduction of the legislative reform which would clarify the different categories of workers falling under union representation and understands that the BATEU was not able to work and function freely. The Committee recalls that it considers the decisions of the courts concerning the BATEU to be rooted in the legislative framework's restrictions on trade union rights that it has extensively commented upon in Case No. 2301. Recalling that questions of trade union structure and organization are matters for the workers themselves and that it sees the situation faced by these workers as a concrete example of the fundamental deficiencies of the legislation which, in the end, prevent these workers from exercising their organizational and collective bargaining rights, the Committee once again urges the Government to take the measures to amend the TUA without further delay so as to ensure that all workers, without distinction whatsoever, enjoy the right to establish and join organizations of their own choosing, whether at primary level or by grouping together workers from different workplaces or cities.*

51. *Concerning the request for measures to be taken to amend the IRA, the Committee once again urges the Government to take the necessary measures without delay so as to ensure that: (1) the definition of managerial and supervisory staff is limited to those persons who genuinely represent the interests of employers, including, for example, those who have the authority to appoint or dismiss; and (2) managerial and supervisory staff have the right to establish their own associations for the purpose of engaging in collective bargaining, and recalls that it may avail itself of the technical assistance of the ILO in this regard should it so desire.*

Case No. 2850 (Malaysia)

52. The Committee last examined this case at its March 2012 meeting [see 363rd Report, paras 853–877]. On that occasion, the Committee made the following recommendations:

(a) As regards the registration of MAYNEU, the Committee requests the Government to provide information as to the impact of the registration of MAYNEU on the recognition of NUBE as bargaining agent in the light of its apparent majority representation and the previously existing collective bargaining agreement recognizing NUBE as the bargaining partner; as well as to keep it informed of the final outcome of the ongoing judicial proceedings.

(b) With respect to the allegations of harassment and intimidation of NUBE officials by the bank's security guards and by the police, the Committee requests the Government to swiftly conduct an independent inquiry into these allegations and to keep it informed of its outcome.

(c) In light of the Government's obligation under Convention No. 98 to ensure the adequate protection of workers' organizations against acts of interference on the part of employers, the Committee requests the Government to institute without delay an independent investigation into the alleged acts of interference against NUBE by the bank and to keep it informed of the results.

(d) The Committee requests the Government to take the necessary measures to guarantee the access of NUBE representatives to the bank's premises and to keep it informed in this regard.

(e) Expressing concern at the alleged anti-union dismissal of the NUBE Vice-President Mr Abdul Jamil Jalaludeen and the NUBE Treasurer-General Mr Chen Ka Fatt on 31 January 2012, the Committee requests the Government to provide its observations concerning the allegations contained in the latest communication of the complainant, as well as to supply the relevant decisions of the High Court and the Appelate Court.

53. The Government submitted its observations in communications dated 6 December 2012 and 20 May 2013. As regards recommendation (a), the Government indicates that the case is still pending before the Federal Court and, therefore, it is not in a position to provide any further comments. The Government adds that there are no implications towards the National Union of Bank Employees (NUBE) due to the registration of the Maybank Non-Executive Employees Union (MAYNEU), as the collective agreement between NUBE and the Malayan Banking Berhad (MAYBANK) is still ongoing. As regards recommendation (b), the Government states that there is no need to establish an independent inquiry as the Department of Industrial Relations Malaysia (DIRM) has received a complaint over the matter, which is currently being referred to the Industrial Court for adjudication. As regards recommendations (c) and (d), the Government indicates that any party can lodge a complaint under section 8 of the Industrial Relations Act 1967 regarding violation to the right to join and participate in lawful union activities. Any complaint received by the DIRM will be handled in accordance with current labour laws. As regards recommendation (e), the Government indicates that the DIRM has received complaints (section 20 of the Industrial Relations Act 1967) concerning the dismissal of the two NUBE officers and that these cases have been referred to the Industrial Court for adjudication. The Government adds that the officers involved have been kept informed of the latest developments on this matter.

54. *The Committee notes the information provided by the Government. As regards the registration of MAYNEU, observing that there are no implications towards NUBE due to the registration of MAYNEU, as the collective agreement between NUBE and MAYBANK is still ongoing, the Committee once again requests the Government to keep it informed of the final outcome of the judicial proceedings before the Federal Court. With respect to the allegations of harassment and intimidation of NUBE officials by the bank's security*

guards and by the police, noting that the DIRM has received a complaint over the matter, which is currently being referred to the Industrial Court for adjudication, the Committee requests the Government to keep it informed of the final outcome of the judicial proceedings before the Industrial Court and to provide a copy of the judgment once it is handed down. With regard to the alleged anti-union dismissal of the NUBE Vice-President Mr Abdul Jamil Jalaludeen, and the NUBE Treasurer-General, Mr Chen Ka Fatt, on 31 January 2012, the Committee notes that the Government indicates that the DIRM has received complaints concerning the dismissal of these two NUBE officers and that these cases have been referred to the Industrial Court for adjudication. The Committee requests the Government to keep it informed of the final outcome of the judicial proceedings before the Industrial Court and to provide a copy of the judgment once it is handed down. Noting that more than two years have elapsed since the presentation of the complaint, the Committee wishes to recall that justice delayed is justice denied [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 115] and trusts that all these proceedings will be concluded rapidly.*

Case No. 2575 (Mauritius)

55. The Committee last examined this case, which concerns allegations of violations of freedom of association in the setting up, composition and appointment of members of the National Wages/Pay Council (NPC) at its March 2012 meeting. On that occasion, the Committee once again requested the Government to provide information on the establishment, composition, appointment and functioning of the commission dealing with the question of annual pay within the National Tripartite Forum. The Committee also requested the Government to ensure that consultations take place within this framework with the Trade Union Common Platform (TUCP) [see 363rd Report, paras 184–186].

56. In its communication dated 24 July 2012, the Government indicates that: (i) discussions on the determination of the quantum of salary compensation for the year 2012 were, at the request of the trade union representatives, held at the level of a tripartite committee (TC) chaired by the Vice-Prime Minister and Minister of Finance and Economic Development instead of the subcommittee on salary compensation under the aegis of the National Tripartite Forum. The TC was composed of seven representatives from each of the tripartite constituents; (ii) at the first meeting of the TC, after allowing representatives from each side to express their views on the issue, the Chairperson proposed that a technical tripartite committee (TTC) be set up and co-chaired by the Ministry of Finance and Economic Development and the Ministry of Labour, Industrial Relations and Employment to examine in detail the proposals from each side and come up with specific recommendations on the quantum of salary compensation for 2012; (iii) the TTC was in principle also constituted on the basis of an equal representation of seven members from each of the tripartite constituents although some members failed to attend the meetings scheduled. It met on two occasions, and after careful consideration of the proposals from employers' and workers' representatives, the co-Chairpersons submitted their recommendations to the Chairperson of the TC on 14 September 2011. The recommendations made were finally approved at the level of the TC and by the Government in a spirit of consensus and compromise; and (iv) thus, despite the inflation rate of 6.6 per cent for 2011, the Government made a special effort to grant a compensation of up to 11 per cent to those workers at the lowest rungs of the ladder earning up to 5,000 Mauritian rupees (MUR) per month while for those earning above MUR5,000 up to MUR7,000 per month, a full compensation of 6.6 per cent was granted. A flat compensation of MUR460 was given to those earning above MUR7,000 up to MUR30,000 monthly. As for those whose salary exceeded MUR30,000 per month, no compensation was proposed in view of the difficult economic situation and in a gesture of solidarity towards those in hardship.

57. *The Committee notes this information with interest.*

Case No. 2887 (Mauritius)

58. The Committee last examined this case at its May–June 2012 meeting, when it made the following recommendations [see 364th Report, paras 676–700]:

(a) The Committee draws the attention of the Government to the principles set out in the above conclusions including the constraints which apply to public authorities when intervening in the process of collective bargaining between the social partners.

(b) In view of the contradictory versions of the complainant, the Government and the trade unions concerned and with respect to the effect on the collective agreements of the action taken by the Minister to refer the 21 issues that could not be resolved during the collective bargaining process to the NRB, and the legality of such action, and noting that the complainant sought leave from the Supreme Court for an application for judicial review to quash, reverse and set aside the decision of the Minister which has still not been determined by the Court, the Committee expects that the abovementioned principles will be brought to the attention of the Court and requests the Government to provide a copy of the court judgment as soon as it is handed down.

59. In its communications dated 2 October 2012 and 8 March 2013, the Government indicates that: (1) following deadlock reached at the level of the Commission for Conciliation and Mediation on another labour dispute reported against the Mauritius Sugar Producers' Association (MSPA) by the Joint Negotiating Panel (JNP) on 10 March 2012 on two new issues, the JNP opted to have recourse to strike action. The MSPA subsequently made an application on 2 August 2012 to the Employment Relations Tribunal (ERT) for an order restraining and prohibiting the JNP from launching or participating in any strike or any matter preparatory to a strike; (2) in view of reaching a settlement, the Minister of Labour, Industrial Relations and Employment was mandated by the Government to pursue negotiations with the parties and finally an agreement was reached on 17 August 2012 (a copy of the agreement is attached to the Government's communication) whereby it was agreed, inter alia, that: (i) the Minister of Labour, Industrial Relations and Employment shall withdraw his referral of the 21 unresolved issues which he made to the National Remuneration Board (NRB) on 26 July 2010; (ii) the MSPA shall withdraw its application before the Supreme Court in relation to an eventual judicial review of the Minister's decision to refer the 21 unresolved issues to the NRB; and (iii) the Minister of Labour, Industrial Relations and Employment shall refer to the NRB for review only the following three issues: (a) payment of a night shift allowance of 25 per cent of daily basic wage to workers working during night shift; (b) the retirement age for a male worker to be 50 years and that for a female worker to be 45 years; and (c) the payment of gratuity on retirement at the age of 60 years/retirement on medical grounds before 60 years/on the death of a worker to be computed on the basis of 2.5 months wages per year of service; (3) on 21 August 2012, the NRB was requested by the Ministry of Labour, Industrial Relations and Employment to take necessary action with respect to issues in point (2)(i) and (iii) above; and (4) on 13 December 2012, the MSPA withdrew its application made before the Supreme Court in relation to an eventual judicial review against the decision of the Minister of Labour, Industrial Relations and Employment to refer the 21 unresolved issues to the NRB.

60. *The Committee welcomes this information and duly notes that the collective dispute has been resolved further to the agreement mentioned above and that court proceedings have therefore been withdrawn by the complainant.*

Case No. 2679 (Mexico)

61. In its previous examination of the case, in March 2011, the Committee requested the Government to inform it of any new legal appeal against the decision upholding the registration of the complainant trade union (Union of General Insurance Sales Agents in the State of Jalisco (SAVSGEJ)); furthermore, with regard to the dismissal of various officials and members of the complainant union (Ms María del Socorro Guadalupe Acévez González, Ms Rosanna Aguirre Díaz, Ms María Cristina Vergara Parra, Ms Bertha Elena Flores Flores, Ms Elodia Hernández Orendain, Mr Alejandro Casarrubias Iturbide, Mr Lázaro Gabriel Téllez Santana, Mr Javier Badillo Flores and Mr Martín Ramírez Olmedo), the Committee was awaiting the rulings to be handed down and requested the complainant organization to provide details of the legal claim made by the trade union member Mr Javier Badillo Flores so that the Government could provide observations in that regard [see 359th Report, para. 106]. *The Committee observes that the complainant has provided the reference number for the legal case (No. 82/20095J) in its communication of 5 November 2012.*

62. In its communications of 17 September and 10 and 20 February 2012, the Government states that the legal ruling in favour of registering the complainant union is final and has been confirmed. *The Committee takes note of this information with interest.*

63. With regard to the alleged dismissals, the Government states that the Local Arbitration and Conciliation Board for the State of Jalisco ordered the defendant insurance company to reinstate Ms María del Socorro Guadalupe Acévez González and to pay her various benefits. *The Committee takes note of this information.* With regard to the rest of the dismissals, the Government provides detailed information on the status of legal proceedings, reporting that rulings are awaited, and states that it trusts they will be handed down soon. *The Committee requests the Government to transmit the outcome of these proceedings.*

Case No. 2268 (Myanmar)

64. The Committee last examined this case at its March 2011 meeting (see 359th Report, paras 107–110) wherein it requested the Government to keep it informed of the steps taken to ensure a legislative framework in full conformity with the standards and principles of freedom of association. The Committee had further urged the Government to issue instructions to civil and military agents so as to ensure that the authorities fully refrain from any act preventing the free operation of all forms of organization of collective representation of workers, freely chosen by them to defend and promote their economic and social interests, including seafarers' organizations and organizations which operated in exile at the time. Finally, the Committee urged the Government to take steps for the immediate release from prison of Myo Aung Thant.

65. In a communication dated 30 August 2011, the Government provided information on the steps being taken to finalize a legislative framework to ensure respect for freedom of association and responded to a number of other outstanding requests. In its communication dated 6 February 2013, it indicated that Order No. 2/88 has been abolished and the Labour Organization Law (LOL) came into force on 9 March 2012. This has given rise to the registration of 396 basic labour organizations, four township labour organizations, one labour federation, 17 basic employer organizations, and one employer federation. The Government adds that the LOL's implementation has been assisted by a number of tripartite and bipartite awareness-raising workshops that have been carried out by the ILO Chief Technical Advisor (CTA) on Freedom of Association Programme. As regards Order No. 1 of 2006, the Government indicates that it is abolishing it in line with the procedures. The Government further refers to numerous communications it has provided to the ILO

Governing Body and to the Committee of Experts on the Application of Conventions and Recommendations concerning the release of detained worker activists, including the release of Myo Aung Thant.

66. *The Committee welcomes the information related to the release of Myo Aung Thant, the repeal of Order No. 2/88 and the introduction of a legislative framework enabling workers and employers to form organizations of their own choosing. The Committee further welcomes the important steps taken with the ILO CTA on Freedom of Association Programme to facilitate the implementation of the LOL in a manner consistent with Convention No. 87. The Committee notes with interest the numerous basic labour organizations that have since been registered but observes from the figures provided by the Government that the formation of higher-level organizations appears to be more challenging. Legitimate representatives of workers and employers at the national level is of particular importance so that the Government may carry out meaningful consultations with labour and business on matters or draft legislation affecting their members' interests. The Committee trusts that national labour confederations will be formed in the very near future so that the voices of Myanmar workers can be effectively heard and until then proposes that the Government review the LOL with the assistance of the ILO so as to ensure that the requirements for forming higher-level organizations are not such as to hinder effectively the meaningful exercise of the rights under the Convention. Observing that the Government is in the process of abolishing Order No. 1 of 2006, and taking due account of the Governing Body's decision at its 316th Session in November 2012 to take no further action under the article 26 complaint, while requesting the ILO, in light of the guidance it has given, to continue its close cooperation with the Government to bring about the application of Convention No. 87, the Committee suggests that the Government include the Federation of Trade Unions of Myanmar in its broad consultations over matters that affect workers' interests.*

Case No. 2613 (Nicaragua)

67. The Committee last examined this case regarding dismissals and transfers of trade union officials and members at its June 2012 meeting, when it noted that the Government had reported that: (1) a decision in first instance was pending for the judicial proceedings pertaining to the dismissal of Mr Alvin Alaniz González, Ms Jazmín del Sagrario Carballo Soto and Mr Rolando Delgado Miranda, of the Nicaraguan Institute of Social Security (INSS); (2) no decision had been handed down for the judicial proceedings initiated by the dismissed workers of ENACAL Granada and the situation had not changed since the communication of 9 December 2010; and (3) a decision in first instance was pending for the judicial action for reinstatement of the trade union official, Mr Ricardo Francisco Arista Bolaños, against the Directorate General of Revenues (DGI), in process at that time before the First Labour Court of the Judicial District of Managua. The Committee expected the judicial authorities to hand down a decision shortly and requested the Government to keep it informed in that respect [see 364th Report, paras 67–68].

68. In a communication of 21 November 2012, the Government reports that: (1) Ms Jazmín del Sagrario Carballo Soto withdrew her complaint against the INSS and continues to be an active worker in the institution; (2) the court rejected the request for reinstatement filed by Mr Alvin Alaniz González, and during the judicial proceedings it was noted that the person in question demonstrated no interest in those proceedings; (3) the court rejected the request for reinstatement filed by Mr Rolando Delgado Miranda, who moreover has received a pension from that institution since 2007; (4) the First Court of the Judicial District of Managua rejected the claim for reinstatement and payment of unpaid wages filed by Mr Ricardo Francisco Arista Bolaños; furthermore, the worker in question has not been to collect the settlement of wages made available to him; and (5) as regards the judicial proceedings filed by the workers dismissed from ENACAL Granada in December 2011,

the First Civil Court of the Judicial District of Granada issued a ruling and referred the case to the Second Civil Court of the Judicial District of Granada, which is responsible for paying six former workers of the company, who have already been notified.

69. *The Committee takes note of this information.*

Case No. 2864 (Pakistan)

70. The Committee last examined this case at its May–June 2012 meeting, when it made the following recommendations [see 364th Report, paras 772–788]:

(a) Observing the recent adoption of the Industrial Relations Act (IRA) 2012 on 14 March 2012, which has avoided the expiration of the NIRC and of the legal status of national and industry-wide trade unions, the Committee expects that the union will be registered without delay under this new legislation and requests the Government to keep it informed of developments.

(b) In view of the NIRC injunction orders for the protection of the Bank trade union officials and members and that these employees have nevertheless remained without remedy for over seven years, the Committee firmly urges the Government to take the necessary steps for their immediate reinstatement pending any remaining judicial decisions and to keep it informed of the progress made in this regard.

71. In its communication dated 11 December 2012, as concerns recommendation (a), the Government indicates that, following the decision of the Islamabad High Court (Inter Court of Appeals ICA 44-55/2012), the National Industrial Relations Commission (NIRC) has registered the Bank of Punjab Employees Union of Pakistan on 18 June 2012 under the Industrial Relations Act (IRA) 2012 and that the union has applied for referendum proceedings which are under process with the NIRC.

72. *As regards recommendation (a), the Committee notes with satisfaction that the Bank of Punjab Employees Union of Pakistan was registered under Industrial Relations Act (IRA) 2012 on 18 June 2012 and that it has applied for referendum proceedings with the NIRC. It expects that the workers were able to elect their representatives in full freedom and trusts that the union is now able to carry out its activities without interference by the employer, in accordance with Conventions Nos 87 and 98, ratified by Pakistan.*

73. *The Committee notes with regret, however, that the Government has not provided any information in relation to recommendation (b). The Committee, therefore, once again firmly urges the Government to take the necessary steps for the immediate reinstatement of the dismissed Bank trade union officials and members, pending any remaining judicial decisions, and to once again keep it informed of the progress made in this regard.*

Case No. 2751 (Panama)

74. The Committee last examined the substance of this case at its March 2012 meeting, when it made the following recommendations [see 363rd Report, para. 950]:

(a) The Committee firmly expects that the future reform of the Act governing administrative careers will reduce the minimum number of public servants needed to establish a trade union association.

(b) The Committee reiterates once again the importance of recognizing FENASEP for all purposes (this includes it being represented on the Technical Committee and the Appeal and Conciliation Committee in the light of Act No. 43 of 2009) in connection with its representativeness and requests the Government to keep it informed of developments and to take the necessary measures to ensure that its legislation recognizes the right to

establish federations and confederations in the public sector. Furthermore, the Committee notes that, as regards the refusal to allocate education insurance funds to FENASEP for training, the Government is waiting for the Third Administrative Division of the Supreme Court of Justice to provide clarification on the matter. The Committee requests the Government to keep it informed in this respect.

(c) As regards the alleged freezing of 30 requests for trade union registration, bearing in mind the number of denied requests for legal personality, the Committee requests the Government to examine the grounds for denial with the organizations so that the functioning of the system in practice can be evaluated, including the means of resolving the issue of securing legal personality for the 30 trade union organizations in question. The Committee requests the Government to keep it informed in this respect.

(d) The Committee notes that the Government is awaiting the decision of the Supreme Court of Justice concerning the dismissal of the leader of ASEMITRABS, Mr Víctor C. Castillo Díaz (the Government disputes his appointment as leader of the association and underlines the fact that the association in question has not been operational for years). The Committee requests the Government to keep it informed in this respect.

(e) The Committee takes note of the information provided by the Government, and in particular the fact that the legal proceedings instituted by the Ministry of Labour against trade union leaders for mismanagement of funds (illicit diversion of public education insurance funds earmarked for trade union training) are ongoing. The Committee requests the Government to inform it of the judicial decision taken in this regard.

(f) Finally, the Committee notes the Government's observations dated 27 February 2012 sent in response to the information transmitted by FENASEP on 31 May 2011 concerning dismissals of trade union leaders and other matters, which will be examined at the next examination of the case.

75. In a communication dated 24 August 2012, the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP) alleges that: (1) the freedom of association situation has deteriorated; (2) the cases where new trade unions have been denied legal personality by the Government have not been reviewed; (3) the payment of the State subsidy for training was recently re-established, although the legal proceedings brought in this regard before the Supreme Court in 2009 by the Ministry of Labour have not been formally withdrawn; (4) the trade union leaders in the public sector who were unfairly dismissed have not been reinstated but, on the contrary, Ms Jennyfer Malca, FENASEP Executive Board Secretary for youth issues, Ms Melanie Guittens, FENASEP executive board member, Mr Ismael Ruiz, FENASEP Executive Board Secretary for education and Mr Andrés Rodríguez, education official, were further dismissed; (5) no inquiry has been made into the murder of the trade unionists in Changuinola, who were killed by the police in 2010; (6) the management of the Social Security Fund continues to deny freedom of association; (7) through the assistance of the ILO, two tripartite dialogue forums were established in February 2012 to bring legislation into line with Convention Nos 87 and 98 as far as possible, and another forum was established to seek to provide rapid solutions to disputes arising in relation to freedom of association (a number of agreements have been reached which have not yet been enforced or have only been enforced in part); and (8) a subcommittee made up of government and FENASEP members was created to bring the text of Act No. 9 governing administrative careers into line as regards freedom of association. The subcommittee has been operating since May 2012 but has yet to produce results.

76. In its communication of 27 February 2012, in relation to the allegations concerning anti-union dismissals submitted by FENASEP in May 2011, the Government reports that: (1) Mr Alba did not have trade union immunity; (2) Mr Alba and Mr Eduardo Baltazar Lan were dismissed on the grounds that they were not in good standing with the Social Security Fund (non-compliance with requirements as members of the executive board of the Fund); (3) Mr Andrés Góndola was absent from duty, without permission, from 6 to 16 May 2011, and thus a decision was issued requesting his dismissal on the grounds of dereliction of

duty. Mr Góndola lodged an appeal before the administrative courts that is currently being processed; (4) Mr Abdiel Zapateiro was dismissed under Staff Decree No. 408 of 18 December 2009, and his appeal for review was rejected, indicating that he was not a union leader; (5) Mr Reynaldo Núñez Castillo was dismissed from the Banco Hipotecario Nacional under Decision No. 293-2011 of 18 February 2011, as a result of the functional and structural reorganization carried out throughout the institution. Mr Núñez Castillo lodged administrative appeals, which were rejected, and may bring his case before the judicial authorities; and (6) Ms Ana Bolena Ayarza, journalist for the Public Relations Office of the National Police of Colón was not unfairly dismissed, but was a temporary employee; she was not a union leader of any public sector trade union.

77. In its communication of 17 October 2012, the Government indicates the following with regard to the recommendations made by the Committee:

– Recommendation (a): (i) In the framework of the social dialogue conducted in the committees on the Panama tripartite agreement of 1 February 2012, the labour subcommittee on administrative careers of the Committee on the Implementation of the Tripartite Agreement is in operation; and (ii) the subcommittee has been addressing all matters relating to administrative careers in search of legal measures to align the legislation in force with Conventions Nos 87 and 98.

– Recommendation (b): (i) FENASEP is an organization that is recognized in the public sector; and (ii) the subsidy for trade union training has been re-established with FENASEP and with the General Union of Workers (UGT), and the month of July 2012 has already been paid.

– Recommendation (c): (i) All the requests for legal personality were answered via reasoned decisions and the Department for Trade Union Organizations is not in default in this respect; (ii) the requests for registration in question were rejected and were not corrected by the applicants; and (iii) the Supreme Court confirmed the ruling denying the requests for legal personality.

– Recommendation (d): The Government is awaiting the decision of the Supreme Court in relation to the dismissal of the ASEMITRABS union official, Mr Victor Castillo.

– Recommendation (e): (i) On 6 June 2012 the First Anti-corruption Prosecutor's Office ordered that statements be taken from a number of unionists; (ii) under the instructions issued by the Prosecutor's Office the use of funds allocated to trade union training was examined and it was found that the list of course participants provided by some trade unions included deceased persons and new born children, as well as the use of funds to pay for alcohol, telephone bills, cable television in private residences, etc.; (iii) to date, the case continues before the Public Prosecutor's Office, which is carrying out investigations in order to submit its report to the judiciary; and (iv) as a result of tripartite dialogue between sectors, the Minister submitted a request before the Prosecutor's Office for the withdrawal of the proceedings, which was not accepted by the Public Prosecutor's Office.

78. Lastly, in its communication of 2 November 2012, the Government refers to the new allegations presented by FENASEP and reports the following: (1) tripartite dialogue is operating in the committees on the Panama tripartite agreement (Committee on the Implementation of the Tripartite Agreement and the Committee for the Rapid Handling of Complaints) as well as the subcommittee on administrative careers to address matters related to freedom of association; (2) under the dialogue process, with the assistance of the ILO, three agreements were signed in the tripartite dialogue committees and Dr Rolando Murgas Torraza was elected by consensus as moderator; (3) the subcommittee in charge of bringing the Act governing administrative careers into line with Conventions Nos 87 and

98 has been meeting since May 2012 and to date has produced a progress report, establishing the list of matters to be addressed, with a view to reaching consensus as regards the amendment of the Act; (4) the new unions were denied legal personality because they did not meet the requirements established in the Labour Code. The applicants have not submitted the required corrections; (5) Ms Melanie Yvette Guittens de Salazar was dismissed in accordance with the administrative authority's power of free discretional appointment and dismissal. She was not an administrative career employee, and she was not a member of the FENASEP executive board or of the Association of Employees of the Administration of the Colón Free Trade Zone, and she did not have trade union immunity, which would have prevented the action adopted; (6) Mr Andrés Rodríguez Olmos, Secretary-General of the Association of Teachers of the Republic of Panama has not been dismissed from his position. The sanction that was issued for his dismissal (following a disciplinary inquiry which followed due process) is formally suspended as a result of an appeal lodged by the sanctioned party and which is currently pending; (7) the case of Mr Ismael Ruiz is currently before the Committee for the Rapid Handling of Complaints relating to freedom of association and collective bargaining, for its tripartite consideration; (8) in the case of Ms Jennifer Malca, information has been requested from the Sports Institute of Panama; (9) as regards the acts of violence in the city of Changuinola, the trade unions SITRAIBANA, SITRAPBI, Comité Ocho de Julio (Committee of the Eighth of July), SITRAEMBA, SUNTRACS and the National Government signed a settlement on 29 August 2010 concluding the negotiations and agreeing not to submit any complaints in respect of the events of 8 July 2010. Likewise, 82 people affected during the events were accorded monthly financial support on humanitarian grounds until their retirement; and (10) as regards the claim that the Social Security Fund continues to deny freedom of association, the Government reports that the institution respects freedom of association, engaging in dialogue with more than 38 existing trade union organizations in the Fund and in May 2012 agreements were signed to bring a strike to an end.

79. *The Committee takes note of all this information. The Committee firmly expects that the committees and subcommittees that were established through the tripartite agreement signed in February 2012 will produce tangible results in the very near future and requests the Government to keep it informed in this respect. It also requests the Government to keep it informed of: (1) the result of the legal proceedings concerning the dismissals of the unionists Mr Andrés Góndola, Mr Victor Castillo and Mr Andrés Rodríguez Olmos; (2) the result of the handling of the case in the committee on complaints related to freedom of association concerning the dismissal of the unionist Mr Ismael Ruiz; (3) the employment situation of the unionist Ms Jennifer Malca; and (4) the result of the investigation being carried out by the First Anti-corruption Prosecutor's Office on the use of funds for trade union training.*

80. *More generally, the Committee has observed in different cases related to Panama that the legal provisions governing trade union rights in the public sector are subject to significant restrictions. For example, in a case examined in its meeting of March 2013 [see 367th Report, Case No. 2677, paras 70–73] indication is made that provisions are needed that protect public servants against acts of anti-union discrimination or interference, and clearly recognize the right to collective bargaining of public servants who are not engaged in the administration of the State. The Committee observes that this case also illustrates that the creation of trade unions in the public sector encounters obstacles in practice. The Committee requests the Government to submit these matters to tripartite dialogue and to keep it informed in this regard.*

Case No. 2868 (Panama)

81. The Committee last examined this case at its March 2012 meeting [see 363rd Report, paras 951–1010] when it made the following recommendations:

(a) The Committee takes note with deep concern a number of the reasons given by the Government for refusing to register or grant legal personality to the six trade union organizations in formation mentioned in the complaint. The Committee considers that the different legal requirements or their interpretation in practice in this case appear to have contravened Article 2 of Convention No. 87 under which workers without distinction whatsoever and without previous authorization have the right to establish organizations of their own choosing.

(b) The Committee, on the one hand, urges the Government to adopt measures to amend legislation to bring it in line with Convention No. 87 and, as it has already done with regard to Case No. 2751, the Committee requests the Government, including the administrative authorities, to examine with the complainants in a proactive and constructive manner the reasons for this situation so as to assess how the system is working in practice and how to resolve the issue of registration or access to legal personality for trade union organizations whose registration has been denied. The Committee requests the Government to keep it informed in that regard.

(c) The Committee also understands that some of the cases of denial of legal personality have been submitted to the judicial authority and requests the Government to inform it of the decisions handed down.

(d) Lastly, with regard to the allegations that the workers who signed the intention to form the SINTEGPPI and those who signed the intention to form a workers' trade union in "Panama Gaming and Services of Panamá" and/or "Cirsa Panamá SA" were dismissed, the Committee regrets that the Government has not sent detailed comments on these serious allegations and, recalling that pursuant to Article 1 of Convention No. 98 it is expressly prohibited to "cause the dismissal of, or otherwise prejudice, a worker by reason of union membership", the Committee urges the Government, should the allegations be verified, to take steps to reinstate the workers of both trade unions immediately and compensate them for their losses (salaries and benefits) and to keep it informed thereof.

82. In a communication of 26 January 2013, the Government reports that:

– As regards recommendation (a), the issue of the refusal to grant legal personality to the trade union organizations in formation mentioned in the complaint, is included in the list of matters that will be addressed by the Committee for the Rapid Handling of Complaints, established under the Panama Tripartite Agreement, and will be evaluated through tripartite dialogue under the moderation of Dr Rolando Murgas. The Committee notes this information and trusts that this matter will be resolved in the near future.

– As regards recommendation (b), concerning the need to amend the legislation (on the registration of legal personality) to bring it in line with Convention No. 87, the committee responsible for analysing areas for harmonization in national legislation, established under the Panama Tripartite Agreement, is drawing up a list of matters to be addressed in accordance with the recommendations of the Committee of Experts on the Application of Conventions and Recommendations and information will be sent when the necessary consensus is achieved. *The Committee takes note of this information and trusts that the necessary amendments to the legislation will be adopted in the near future.*

– As regards, recommendation (c), only one denial of legal personality (the case of the Industrial Trade Union of Panamanian Waterway Workers and Related Industries) was brought before the courts. The Supreme Court of Justice ordered the approval of

a new list of trade union members, but it did not grant the trade union legal personality. Furthermore, the Government reports that this case will be examined by the Committee for the Rapid Handling of Complaints. *The Committee notes this information and firmly expects that, once the legal requirements have been met, legal personality will be granted to the trade union organization in question.*

– As regards recommendation (d), the workers of the company "Panama Gaming & Services of Panamá" and/or "Cirsa Panamá SA", referred to by the complainant organizations, were not dismissed but rather signed a mutual agreement with the company to terminate their employment relationship. As regards the company "Gaming Properties of Panamá Inc.", the founding members of the trade union organization left the company, and legal personality was denied on the grounds that the trade union lacked the minimum number of workers (40) needed to establish a company trade union. *The Committee takes note of this information. In accordance with the Committee of Experts on the Application of Conventions and Recommendations in its 2012 observation on the application of Convention No. 87 by Panama, the Committee considers that the minimum number of 40 workers required to form a trade union under the Labour Code should be reduced so as not to obstruct the creation of company trade unions. The Committee trusts that this matter will be addressed within the framework of the Committee in charge of analysing areas for harmonization in national legislation established under the Panama Tripartite Agreement, and that the necessary steps will be taken to amend the relevant legislative provisions.*

Case No. 2400 (Peru)

83. The Committee last examined this case at its November 2012 meeting [see 365th Report, para. 119], when it asked the Government to inform it of the outcome of the appeal relating to the dismissal of the trade unionist of the enterprise CrediScotia Financiera SA, Mr William Alburquerque Zevallos (the Court of First Instance had ruled against him on 31 January 2012, having established serious misconduct unrelated to his status as a union leader) [see 362nd Report, paras 111–112].

84. In its communication of 16 January 2013, the Government states that the appeals court upheld the first instance ruling and confirmed the professional misconduct of the interested party. The Government adds that Mr William Alburquerque Zevallos has filed a cassation appeal.

85. *The Committee takes note of this information and requests the Government to keep it informed of the outcome of the cassation appeal filed by the trade union leader.*

Case No. 2527 (Peru)

86. In its previous examination of the case in November 2012, the Committee made the following recommendations on the pending matters [see 365th Report, paras 123–124]:

– The Committee hopes that the appeal filed by Mr Arenaza Lander with the Seventh Civil Chamber of the High Court of Justice of Lima relating to his dismissal will be dealt with swiftly.

– The Committee trusts that the criminal complaint regarding acts of violence filed by Mr Elías García in connection with alleged assaults will proceed without delay.

87. In its communication dated 15 January 2013, the Government states that the provincial prosecutor's office of the Cañete judicial district shelved the criminal complaint filed by Mr Elías García.

88. *The Committee takes note of this information.*

89. The Government also states that, with regard to Mr Arenaza Lander, the Seventh Civil Chamber of the High Court of Justice of Lima upheld on appeal the ruling handed down in the first instance. Furthermore, on 27 March 2012, the Constitutional Court declared the constitutional grievance appeal filed by the interested party to be inadmissible.

90. *The Committee takes note of this information.*

Case No. 2533 (Peru)

91. In its November 2012 meeting, the Committee made the following recommendations on the matters still pending [see 365th Report, paras 126–129]:

- The Committee requested the Government to keep it informed of the outcome of the action for wrongful dismissal filed by the trade union official Mr Wilmert Medina against the enterprise San Fermín SA.
- Concerning the alleged dismissal by the company CFG Investment SAC of members of the executive committee and union members, the Committee noted that the Government provided information on the status of the judicial proceedings brought by dismissed workers against CFG Investments (Mr Abel Antonio Rojas, Mr Rodolfo Toyco, Mr Primitivo Ramos, Mr Marco Antonio Malta and Mr Juan Germán Cáceres), and five cases which were under appeal (Mr Ángel Maglorio, Mr Alfredo Flores, Mr Segundino Flores, Mr Alex Javier Rojas and Mr Roberto Juan Gargate). The Committee noted that information and requested the Government to report on the outcome of the ongoing proceedings concerning the trade unionists from CFG Investment SAC.
- Lastly, the Committee once again urged the Government to ascertain whether the enterprise Textiles San Sebastián SAC still existed, and if it did, to take the necessary measures without delay to ensure that the enterprise reinstated the dismissed officials and workers with the payment of wage arrears, recognized the union, rectified the anti-union measures taken against it, refrained from adopting any such measures in the future and encouraged collective bargaining between the parties. If the reinstatement was not possible for objective and compelling reasons, the Committee urged the Government to ensure that the workers concerned received sufficient and adequate compensation so as to constitute a dissuasive sanction against anti-union dismissals.

92. In its communication dated 16 January 2013, the Government provides information concerning the action for wrongful dismissal initiated by the trade union official Mr Wilmert Medina, worker at the company San Fermín SA, indicating that a ruling was issued by the Supreme Court of Justice, ordering his reinstatement.

93. As regards the alleged dismissal by the company CFG Investment SAC of members of the Executive Committee and union members, the Government provides detailed information on the progress of the judicial proceedings initiated by the dismissed workers against CFG Investment SAC (Mr Abel Antonio Rojas (who did not obtain a favourable ruling ordering his reinstatement), Mr Rodolfo Toyco, Mr Primitivo Ramos, Mr Marco Antonio Malta and Mr Juan Germán Cáceres), and five cases which are under appeal (Mr Ángel Maglorio, Mr Alfredo Flores, Mr Segundino Flores, Mr Alex Javier Rojas and Mr Roberto Juan Gargate).

94. As regards the enterprise Textiles San Sebastián SAC, the Government states that, following a number of investigations and enquiries, it has not been possible to find the company. *The Committee concludes that it does not seem that the enterprise will continue its production activity, or that the reinstatement of workers will be possible. The Committee requests the Government to continue conducting its investigations and to ensure that all the dismissed trade union officials and workers receive the legal indemnity and compensation constituting a sufficiently dissuasive sanction against anti-union dismissals.*

95. *The Committee notes with satisfaction the ruling by the Supreme Court of Justice ordering the reinstatement of the trade union official Mr Wilmert Medina Campos. The Committee notes that the Government reports on the progress of the proceedings concerning the dismissal of the trade unionists of CFG Investment, which are still pending resolution (except for the case of the unionist Mr Abel Antonio Rojas, where the court ruled against him) and requests the Government to keep it informed in this regard.*

Case No. 2638 (Peru)

96. In its previous examination of the case in November 2012, the Committee made the following recommendations on matters that were still pending [see 365th Report, para. 139]:

> The Committee takes note of the information received, in particular the reinstatement of 12 workers. The Committee requests the Government to keep it informed of the outcome of the judicial proceedings relating to the dismissal of the 13 remaining workers by the municipality of Surquillo.

97. In its communication of 10 January 2013, the Government reports that five union members have been reinstated and that a further four have been reinstated under administrative contracts; certain cases have not been the subject of judicial proceedings.

98. *The Committee takes note of this information.*

Case No. 2639 (Peru)

99. In its previous examination of the case in March 2013, the Committee asked the Government to provide information on the allegation relating to payment of the basic wages established in collective agreements by Sociedad Eléctrica del Sur Oeste (SEAL) and Electropuno SA.

100. In its communications dated 5 and 10 April 2012, the Government states that the labour inspectorate has established that members of the complainant federation have been paid the wage increases and that the social/labour obligations at the abovementioned enterprises have been fulfilled.

101. *The Committee takes note of this information.*

Case No. 2664 (Peru)

102. In its previous examination of the case in November 2012, the Committee made the following recommendations on the matters still pending [see 365th Report, para. 148]:

> Lastly, the Committee notes the information sent by the Government on the alleged murder of the trade union official Mr Manuel Yupanqui Ramos and trusts that further investigations will allow the facts to be clarified. The Committee once again draws the Governing Body's attention to the serious and urgent nature of this aspect of the case and requests the Government to send information on the investigations into the alleged murder of the trade union leader Mr Jorge Huanaco.

103. In its communication of 15 January 2013, the Government states that it already sent detailed information on those murders and on the investigations carried out in relation to the death of those trade union members from gunshot wounds on 12 July 2008, as well as on the investigations carried out in relation to the injuries sustained by five individuals and three police officers following a confrontation with around 300 striking miners who were blocking a road and who attacked 19 police officers who had just been performing their duties in another locality and who were on their way to the city of Trujillo.

104. The Government adds that, despite the time that has elapsed and the investigations carried out, the authorities have not been able to identify the suspected perpetrators of the acts, or the participants therein, committed against Mr Manuel Jesús Yupanqui Ramos and Mr Jorge Luis Huanaco Tutuca, and against the National Police and the enterprise Minera Marsa. This led the Public Prosecution Service to decree that the preliminary investigation should not be formalized or continued. This decision was not challenged by any of the interested parties during the clarification of the facts and none of the interested parties has appealed against it.

105. *The Committee takes note of this information from the Government and invites the complainant organization to send its comments. The Committee emphasizes that this case had been classified as serious and urgent and highlights the importance of receiving information requested as soon as possible.*

Case No. 2697 (Peru)

106. The Committee examined this case at its November 2012 meeting when it requested the Government to keep it informed of the outcome of the appeal filed by the Lima Registry Zone against the court ruling ordering the reinstatement of the unionists Ms Ana Elizabeth Mújica Valencia, Ms María Yolanda Zaplana Briceño, Ms Mirian Reyes Candela, Ms Nelly Cecilia Marimón Lino Montes, Ms Rosemary Alexandra Almeyda Bedoya and Ms Rocío del Carmen Rojas Castellares [see 365th Report, paras 149–151].

107. In its communications dated 11 January and 10 April 2013, the Government indicates that the Chamber of Constitutional and Social Law of the Supreme Court of Justice rejected the appeal on the grounds that it was inadmissible, thereby confirming the previous ruling ordering the reinstatements and the payment of the wages owed, ruling which had already been executed by the employer.

108. *The Committee notes this information with satisfaction.*

Case No. 2771 (Peru)

109. The Committee last examined this case at its November 2012 meeting, when it made the following recommendation [see 365th Report, para. 163]:

> The Committee requests the Government to comment in detail on the CGTP's communication of 1 March 2012. (In that communication the CGTP reported that, in May 2010, two trade union leaders were detained for nearly three months for alleged obstruction of the running of public services.)

110. In its communication of 18 January 2013, the Government states that the judicial authority has acquitted both trade union leaders.

111. *The Committee takes note of this information.*

Case No. 2866 (Peru)

112. At its June 2012 meeting, the Committee made the following recommendations on the matters still pending [see 364th Report, para. 875]:

(a) The Committee requests the Government, in keeping with its offer to the union, to make representations to the Ministry of the Economy and Finance for consideration of approval of a wage increase for the inspectors and to keep it informed in this respect.

(b) The Committee requests the Government to send its observations on the union's affirmation that various leaders were on union leave during the obligatory secondment ordered by the Ministry.

(c) The Committee once again requests the Government to take steps to modify the law so that the decision to declare a strike illegal lies not with the administrative authority but with an independent body which has the confidence of the parties involved.

113. In its communications dated 24 August 2012 and 15 January and 30 April 2013, the Government states with regard to recommendation (a), that, in the context of arbitration proceedings arising from collective bargaining, on 23 March 2012, the designated arbitration tribunal issued a ruling on the dispute between the MTPE Labour Inspectors' Union and the Ministry of Labour and Employment Promotion (MTPE), whereby the following benefits are granted: (a) inspection bonus: the equivalent of nine times the living wage, which amounts to 6,075 nuevos soles (PEN) per worker, to be paid in December each year, for the performance of duties; (b) closure bonus: a one-off payment of PEN10,000 on completion of collective bargaining (approximately PEN2.35 million to be paid by the Ministry of Labour); (c) mobility allowance: PEN15 per inspector per day for travel to work (as at December 2012, some PEN3 million were needed); (d) food allowance: PEN12 per inspector per day for lunches (as at December 2012, the Ministry of Labour needed to budget about PEN2.5 million); (e) holiday allowance: PEN1,000 when going on vacation (the Ministry of Labour needs to budget about PEN0.65 million for holiday allowances for two periods).

114. The Government adds that further to the necessary steps having been taken by the Planning and Budget Office, by multiple memorandum No. 089 2012 MTPE/4/9 (of 25 July 2012), the budget has now been approved for payment of the closure bonus granted in the arbitration award referred to above; the respective bonus was paid to unionized inspection staff in July 2012. As regards other benefits granted by the award, the corresponding departments of the Ministry are taking the appropriate measures. The Government further indicates that there has been a partial appeal against the arbitration award due to infringement of the budgetary law, and that the tribunal has temporarily suspended the contested clauses of the award and will subsequently issue a decision.

115. *The Committee notes this information and requests the Government to keep it informed concerning the decision of the judicial authority.*

116. With regard to recommendation (b), the Government states that there have been cases such as those that occurred between 22 and 25 March 2011, in which trade union leave was requested one day in advance, and not 48 hours in advance as required by the administrative procedure with a view to the appropriate planning of inspection activities and visits, which includes the reservation of tickets, the payment of travel expenses, and various coordination measures, as in the case of other workers. At present, the trade unions are abiding by these criteria.

117. *The Committee notes this information.*

118. With regard to recommendation (c), the Government states that the Committee's request concerning reform of the legislation with respect to declaring a strike illegal is being taken into consideration in the General Labour Bill. Moreover, the draft amended regulations implementing the Collective Labour Relations Act seek to make it clear that, in the case of workers employed in the public sector system, the decision to declare a strike illegal is made by the authorized representative for the corresponding sector; this declaration must be made on the basis of a verification of validity undertaken by the labour administrative authority. *The Committee reminds the Government, in accordance with its previous recommendations, that the draft amended regulations should stipulate that the decision to declare a strike legal or illegal should lie with a body which is independent from the parties involved, for example the judicial authority, and should not lie with administrative bodies – even one such as the labour administrative authority – as provided for by the aforementioned draft.*

119. *Lastly, the Committee notes the communication dated 25 June 2012 from the Autonomous Confederation of Peruvian Workers concerning sanctions against three trade unionists, and observes that, according to the Government's communication dated 30 April 2013, these sanctions have not been enforced.*

Case No. 2291 (Poland)

120. The Committee last examined this case, which concerns numerous acts of anti-union intimidation and discrimination, including dismissals, lengthy proceedings and non-execution of judicial decisions, at its meeting in March 2012 [see 363rd Report, paras 202–205]. On that occasion, the Committee reiterated its requests to the Government and the complainant organization to indicate whether Mr Jedrejek had been reinstated and, if not, it once again urged the Government to take the necessary steps to ensure his full reinstatement pursuant to the Court's decision. The Committee also firmly expected that the proceedings in the case against 19 senior managers of SIPMA SA pending before the Court of Appeal would be concluded without any further undue delay and once again requested the Government to keep it informed of progress made and to transmit a copy of the judgment once handed down.

121. In its communication dated 4 September 2012, with regard to the issue of reinstatement of Mr Jedrejek, the Government indicates that he was reinstated in accordance with the judgement of the District Court in Lublin. With regard to the case against 19 senior managers of SIMPA SA, the Government indicates that, in the case of two defendants, the trial was quashed for retrial by the District Court in Lublin and the next hearings were to be held on 4 and 20 September 2012.

122. *The Committee notes the information provided by the Government. With regard to the issue of reinstatement of Mr Jedrejek, the Committee notes with satisfaction that the*

company has informed the Government that he was reinstated in accordance with the judgement of the District Court in Lublin.

123. *With regard to the case against 19 senior managers of SIMPA SA charged with offences under the Act of 23 May 1991 on the settlement of collective disputes, the Penal Code and the Act of 23 May 1991 on trade unions on 14 October 2003, the Committee notes the Government's indication that in the case of two defendants, the trial was quashed for retrial by the District Court in Lublin and that the next court sessions were to be held on 4 and 20 September 2012. No information was provided concerning the other 16 defendants. The Committee recalls from its previous examination of the case that 18 of the 19 managers were found guilty by the District Court in Lublin on 29 December 2010 and lodged an appeal before the Court of Appeal. The Committee requests the Government to: (i) keep it informed of progress made concerning the retrial before the District Court in Lublin of two of the defendants; and (ii) to indicate the status of the proceedings before the Court of Appeal concerning the other 16 defendants. The Committee once again recalls that the penal case has been pending since 2003 and emphasizes that justice delayed is justice denied [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 105]. The Committee once again firmly expects that the proceedings before the Court of Appeal and the District Court in Lublin will be concluded without any further undue delay and requests the Government to keep it informed of progress made and to transmit a copy of the judgments as soon as they have been handed down.*

Case No. 2758 (Russian Federation)

124. The Committee last examined this case, concerning allegations of numerous violations of trade union rights, including physical attacks on trade union leaders, violations of freedom of opinion and expression, Government interference in trade union matters, refusal by the state authorities to register trade unions, acts of anti-union discrimination and absence of effective mechanisms to ensure protection against such acts, denial of facilities for workers' representatives, violation of the right to bargain collectively and the failure of the State to investigate those violations, at its November 2012 meeting [see 365th Report, paras 1301–1401]. On that occasion, it made the following recommendations:

(a) The Committee expects that the joint KTR–FNPR proposal will be discussed by the RTK without delay with a view to resolving the issues raised in this case. It requests the Government to keep it informed in this respect.

(b) Recognizing that the legislative matters in this case are also being addressed by other parts of the ILO supervisory mechanism, the Committee, noting its specific mandate, requests the Government to take steps to bring the legislation into conformity with the principles of freedom of association and collective bargaining and to keep it informed in this regard.

(c) The Committee urges the Government to take the necessary measures without delay in order to remove the trade union leaflets from the list of extremist literature and to ensure that this does not happen again. It requests the Government to keep it informed in this respect.

(d) The Committee requests the Government to indicate whether the allegation of anti-union persecution has been duly investigated by the relevant authorities and to provide details of such investigation, as well as all other relevant information, including judicial decisions in this case. If the allegation of anti-union persecution has not been examined, the Committee requests the Government to conduct an independent inquiry into this allegation without delay, and if the investigation reveals that anti-union motives were behind the arrest of Mr Urusov to take the necessary measures for his immediate release.

125. By a communication dated 7 March 2013, the Government informs that the proposals for improving the legislation and enforcement procedures, as recommended by the Committee, will be considered, as a matter of priority, by the Russian Tripartite Commission (RTK) in April 2013.

126. As regards the declaration of trade union leaflets circulated at the "Tsentrosvarmash" enterprise in Tver as extremist material, the Government indicates that the procedure for listing extremist literature is prescribed in the Law on Prevention of Extremist Activities (No. 114-FZ of 25 July 2002), which provides that the declaration of information material as extremist is made by a federal court; thereafter, the Ministry of Justice enters such information material on the list of extremist literature. The Government further indicates that despite the fact that pursuant to the legislation, an appeal may be lodged against a decision to enter information material on the federal list of extremist literature, in the present case, the possibility of filing a judicial appeal against the local court's decision was not available as it was not established that the leaflets in question belonged to any trade union organization. In this connection, and in order to rule out such situations in the future, the Ministry of Labour and Social Protection has submitted a proposal to the Ministry of Justice with a view to reconsidering the existing procedure.

127. Finally, the Government informs that a second hearing in the case of Mr Urusov was held on 6 March 2013 and that the Khangalasskiy District Court of the Republic of Sakha (Yakutia) handed down a decision to release the trade union leader from detention and to sentence him to nine months and 11 days to corrective labour. The Confederation of Labour of Russia (KTR) guaranteed job placement for Mr Urusov upon his release.

128. *The Committee takes note of the Government's reply. It welcomes the release of Mr Urusov in March 2013.*

129. *Noting the Government's indication that the RTK intended to discuss proposals for improving the legislation and enforcement procedures as a matter of priority, the Committee requests the Government to keep it informed of the outcome of these discussions. The Committee regrets that no information has been provided by the Government as to whether the "Proposals for the resolution of the issues raised in the complaint" have been discussed by the RTK. Recalling that the Government and its social partners agreed, in October 2011, to examine these proposals in the framework of the tripartite body, the Committee once again requests the Government to keep it informed of the developments in this respect.*

130. *As regards the issue of trade union leaflets included, following a local court's decision, in the list of extremist material, the Committee notes the information provided by the Government and, in particular, that the Ministry of Labour and Social Protection has submitted a proposal to the Ministry of Justice to reconsider the appeal procedure in such cases. The Committee requests the Government to keep it informed in this regard. Furthermore, with reference to the previous examination of this case, the Committee understands that trade union leaflets containing such slogans as "let those who caused the crisis pay for it", "fight substandard employment", and "we demand our night shift pay" are still on the federal list of extremist material. The Committee considers that placing leaflets containing such or similar slogans on the list of extremist literature impedes considerably the right of trade unions to express their views and is an unacceptable restriction on trade union activities and, as such, a grave violation of freedom of association. The Committee recalls in this respect that the right to express opinions, including those criticizing the Government's economic and social policy, is one of the essential elements of the rights of occupational organizations. It therefore once again urges the Government to take the necessary measures without delay in order to remove the trade union leaflets in question from the list of extremist literature and to ensure that this*

does not happen again. The Committee requests the Government to keep it informed in this respect.

Case No. 2760 (Thailand)

131. The Committee last examined this case, which concerns the following allegations of violations of the principles of freedom of association and trade union rights: (i) the individual dismissal of a leader of the Triumph International (Thailand) Labour Union in violation of the fundamental principle of freedom of expression, following a judicial procedure which took place in violation of the rights of the defence; (ii) the collective dismissal of 1,959 workers, including 13 union board members, in the framework of a restructuring process, allegedly in violation of a collective agreement in force; (iii) the use of dangerous sound devices by the police forces to disperse strikers who gathered in the aftermath of the collective dismissal; (iv) the arrest of three union leaders in the framework of a strike, on the basis of unsubstantiated criminal charges; and (v) the interference by authorities in the elections of the union, at its March 2012 meeting [see 363rd Report, paras 221–234]. On that occasion, the Committee once again urged the Government to take all necessary measures to seek the immediate reinstatement of Ms Kotchadej with full pay for back wages. If her reinstatement was found not to be possible for objective and compelling reasons, the Committee requested the Government to ensure that Ms Kotchadej is paid adequate compensation which would constitute a sufficiently dissuasive sanction against anti-union dismissals. The Committee expected that the complainant organization would be in a position to provide detailed information on the date and circumstances of the assaults against Ms Kotchadej in the near future in order for the Government to take the appropriate steps for their investigation and to provide information on the outcome. The Committee also expected that the complainant would be in a position to provide the relevant provisions of the collective agreement, including article 6, which allegedly stipulated that, in the event of a restructure, the decision concerning a lay-off was to be collectively agreed. As regards the dismissal of 1,959 workers, the Committee urged the Government to inquire whether anti-union criteria were applied when identifying the employees to be dismissed. Noting that the case of the dismissed board members of the union was still pending before the Supreme Court, the Committee once again requested the Government to provide a copy of the decision as soon as it is handed down, as well as of any other relevant judicial decisions. The Committee trusted that the Supreme Court would take into account the principle according to which no person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, whether past or present [see *Digest of decisions and principles of the Freedom of Association Committee*, fifth (revised) edition, 2006, para. 770]. As regards the dispersal of the demonstration which took place on 27 August 2009, the Committee once again: (i) urged the Government to undertake appropriate investigations into this matter, including as regards the use of LRAD on the striking workers and to take the necessary measures to ensure that police forces or other government authorities do not intervene in demonstrations with excessive force and in a manner that is likely to cause injury to the striking workers; and (ii) further requested the Government to ensure the strict observance of due process guarantees in the context of any surveillance operations of workers' activities by the army, in order to guarantee that the legitimate rights of workers' organizations can be exercised in a climate that is free from violence, pressure or threats of any kind against their leaders and members. The Committee urged the Government to keep it informed of the measures taken in this respect. As regards the arrest of three trade union leaders, the Committee once again: (i) urged the Government to provide updated information on their present situation, including on the specific charges filed against them. Should these charges be related to their legitimate trade union activities and bearing in mind the Memorandum of Agreement concluding the dispute, it urged the Government to ensure that the charges are immediately dropped; (ii) requested the Government to ensure that the lawyers of the trade union leaders would be allowed to have full access to the

arrest warrants as well as to any other relevant information for their proper defence and to keep it informed in this regard; and (iii) requested the Government to provide a copy of any relevant judicial decision in this respect, in particular, a copy of the appeal decision on the request made by the lawyers to receive a copy of the arrest warrants. As regards the elections of the Triumph International (Thailand) Labour Union Chairperson, the Committee urged the Government to indicate if the newly elected Chairperson of the union is recognized by the authorities and the employer so that the right of workers to elect their representatives freely and to bargain collectively is fully ensured.

132. In its communication dated 19 April 2012, the Government provides partial information indicating that the case concerning the arrest of three trade union leaders is still pending before the court for examination of evidence and witnesses and that a hearing was scheduled on 24 May 2012.

133. *The Committee takes note of the information provided. The Committee once again notes with regret that although it had made extensive recommendations, the Government has not provided information with respect to most of these. In these circumstances, the Committee is bound to reiterate the abovementioned recommendations and firmly expects that the Government will make all efforts to provide the information requested including by seeking information from the employer through the relevant employers' organizations concerned, as requested in its previous recommendation. The Committee further observes with regret that the complainant has not provided the information requested and recalls the importance of receiving full information to enable the Committee to carry out a full and objective consideration of the matters before it in full knowledge of the facts. In these circumstances, it will not pursue its examination of those matters.*

Case No. 2843 (Ukraine)

134. The Committee last examined this case at its November 2011 meeting, when it made the following recommendations [see 362nd Report, paras 1458–1499]:

(a) The Committee once again requests the Government to amend section 87 of the Civil Code so as to eliminate the contradiction with regard to the requirement of registration versus the requirement of legalization imposed on trade unions by the national legislation and so as to fully guarantee the right of workers to establish their organizations without previous authorization.

(b) The Committee requests the Government and the KVPU to provide information on the registration status of the KVPU organizations in the Khmelnitsky region and the Autonomous Republic of Crimea.

(c) The Committee requests the Government and the KVPU to indicate whether a new branch agreement has been reached for the education sector and whether the KVPU has participated in the collective bargaining. It further requests the Government and the KVPU to indicate whether amendments to the health sector agreement proposed by the KVPU have been considered and adopted.

(d) The Committee requests the Government to institute an independent investigation into the allegations of pressure put on trade unions activists at mining enterprises (Frunze, Nikopol Plant of Ferroalloys and Kryvy Rih Iron Ore Complex) and mines mentioned in the KVPU communication of 8 September 2011 and to keep it informed of the outcome.

(e) The Committee expects that the powers of the NSMR under section 7 of the Law on the Social Dialogue will be limited to the examination of whether a given organization meets the established objective representativity criteria.

(f) The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case.

135. In its communications dated 15 March 2012, 7 July 2012 and 1 August 2012, the Government sent its observations in reply to the Committee's recommendations. As concerns the legalization (registration) of trade unions, the Government indicates that the conditions of trade union legalization are defined by section 16 of the Trade Union Law but it does not address the need to amend section 87 of the Civil Code (2003) so as to eliminate the contradiction within the national legislation and so as to fully guarantee the right of workers to establish their organizations without previous authorization.

136. As regards the registration status of the Confederation of Free Trade Unions of Ukraine (KVPU) organizations in the Khmelnitsky region, the Government indicates that according to the Ukrainian State Register, no documents regarding the legalization of a KVPU organization in the Khmelnitsky district and the Confederation of Free Trade Unions of the Autonomous Republic of Crimea (ARC) were issued. As regards the registration status of the KVPU organizations in the ARC, the Government reiterates its explanations with regard to the reasons for the non-registration of the KVPU affiliates.

137. As regards the conduct of an independent investigation into complaints of interference in the activity of trade unions, the Government indicates that sections 12 and 46 of the Trade Union Law protect against acts of interference by the state and local government authorities, their officials and employers and provides for sanctions against such acts.

138. As regards whether amendments to the health sector agreement proposed by the KVPU have been considered and adopted, the Government indicates that in an effort to engage the KVPU in the process of improving the existing industrial agreements and in the drafting of an industrial agreement in the health-care sector for 2012–16, the Ministry of Health Care repeatedly requested that the Free Trade Union of Medical Workers of Ukraine (a KVPU affiliate) submits proposals. Particularly in connection with the signing of a General Agreement on setting basic principles and norms for implementing social and economic policy and labour relations in Ukraine for 2010–12 and in connection with the adopted order of the Cabinet of Ministers of Ukraine dated 30 March 2011 on the appropriate plan of action for implementing its provisions, the Ministry requested that proposals be made for adopting changes to the industrial agreement between the Ministry and the Central Committee of the Trade Union of Healthcare Workers of Ukraine for 2007–11. In order to satisfy this request from the Ministry, the President of the Free Trade Union for Medical Workers of Ukraine, Mr Panasenko proposed that the President of the Trade Union of Healthcare Workers of Ukraine, Ms Koval, establish a joint representative body for the subsequent adoption of changes and additions to the industrial agreement with the Ministry. In response, the Trade Union for Healthcare Workers of Ukraine reported that a joint representative body for collective bargaining, so as to prepare and introduce changes to the industrial agreement, can be considered once the representativeness of the parties has been confirmed in accordance with the Law on Social Dialogue. In an effort to conclude the industrial agreement between the Ministry, the Ukrainian Federation of Healthcare Employers and the Central Committee of the Trade Union of Healthcare Workers for 2012–16, in accordance with the requirements of the Law on Social Dialogue and the Law on Collective Agreements, a draft order on establishing a working group on collective bargaining for signing an industrial agreement between the Ministry, the Ukrainian Federation of Healthcare Employers and the Central Committee of the Trade Union for Healthcare Workers was drafted by the Ministry for 2012–16. The Ministry says that, despite the lack of certificate confirming representativeness of the Free Trade Union for Medical Workers of Ukraine, the its representatives will be engaged in work for drafting a new industrial agreement for 2012–16 in an advisory capacity.

139. As regards the powers of the National Service of Mediation and Reconciliation (NSMR) under section 7 of the Law on Social Dialogue, the Government states that the assessment of compliance with the criteria for representativeness is carried out in accordance with the

principles of confidentiality, independence and impartiality. The NSMR and its bodies assess conformity with representativity criteria and confirm the representative status of bodies of trade union and employers' organizations at the national, sectorial and local levels, in line with the Law on Social Dialogue and the Procedures on the assessment of conformity with representativity criteria and confirmation of the representative status of trade union bodies and employers' organizations (the Procedures). The NSMR, in keeping with the values of openness and transparency in decisions made on the drafting of the Procedures, engaged representatives of trade unions and employers' organizations at the national level and also specialists from the Ministry of Justice, the Ministry of Social Policy and the State Statistics Service. On 30 May 2011, in view of these proposals, the draft Procedures were examined once again by parties to the social dialogue to be approved at meetings of the Joint Representative Body of the Employers' Side on the National Level (the Joint Representative Body of the Employers) and the Joint Representative Body of the all-Ukrainian Trade Unions and Trade Union Associations (the Joint Representative Body of the Trade Unions). On 10 June 2011, the NSMR received the draft Procedures which had been agreed at the meeting of the Joint Representative Body of the Trade Unions. The Government underlines that although the KVPU was also part of the Joint Representative Body of Trade Unions, it did not submit proposals on the draft Procedures to the NSMR nor did it delegate its members to the working group on the drafting of the Procedures. On 22 June 2011, the NSMR Chairperson reported on the progress of the Law at hearings on social policy and labour by the Committee of the Supreme Council, and also on 24 June 2011 at a meeting of the National Tripartite Social and Economic Council. After discussion and agreement with parties to the social dialogue at the national level, the Procedures were approved by NSMR Order No. 73 of 21 July 2011 and placed on the official website. The Government further explains that according to the results of a 2011 national level assessment of compliance with the criteria for representativeness, the NMSR did not consider the KVPU to be representative in a decision dated 22 February 2012. At the same time, the NSMR informed the President of the KVPU, Mr Volynets, that if the problems identified during random checks were resolved, then the KVPU could again have the NSMR assess their compliance with the criteria for representativeness in 2012. The documents for reassessing the KVPU's compliance at the national level were received at the NSMR on 12 April 2012. Taking into account the results of the NSMR random checks which evaluated the reliability of the submitted data regarding the number of KVPU affiliates, the NSMR Committee found that in 2012 the KVPU had resolved the problems from 2011, and that on 1 January 2012 the total membership of the KVPU stood at 181,600 people. Taking into account the results of the KVPU's reassessment on the compliance with the criteria for representativeness, on 26 April 2012, the NSMR recognized the KVPU as representative at the national level.

140. *With regard to the requirement of legalization (registration), the Committee observes that while the Government did not address the need to amend section 87 of the Civil Code (2003) so as to eliminate the contradiction within the national legislation and so as to fully guarantee the right of workers to establish their organizations without previous authorization in its response, it has indicated to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) that the Ministry of Social Policy has requested the Ministry of Justice to examine this issue pursuant to the CEACR's request. The Committee expects that the necessary amendments to the legislation will be adopted in the near future and refers this aspect to the case to the CEACR.*

141. *As regards the registration status of the KVPU organizations in the Khmelnitsky region and the ARC, the Committee notes the Government's explanations with regard to the reasons for the non-registration of the KVPU organizations. The Committee observes with regret that the complainant has not provided the information requested and recalls the importance of receiving full information to enable the Committee to carry out a full and*

objective consideration of the matters before it in full knowledge of the facts. In these circumstances, it will not pursue the examination of those matters.

142. *As regards the Committee's recommendation to institute an independent investigation into the allegations of pressure put on trade unions activists at mining enterprises (Frunze, Nikopol Plant of Ferroalloys and Kryvy Rih Iron Ore Complex) and mines mentioned in the KVPU communication of 8 September 2011, the Committee notes the Government's indication that sections 12 and 46 of the Trade Union Law protect against acts of interference by the state and local government authorities, their officials and employers and provides for sanctions against such acts. Noting with regret that no information was provided regarding the institution of an independent investigation, as requested by the Committee, it urges the Government to institute without delay an independent investigation into the allegations of pressure put on trade unions activists at mining enterprises (Frunze, Nikopol Plant of Ferroalloys and Kryvy Rih Iron Ore Complex) and mines mentioned in the KVPU communication of 8 September 2011, and to keep it informed of the outcome.*

143. *As concerns whether amendments to the health-sector agreement proposed by the KVPU have been considered and adopted, the Committee welcomes the Government's explanation that in an effort to engage the KVPU in the process of improving the existing industrial agreements and in the drafting of an industrial agreement in the health-care field for 2012–16, the Ministry requested that the Free Trade Union of Medical Workers of Ukraine (a KVPU affiliate) offer proposals and further welcomes the indication that, despite the lack of certificate confirming representativeness in the Free Trade Union for Medical Workers of Ukraine, its representatives will be engaged in work for drafting a new industrial agreement for 2012–16 in an advisory capacity.*

144. *The Committee notes with regret that no information has been provided concerning agreements reached for the education sector. It once again requests the Government to indicate whether a new branch agreement has been reached for the education sector and whether the KVPU has participated in the collective bargaining.*

145. *The Committee notes the Government's indication that consultations took place with the social partners prior to the adoption of the Procedures, including the KVPU who was part of the Joint Representative Body of Trade Unions but did not submit proposals on the draft Procedures to the NSMR nor did it delegate its members to the working group on the drafting of the Procedures. The Committee welcomes the Government's indication that as regards the powers of the NSMR under section 7 of the Law on Social Dialogue and the Procedures, the assessment of compliance with the criteria for representativeness is carried out in accordance with the principles of confidentiality, independence and impartiality. The Committee notes with interest that on 26 April 2012, the NSMR recognized the KVPU as representative at the national level.*

Case No. 2699 (Uruguay)

146. At its March 2010 meeting, the Committee made the following recommendations [see 356th Report, para. 1391]:

(a) With regard to the abovementioned Decree No. 145 of 2005, which revoked two decrees, one which had been in force for over 40 years, which allowed the Ministry of the Interior to clear company premises which had been occupied by the workers, the Committee is of the view that the exercise of the right to strike and the occupation of the premises should respect the right to work of non-strikers, and the right of the management to enter its premises. In these circumstances, the Committee requests the Government to ensure respect for these principles in regulatory legislation and practice.

(b) The Committee requests the Government, in consultation with the most representative workers' and employers' organizations, to take measures to amend Act No. 18566, in order to give effect to the conclusions formulated in the foregoing paragraphs and to ensure full conformity with the principles of collective bargaining and the Conventions ratified by Uruguay on the subject.

In March 2011, when the Committee next examined this case [see 359th Report, paras 206–210] it noted that the Government had convened a tripartite meeting on 7 February 2011, where the parties discussed Act No. 18566 and agreed to create a tripartite commission that would prepare a report on the issues mentioned in the report of the Committee.

147. In a communication dated 9 February 2012, the International Organisation of Employers (IOE), the Uruguayan Chamber of Industries (CIU) and the National Chamber of Commerce and Services of Uruguay (CNCS) state that, as regards the occupation of the premises, the Government failed to give effect to the Committee's recommendation, that this gave impetus to this type of practice and that the occupied companies had to turn to the judiciary in search of protection for the fundamental human rights denied to them by the Government. The complainants also indicate that, as regards Act No. 18566 concerning collective bargaining, the delay in amending the law has the immediate consequence of creating legal uncertainty over any agreement concluded under the protection of a law that is being questioned by the employer sector as a whole, and they reiterate their position in the sense that the Government is required to amend the law in keeping with the Committee's observations.

148. In its communications of 12 April and 14 November 2012, the Government indicates that, in keeping with its practice of respecting the decisions of supervisory bodies, for more than two-and-a-half years it strove to find a consensus-based solution with the professional sectors in view of the comments made about different aspects of Act No. 18566, that, cognizant of its obligations and responsibilities, it considers the prior consultation process with the social partners to have ended, and that it plans to send a bill aimed at settling this dispute to Parliament for consideration. As regards the occupation of the premises, the Government indicated that: (1) the rate of conflict in Uruguay is currently the lowest it has been over the last few years; (2) the referral to the courts of cases related to requests to clear the premises by non-strikers is indicative of the great importance attached to guaranteeing the freedom to work; (3) the judicial authorities have often ruled in favour of protecting the right to work of non-strikers and employers' rights by means of very short trials; and (4) it is clear that employers' constitutional rights are guaranteed by the State.

149. *In this regard, the Committee notes that the Committee of Experts on the Application of Conventions and Recommendations (CEACR), when examining the application of Conventions Nos 87 and 98 by Uruguay at its November–December 2012 meeting, referred to the issues being examined by the Committee relating to Act No. 18566 concerning collective bargaining and to the occupation of company premises (the complainant organizations and the Government sent the same communications to the CEACR and to the Committee). The CEACR stated the following:*

> *The Committee notes with interest the decision to send a bill addressing the issues pending to Parliament with a view to overcoming the problems identified, and is pleased to learn that the bill will be sent to Parliament in November. The Committee hopes that the new law adopted will take full account of the principles and comments made. The Committee requests the Government to inform it of any developments in that regard in its next report.*
>
> *The Committee also recalls that, on numerous occasions, it has underlined that "in so far as the strike remains peaceful, strike pickets and workplace occupations should be allowed. Restrictions on strike pickets and workplace occupations can only be accepted where the action ceases to be peaceful. It is however necessary in all cases to guarantee respect for*

the freedom to work of non-striking workers and the right of the management to enter the premises" (see General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2012, para. 149). Under these circumstances, the Committee firmly hopes that in the course of the tripartite dialogue initiated, the necessary measures will be taken, taking into account the comments of the Committee on Freedom of Association and of this Committee, to ensure full respect for this principle in law and in practice, in consultation the most representative workers' and employers' organizations. The Committee suggests that the rulings of the national courts be taken into account during the consultation process already initiated.

150. *The Committee notes with satisfaction that, in a communication dated 26 December 2012, the Government states that, in keeping with the Committee's recommendations [see 356th Report, para. 1391] and following several consultations with the social partners, it promulgated Act No. 19027, which, in its single article, provides for the replacement of article 8 of Act No. 18566. Consequently, the Higher Tripartite Council will be composed of six delegates from the Executive, six delegates from the most representative employers' organizations, six delegates from the most representative workers' organizations and an equal number of substitutes from each party.*

151. Furthermore, the Committee notes that, in a communication dated 5 March 2013, the Government states that for more than two years it has been proposing to introduce a consensus-based reform of the Act concerning collective bargaining objected to by the complainant organizations, and that, given the lack of tangible results and in the interest of honouring the international obligations arising from the ILO Constitution, on 4 March 2013, the Executive sent a bill amending Act No. 18566 of 11 September 2009 to Parliament. The Government adds that the provisions of the bill give effect to the recommendations made by the supervisory bodies.

152. Lastly, in a communication dated 7 March 2013, the IOE, CIU and CNCS allege that: (1) the consultations on the aforementioned bill sent to Parliament were ineffective and totally insufficient; (2) the aforementioned bill does not take account of the observations made by the Committee on Freedom of Association in their totality, for which reason it is only a partial solution; and (3) the occupation of companies, which is never peaceful, is the main problem facing the employer sector in Uruguay and that the Government has yet to provide a solution to that problem (the complainants emphasize that, there is no right to strike in the ILO Conventions, and therefore such occupations must be considered illegitimate, if not illegal).

153. *The Committee takes note of this information. The Committee requests the Government to send its observations in relation to the allegations made by the complainant organizations on 7 March 2013.*

154. *Furthermore, the Committee requests the Government to keep it informed of any developments concerning the bill sent to Parliament, which seeks to amend Act No. 18566 concerning collective bargaining, and to intensify social dialogue on the subject of the occupation of company premises.*

Case No. 2727 (Bolivarian Republic of Venezuela)

155. In its previous examination of the case, in June 2012, the Committee made the following recommendations on the matters still pending [see 364th Report, para. 1085]:

(a) With regard to the allegations concerning the murder of three officials of the Bolivarian Union of Workers in the Construction Industry in El Tigre (Mr Wilfredo Rafael Hernández Avile, General Secretary, Mr Jesús Argenis Guevara, Organizational Secretary, and Mr Jesús Alberto Hernández, Culture and Sports Secretary) the

Committee urges the Government to expedite investigations in order to identify and punish the instigators or accomplices of the murders of these officials whose perpetrator according to investigations died while committing a common crime.

(b) With regard to the murder of the two trade union delegates, Mr Felipe Alejandro Matas Iriarte and Mr Reinaldo José Hernández Berroteran, the Committee regrets that in its response the Government did not provide information on developments in the judicial proceedings and investigations concerning the aggravated homicide of the two abovementioned trade union delegates and whether the two accused have been arrested, and once again firmly expects that the judicial authorities will hand down sentences on the perpetrators, should they be found guilty, and where possible on the instigators and accomplices. The Committee requests the Government to keep it informed of developments.

(c) As regards the allegations concerning the Office of the Attorney-General's preparation of criminal charges against and detention of six workers at PDVSA because, during a protest in defence of their labour rights, they paralysed the enterprise's activities, the Committee urges the Government and the competent authorities to take the necessary measures to have the criminal proceedings brought against the six union officials at PDVSA dropped and to ensure their release without delay. The Committee urges the Government to take the necessary steps to amend section 139 of the Act for the Defence of Persons in Accessing Goods and Services so that it does not apply to services which are not essential in the strict sense of the term and so that in no event may criminal sanctions be imposed in cases of peaceful strikes. The Committee requests the Government to keep it informed in this regard.

(d) The Committee draws the attention of the Committee of Experts to the legal aspects of this case.

(e) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of the matters dealt with in this case.

156. With regard to the allegations relating to the murder of three officials of the Bolivarian Union of Workers in the Construction Industry in El Tigre (Mr Wilfredo Rafael Hernández Avile, Mr Jesús Argenis Guevara and Mr Jesús Alberto Hernández), the Government states in its communication of 1 October 2012 that in order to respond once again to this allegation it asked the Office of the Attorney-General of the Republic for information, and was told that the Public Prosecutor had ordered a series of useful, necessary and pertinent measures, which had proved the criminal responsibility of Mr Pedro Guillermo Rondón; however, the fact is that on 26 September 2009, there was a confrontation between this individual and officials belonging to the Anti-extortion and Abduction Group of the National Guard (GAES) and the Investigative and Criminal Police Corps (CICPC), which resulted in the death of the abovementioned accused, Mr Pedro Guillermo Rondón, who was the only person charged in the death of Mr Wilfredo Rafael Hernández Avile, Mr Jesús Argenis Guevara and Mr Jesús Alberto Hernández. Consequently, the Public Prosecutor requested that the case be closed, and this request was granted on 5 October 2010, in accordance with the provisions of section 318(3) of the Code of Criminal Procedure and pursuant to section 48(1) of this Code. For these reasons, and given that the Office of the Attorney-General of the Republic conducted the corresponding investigations, charged the person responsible for the crime in question and that he subsequently lost his life, the Government informs the Committee that it has no further information to provide regarding this matter, in view of the fact that the only person charged died. The Committee is explicitly requested not to comment further on the matter, as the competent institutions and authorities have conducted the corresponding investigations and work and have acted diligently to clarify the facts, the case has been closed by the Public Prosecutor and the Government has fully complied with the obligation to inform and provide all information to the Committee.

157. With regard to the murder of Mr Felipe Alejandro Matas Iriarte and Mr Reinaldo José Hernández Berroteran, the Office of the Attorney-General of the Republic stated that

interviews, technical inspections, expert investigations and other steps taken by the Public Prosecutor to date have been unable to identify anyone as the perpetrator or perpetrators of the acts. Nevertheless, the Public Prosecutor is proceeding with the investigations in order to fully clarify the facts.

158. As regards the allegations concerning the filing of criminal charges against and detention of six workers at Petróleos de Venezuela (PDVSA) by the Office of the Attorney-General, the Government states that the Office of the Attorney-General said in respect of the case involving six workers from PDVSA GAS (Mr Larrys Antonio Pedrosa, Mr José Antonio Tovar, Mr Juan Ramón Aparicio Martínez, Mr Jaffet Enrique Castillo Suárez, Mr Roy Rogelio Chaparro Hernández and Mr José Luis Hernández Alvarado) charged with the offence of boycotting, provided for and punishable under section 139 of the decree with rank, value and force of law for the defence of persons in accessing goods and services, that the Second Court acting as the Criminal Judicial Circuit of the State of Miranda on 11 June 2012 deferred the initiation of proceedings. With regard to this case, the Government once again categorically rejects the Committee on Freedom of Association overstepping its powers, resulting in it issuing judgments without any justification and requiring unlawful subjective actions of the Government and its institutions. The Government states that the Committee on Freedom of Association does not have the authority to request it or to urge any government and its competent authorities, to bring to a standstill or to consider terminated any judicial proceedings or to drop criminal proceedings against individuals who commit offences set out in national laws and regulations. The Government emphatically calls on the Committee to refrain from issuing pronouncements of this kind against the decisions handed down by the competent authorities and institutions of the Bolivarian Republic of Venezuela, to stick strictly to its sphere of competence and to refrain from issuing subjective and irresponsible judgments which, moreover, call on the Government to act in violation of its own internal regulations.

159. *The Committee notes the Government's statements. Underlining that it had classified this case as serious and urgent, the Committee wishes to recall that the murder of union leaders and trade unionists constitutes the most serious violation of freedom of association and that the Committee's procedures were established specifically in order to ensure respect for trade union rights and in particular the right to life of union leaders and trade unionists. Taking this into account, the Committee is surprised, particularly in view of the fact that the allegations date back to 2009, that the Government is reproaching the diligence it is showing in seeking to establish – beyond the death of the perpetrator – if there were any instigators or accomplices involved in the murders of trade union officials Mr Wilfredo Rafael Hernández Avile, Mr Jesús Argenis Guevara and Mr Jesús Alberto Hernández. The Committee stresses the importance, in cases involving the murder of trade unionists, of identifying the perpetrator, and also any instigators and accomplices.*

160. *With regard to the murder of trade union delegates Mr Felipe Alejandro Matas Iriarte and Mr Reinaldo José Hernández Berroteran, the Committee notes that according to the Government's statements the measures taken by the Public Prosecutor have so far been unable to identify anyone as the perpetrator or perpetrators of the acts. The Committee notes the Government's statement that the Public Prosecutor is proceeding with the investigations in order to fully clarify the facts. The Committee regrets that, despite the time that has elapsed, the investigations undertaken have not led to the identification of the perpetrator or perpetrators and, if applicable, the instigators and accomplices, and firmly expects that, in the near future, the Government will be in a position to provide information on the identification and detection of those responsible for the murders.*

161. *Finally, with regard to the filing of criminal charges against and detention of six workers at PDVSA by the Office of the Attorney-General because, during a protest in defence of their labour rights, they paralysed the enterprise's activities, the Committee wishes to*

point out to the Government that the in-depth examination of the allegations of the filing of criminal charges against and detention of trade unionists for paralysing the work of an enterprise in a peaceful manner does not exceed its mandate and that in fact it regularly examines allegations of this sort in many countries. The Committee wishes to recall that simply citing a generic type of offence, such as the offence of boycotting, without indicating the specific actions the trade unionists are being charged with, does not in itself constitute sufficient grounds to dismiss an allegation of disciplinary action for the peaceful exercise of union protest action, particularly if, as in the present case, the judicial process lasts for several years and the parties concerned remain in custody. The Committee reiterates its previous recommendation and requests the Government to indicate the specific actions that the six workers are being charged with, and whether they are still in custody or have been released. As to the recommendation concerning the amendment of the Act for the Defence of Persons in Accessing Goods and Services, the Committee wishes to state that it was made in order to clarify and ensure that the Act does not apply to services that are not essential in the strict sense of the term and that in no event criminal sanctions are imposed in cases of peaceful strikes.

Case No. 2862 (Zimbabwe)

162. The Committee last examined this case, concerning allegations of violations of trade union right to organize demonstrations and protests, at its June 2012 meeting [see 364th Report, paras 1125–1145]. On that occasion, it made the following recommendations:

(a) The Committee expects that the Government will intensify its efforts in ensuring that the POSA is not used to infringe upon legitimate trade union rights and requests the Government to provide information on all concrete measures aimed at ensuring that trade unions could organize freely peaceful demonstrations and that permissions to hold processions and demonstrations are not arbitrarily refused.

(b) The Committee requests the Government to provide its observations on the allegations submitted by the ZCTU in communications dated 7 and 21 May 2012.

(c) The Committee expects that a full review of the application of the POSA in practice has been carried out together with the social partners and requests the Government to inform it of the outcome. If this has not yet been done, the Committee urges the Government to do so without delay. The Committee further expects that clear lines of conduct for the police and security forces will be elaborated and promulgated without delay. It requests the Government to keep it informed in this respect.

(d) The Committee requests the Government to clarify whether the POSA is being considered for amendment and, if so, the status thereof.

(e) The Committee firmly expects that the Government will take the necessary steps without delay to ensure that trainings on human and trade union rights for the police and security forces are intensified and requests the Government to keep it informed in this regard.

163. In its communication dated 2 March 2013, the Government indicates that it has conducted a number of training activities for the law enforcement bodies on international labour standards. The Government considers that these training activities provide an information-sharing platform on the application of international labour standards, focusing, in particular, on freedom of association, and their nexus with national law and practice with a view to improving the interaction between the law enforcement bodies and trade unions. The Government hopes that, funds permitting, training activities will be cascaded down to cover more officials from the provinces, so as to attend a critical mass of officials sufficient to positively impact on the interaction between trade unionists and the law enforcement bodies.

164. The Government further submits that the incidents referred to by the Zimbabwe Congress of Trade Unions (ZCTU) in its communications dated 7 and 21 May 2012 vindicate the

call by the Government for more information sharing activities with the law enforcement bodies given the fact that a number of processions were allowed to proceed after the Ministry of Labour had intervened with the relevant authorities riding on the strength of the cooperation understanding established during the abovementioned training activities. It is therefore the Government's view that more impact can be achieved if such training activities are cascaded down to provinces where such incidents have been experienced in the past. The Government indicates that the soccer match referred to by the ZCTU was ended purely on security considerations, given the poor lighting and inadequate security arrangements at the stadium where the match was being played. The police, in their assessment, saw the possibility of breach of law and order given the fact that they had not been informed in advance regarding the extension of the time for the match to enable them to make adequate preparations for the extension of the match into the evening.

165. With regard to the Public Order and Security Act (POSA), the Government considers that a joint review of the POSA could not have been carried out before the training of law enforcement bodies on international labour standards since it was necessary for all those concerned to have the same conceptual understanding of the issues involved. The Government informs that a joint review of the use of the POSA in practice has been scheduled among the activities to be carried out in 2013 in the framework of implementation of the Commission of Inquiry's recommendations. However, there is no intention to amend the Act given the fact that this piece of legislation does not apply to trade union activities. The Government considers that what needs to be corrected is the practice, particularly with regard to the incidences where the POSA has been invoked by the law enforcement bodies.

166. The Government concludes by indicating that the issues pertaining to the Committee's recommendations in this case are being attended to by the Government in the context of implementing the recommendations of the Commission of Inquiry, on the progress of which the Government is obliged to report. The Government therefore requests the Committee to consider closing this case with a view to avoiding multiple reporting over the same issues. The Government commits itself to implementing the activities intended to improve observance of principles of freedom of association and to reporting to the Office on all progress made in this respect.

167. In its communication dated 9 May 2013, the ZCTU informs that on 10 April 2013, its southern region office based in Masvingo notified the police of its intention to hold May Day celebrations on 1 May 2013 at Mucheke stadium in Masvingo. The celebrations were to commence with a procession. On 24 April 2013, the Police Chief Superintendent, Officer Commanding Police in Masvingo Central District replied banning the holding of the procession. The reasons proffered for banning the procession were said to be a security reason without elaboration. On 26 April 2013, ZCTU, through the Zimbabwe Lawyers for Human Rights, filed an urgent chamber application in the High Court of Zimbabwe challenging the banning of the procession. It was only after the application has been served to the police, on 30 April 2013, the procession was allowed to go ahead but under strict conditions. As a result, the procession went ahead on 1 May, as well as the celebrations. However, according to the complainant, the attitude of the Zimbabwean authorities created an organizing problem for the ZCTU as the reply came on the evening of the May Day making it difficult for the union to inform its members that the procession will go ahead as planned. The police action was a well-calculated move to instigate fear among ZCTU members and distract ZCTU attention from organizing the celebrations. They further demanded to be paid for escorting the procession, a demand the ZCTU resisted. As a result, in the ZCTU's view, the authorities achieved their objective as only 18 people managed to join the procession at the scheduled times.

168. The ZCTU further alleges denial of visas to a six-member delegation from the Chinese Trade Unions whom it had invited to Zimbabwe as part of the trade union solidarity work.

169. *The Committee takes note of the Government's reply and its request to close this case. In this respect, in line with the Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association [see, in particular, Annex I of* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 72] and, given the nature of the questions raised therein, as well as the new allegations submitted by the complainant, the Committee will continue to examine actions the Government had been able to take on the recommendations made to it.*

170. *The Committee notes the information on training activities for the law enforcement bodies. Noting with interest the importance the Government attaches to the cascading of such activities at the provincial level, the Committee requests the Government to continue engaging with the Office in this regard and taking the necessary measures aimed at ensuring that such activities take place.*

171. *With regard to the POSA, the Committee notes the Government's indication that, while it plans to review the application of this legislation in practice, there is no intention to amend it. The Committee expects that a full review of the application of the POSA in practice will be carried out together with the social partners without further delay. At the same time, in the light of the continuing difficulties with the application of the POSA in practice, as demonstrated by this case and acknowledged by the Government, and the Commission of Inquiry's recommendation that the POSA be brought into line with the Convention, the Committee urges the Government to take the necessary measures, in consultation with the social partners, in order to amend the POSA. It requests the Government to provide information on all concrete steps taken in this respect.*

172. *The Committee regrets that no information has been provided by the Government on the measures taken to elaborate and promulgate clear guidelines for the conduct of the police and security forces. It notes with concern the allegation of banning of a May Day procession in Masvingo. It therefore reiterates its previous request and asks the Government to keep it informed of the concrete steps taken in this respect.*

173. *The Committee requests the Government to provide its observations on the allegations submitted by the ZCTU in its communication dated 9 May 2013.*

* * *

174. Finally, the Committee requests the governments concerned to keep it informed of any developments relating to the following cases.

Case	Last examination on the merits	Last follow-up examination
1962 (Colombia)	November 2002	June 2008
2086 (Paraguay)	June 2002	November 2012
2096 (Pakistan)	March 2004	March 2011
2153 (Algeria)	March 2005	November 2012
2173 (Canada)	March 2003	June 2010
2304 (Japan)	November 2004	November 2010
2355 (Colombia)	November 2009	March 2012
2362 (Colombia)	March 2010	November 2012

Case	Last examination on the merits	Last follow-up examination
2384 (Colombia)	June 2008	June 2009
2450 (Djibouti)	March 2011	March 2012
2488 (Philippines)	June 2007	June 2011
2603 (Argentina)	November 2008	November 2012
2616 (Mauritius)	November 2008	November 2012
2634 (Thailand)	March 2009	November 2012
2637 (Malaysia)	March 2009	November 2012
2652 (Philippines)	March 2010	November 2012
2654 (Canada)	March 2010	March 2013
2680 (India)	November 2009	March 2013
2690 (Peru)	June 2010	March 2013
2702 (Argentina)	March 2013	–
2706 (Panama)	March 2013	–
2709 (Guatemala)	November 2012	–
2722 (Botswana)	June 2010	March 2013
2724 (Peru)	November 2010	March 2013
2730 (Colombia)	November 2010	November 2012
2747 (Islamic Republic of Iran)	June 2011	November 2012
2752 (Montenegro)	March 2012	–
2755 (Ecuador)	June 2010	March 2011
2763 (Bolivarian Republic of Venezuela)	March 2013	–
2764 (El Salvador)	November 2010	March 2013
2788 (Argentina)	November 2011	March 2013
2793 (Colombia)	November 2011	–
2815 (Philippines)	November 2012	–
2816 (Peru)	March 2013	–
2825 (Peru)	November 2011	March 2013
2826 (Peru)	March 1013	–
2827 (Bolivarian Republic of Venezuela)	March 2013	–
2829 (Republic of Korea)	November 2012	–
2836 (El Salvador)	November 2011	March 2013
2844 (Japan)	June 2012	–
2851 (El Salvador)	November 2012	–
2852 (Colombia)	November 2012	–
2858 (Brazil)	November 2012	–
2860 (Sri Lanka)	March 2013	–
2861 (Argentina)	November 2012	–
2863 (Chile)	November 2012	–
2870 (Argentina)	November 2012	–
2872 (Guatemala)	November 2011	–
2877 (Colombia)	March 2013	–

Case	Last examination on the merits	Last follow-up examination
2890 (Ukraine)	March 2013	–
2894 (Canada)	March 2013	–
2895 (Colombia)	March 2013	–
2905 (Netherlands)	November 2012	–
2906 (Argentina)	November 2012	–
2907 (Lithuania)	March 2013	–
2909 (El Salvador)	March 2013	–
2915 (Peru)	March 2013	–
2930 (El Salvador)	March 2013	–
2934 (Peru)	November 2012	–
2938 (Benin)	March 2013	–
2940 (Bosnia and Herzegovina)	March 2013	–
2944 (Algeria)	March 2013	–
2952 (Lebanon)	March 2013	–
2977 (Jordan)	March 2013	–

175. The Committee hopes these governments will quickly provide the information requested.

176. In addition, the Committee has received information concerning the follow-up of Cases Nos 1787 (Colombia), 1865 (Republic of Korea), 2225 (Bosnia and Herzegovina), 2228 (India), 2257 (Canada), 2341 (Guatemala), 2382 (Cameroon), 2428 (Bolivarian Republic of Venezuela), 2430 (Canada), 2434 (Colombia), 2460 (United States), 2478 (Mexico), 2512 (India), 2528 (Philippines), 2540 (Guatemala), 2547 (United States), 2595 (Colombia), 2602 (Republic of Korea), 2611 (Romania), 2656 (Brazil), 2660 (Argentina), 2667 (Peru), 2674 (Bolivarian Republic of Venezuela), 2678 (Georgia), 2710 (Colombia), 2719 (Colombia), 2725 (Argentina), 2736 (Bolivarian Republic of Venezuela), 2741 (the United States), 2746 (Costa Rica), 2750 (France), 2772 (Cameroon), 2775 (Hungary), 2780 (Ireland), 2808 and 2812 (Cameroon), 2820 (Greece), 2833 (Peru), 2838 (Greece), 2840 (Guatemala), 2848 (Canada), 2854, 2856 and 2910 (Peru), which it will examine at its next meeting.

CASE NO. 2942

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of Argentina presented by
– the Confederation of Argentine Educators (CEA) and
– the Santiago Circle for Secondary and Higher Education (CISADEMS)

Allegations: The complainant organizations allege that, as part of various disputes over wage-related claims made by the Santiago Circle for Secondary and Higher Education (CISADEMS) between 2009 and 2011, the authorities of the Province of Santiago del Estero – which are a party in the dispute – issued resolutions calling for compulsory conciliation for the sole purpose of impeding the exercise of the right to strike

177. The complaint is contained in a communication dated April 2012 from the Confederation of Argentine Educators (CEA) and the Santiago Circle for Secondary and Higher Education (CISADEMS). The CEA and CISADEMS sent new allegations in relation to the complaint in a communication dated June 2012.

178. The Government sent its observations in a communication dated February 2013.

179. Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

180. In their communication of April 2012, the CEA and CISADEMS state that CISADEMS is in the process of filing claims for a wage review and for the elimination of irregular payments with the Subsecretariat of Labour of the Province of Santiago del Estero. They allege that when several hearings prior to the dispute yielded no results and the decision to strike was subsequently taken, the Subsecretariat of Labour issued repeated resolutions calling for compulsory conciliation. According to the complainant organizations, in every dispute, conciliation is ordered at the request of the Ministry of Education. Hearings for compulsory conciliation are always scheduled between ten and 15 days after the strike called by the trade union organization and where the measure of force used is declared illegal. A solution was never found owing to a lack of proposals from the employers. Furthermore, the compulsory conciliation process is never exhausted (the complainants refer to different administrative proceedings since 2009). The complainants state that they are the victims of an unfair practice whereby the abusive exercise of the powers derived from Act No. 14786 concerning compulsory conciliation impedes the exercise of trade union rights, while the Subsecretariat of Labour becomes both the judge and interested party by ruling on a dispute involving a body that is part of the provincial executive, which violates the principles of due process and, in so doing, the international instruments that refer to the right to defence and to a natural judge.

181. The complainant organizations add that, in accordance with Act No. 26075 (Educational Funding Act, which lays down, together with Decree No. 457/07, the framework agreement for collective bargaining in the education sector), in February 2011, federal government representatives, which included the provincial education authorities in their entirety (including the Province of Santiago del Estero), the national authorities and trade union representatives from teachers' associations with trade union status and a field of activity that extended to the whole Argentine Republic (CISADEMS was represented by the CEA), met to bargain collectively. The complainants state that, on this occasion, the parties agreed to set a minimum wage for teachers, whose basic wage could not fall below 50 per cent of the minimum wage set in that sector throughout the country.

182. In their communication of June 2012, the complainant organizations refer to cases of compulsory conciliation that took place in the sector in 2011 and 2012.

B. The Government's reply

183. In its communication of February 2013, the Government states that the provincial authorities have not intervened or violated any trade union rights. The Government states that the information from the Secretariat of Labour of the province regarding the establishment of a round table, and the provincial authority's constant efforts to reach out to trade union organizations, support the above statement. The Government adds that, according to the provincial authority, a working group was created to deal exclusively with the provincial education system. In accordance with the law, the working group was subsequently divided up into specific institutional spaces, which led to the creation of the round table on education, among others. According to the information provided by the provincial authority, CISADEMS did not participate in that round table of its own accord.

184. The Government also sends a communication from the Secretariat of Labour of the government of the Province of Santiago del Estero relating to the complaint. The provincial authority indicates that the Secretariat of Labour has been granted ministerial status as a result of the amendment to the Ministries Act. It states that there are no collective disputes with any trade union organization in the province, be it regarding wages or any other problems that could affect social dialogue or industrial peace. It also states that the province has undergone changes in all areas, including industry and production, as well as social inclusion policies, for which reason it worked to consolidate institutional spaces for dialogue and consensus. In this context, the relevant legal instruments were drawn up and the round tables with the organizations that are members of the General Labour Confederation (CGT) and with other unions that are unrelated to that trade union centre (the education sector, farmers' associations and security councils) were established. Consequently, with a view to tackling the problems in the education sector, a working group was set up in 2005 to deal exclusively with the current situation of the provincial education system. The working group was created to deal specifically with issues relating to the educational sphere and was composed of all legally established trade union entities. The only organization that did not participate in the round table for debating and discussing the trade union, social and legislative aspects of the problems relating to the area in question was CISADEMS. The provincial authority states that it has worked with the remaining entities for the benefit of all workers and students of the province and that the complainant organization also benefited despite not having participated or contributed useful ideas. The provincial authority indicates that the dialogue highlighted the need to expand the scope of the discussion and, consequently, the provincial executive, through Decree No. 770, extended the round table to other state and private trade union sectors, which led to the decision to divide up the areas for discussion and debate. At the express request of the CGT (delegation of Santiago del Estero), Act No. 7054 was promulgated which institutionalized the round table on dialogue and labour. In order to place a greater focus on the problems of each trade union institution, the following spaces for institutional

dialogue were created: (a) the round table on dialogue and labour; (b) the round table on education; (c) the round table on land and production; and (d) the Economic and Social Council. The provincial authority adds that the provincial executive appointed the trade unions affiliated with the CGT, together with the Chief of the Cabinet, as the coordinators responsible for regulating the functioning of the Act and, to date, they have laid down regulations for the round table on education and the round table involving the state. The provincial authority states that the adoption of these norms has facilitated the participation of structures that are neither political nor related to trade unions but which deal with social problems such as those related to land, farmers and religious associations. The provincial authority states that, in the province, trade unions are part of a single confederation, the CGT, Santiago del Estero branch, which is composed of a total of 85 trade unions. Moreover, the provincial authority states that the complainant organization, CISADEMS, does not participate in the spaces for dialogue of its own accord.

185. The provincial authority states that the authority competent to deal with collective disputes in Santiago del Estero is the Subsecretariat of Labour. The Subsecretariat prepared a report relating to the complaint (this report gives details of the action taken by the complainant organization CISADEMS before the administrative authority of the province, including its request for hearings with the provincial government to deal with claims for wage increases and other issues relating to the interests of its members; the dates on which CISADEMS strikes were scheduled; and the resolutions that led to compulsory conciliation). The provincial authority adds that, as regards the alleged incompetence of the Subsecretariat of Labour of the province in dealing with the cases referred to in the complaint, it should be noted that the Province of Santiago del Estero signed an agreement with the Government aimed at jointly determining how the provision of administrative services would be shared between the national and provincial authorities in the employment sector in an integrated and harmonious manner. This is aimed at strengthening and promoting the autonomous functioning of the provincial governments in the full exercise of labour enforcement powers, which include monitoring full compliance with labour legislation, particularly that referring to working conditions and working environment, and to the resolution of individual or collective disputes. Furthermore, the provincial authority states that the provinces of Argentina are members of the Federal Labour Council, which sets all labour-related standards in the country.

C. The Committee's conclusions

186. *The Committee notes that, in the present case, the complainant organizations allege that as part of various disputes over wage-related claims made by CISADEMS between 2009 and 2011, the authorities of the Province of Santiago del Estero – which are involved in the dispute – issued resolutions calling for compulsory conciliation for the sole purpose of impeding the exercise of the right to strike, while failing to formulate proposals for examining agreements.*

187. *The Committee takes note of the Government's statement to the effect that the provincial authorities have not intervened or violated any trade union rights. Furthermore, the Committee notes that the Government sends a communication from the Secretariat of Labour of the provincial government of Santiago del Estero indicating that: (1) there are no collective disputes with any trade union organization in the province, be it regarding wages or any other problems that could affect social dialogue or industrial peace; (2) the province has undergone changes in the areas of industry and production, as well as social inclusion policies, for which reason it worked to consolidate institutional spaces for dialogue and consensus; (3) in this context, round tables with the organizations that are members of the CGT and with other unions that are unrelated to this trade union centre (the education sector, farmers' associations and security councils) were established and, in 2005, with a view to tackling the problems in the education sector, a working group was*

set up to deal exclusively with the current situation of the provincial education system; (4) the working group was created to deal specifically with issues relating to the educational sphere and was composed of all legally established trade union entities. The only organization that did not participate in the round table for debating and discussing the trade union, social and legislative aspects of the problems relating to the area in question was CISADEMS; (5) the provincial authority has worked with the remaining entities for the benefit of all workers and students of the province and the complainant organization also benefited, despite not having participated or contributed useful ideas; (6) at the express request of the CGT (delegation of Santiago del Estero), to which, according to the provincial government, 85 trade unions are affiliated in the province, Act No. 7054 was promulgated which institutionalized the round table on dialogue and labour and the round table on education, among others; (7) the complainant organization CISADEMS does not participate in the spaces for dialogue of its own accord; (8) the authority competent to deal with collective disputes in Santiago del Estero is the Subsecretariat of Labour, which prepared a report relating to the complaint (this report gives details of the action taken by the complainant organization CISADEMS before the administrative authority of the province, including its request for hearings with the provincial government to deal with claims for wage increases and other issues relating to the interests of its members; the dates on which CISADEMS strikes were scheduled; and the resolutions that led to compulsory conciliation); and (9) as regards the alleged incompetence of the Subsecretariat of Labour of the province in dealing with the cases referred to in the complaint, it should be noted that the Province of Santiago del Estero signed an agreement with the Government aimed at jointly determining how the provision of administrative services would be shared between the national and provincial authorities in the employment sector in an integrated and harmonious manner, which includes monitoring full compliance with labour legislation, particularly that referring to working conditions and working environment and to the resolution of individual or collective disputes. However, the Committee takes note of the complainant organization's statement to the effect that it participated, represented by the CEA, in the collective bargaining that took place between federal government representatives and trade union representatives, during which the parties agreed to set a minimum wage for teachers. Nevertheless, bearing in mind the Government's statement to the effect that the complainant organization CISADEMS does not participate in the round tables set up in the province of its own accord, the Committee invites the complainant organization to consider joining the spaces established for dialogue and, in particular, the round table on education.

188. *Furthermore, as regards compulsory conciliation, the Committee recalls that it has had to examine several cases from Argentina involving objections to orders for compulsory conciliation between the parties to a dispute in the public education sector by the administrative authority, when the latter was a party in the dispute. In this regard, the Committee recalls that the intervention of a neutral, independent third party, in which the parties have confidence, may be enough to break a stalemate resulting from a collective dispute, which the parties cannot resolve by themselves, and reiterates that it is necessary to entrust the decision of initiating the conciliation procedure in collective disputes to a body which is independent of the parties to the dispute [see 349th Report, Case No. 2535, para. 351; 342nd Report, Case No. 2420, para. 221; and 338th Report, Case No. 2377, para. 403]. The Committee once again requests the Government to take the necessary measures, including legislative measures if required, to that end and thus bring the legislation and practice into conformity with Conventions Nos 87 and 98. The Committee requests the Government to keep it informed in this respect.*

The Committee's recommendations

189. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee reiterates that it is necessary to entrust the decision of initiating the conciliation procedure in collective disputes to a body which is independent of the parties to the dispute and once again requests the Government to take measures, including legislative measures if required, to that end, thus bringing the legislation and practice into conformity with Conventions Nos 87 and 98. The Committee requests the Government to keep it informed in this respect.

(b) The Committee invites the complainant organization CISADEMS to consider joining the spaces for dialogue established in the Province of Santiago del Estero and, in particular, the round table on education.

CASE NO. 2765

INTERIM REPORT

Complaint against the Government of Bangladesh presented by the Bangladesh Cha-Sramik Union (BCSU)

Allegations: The complainant alleges interference by the authorities in the election of officers to its Central Executive Committee, as well as the violent suppression of demonstrations organized to protest this interference

190. The Committee last examined this case on its merits at its May–June 2012 meeting, when it presented an interim report to the Governing Body [see 364th Report, approved by the Governing Body at its 315th Session (June 2012), paras 309–317].

191. The Government sent its observations in a communication dated 28 November 2012.

192. Bangladesh has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. Previous examination of the case

193. In its previous examination of the case, the Committee made the following recommendations [see 364th Report, para. 317]:

(a) Recalling that it has already considered that the Central Executive Committee (Makhon Lal Karmaker – Ramjovan Koiry's panel) should be able to exercise its functions without delay and be recognized by the Government pending any decision by the judicial

authorities, the Committee requests the Government to provide a copy of the rulings made by the High Court Division of the Supreme Court and the Appellate Division of the Supreme Court (with regard to the writ petitions filed by both parties) as soon as they are handed down. It once again urgently requests the Government to provide a copy of any ruling handed down by the Labour Court following the decision of the High Court in the abovementioned case.

(b) Considering the contradictory versions of the complainant and the report of the Deputy Director of Labour, Srimongal, with regard to the violent suppression of the demonstration to protest against interference in union elections on 20 December 2009 in various places of Moulvibazar District and during another demonstration held in the Moulvibazar District, and considering the factual discrepancies between the conclusions of the Deputy Director of Labour and the allegations and newspaper clippings provided by the complainant in this regard, the Committee once again requests the Government to conduct a thorough and independent investigation immediately into all the allegations of violent suppression of the demonstrations and to keep it informed in this regard.

B. The Government's reply

194. In its communication dated 28 November 2012, the Government recapitulates the past events including: (i) the alleged no confidence vote on 12 July 2009 of the members of the Bangladesh Cha-Sramik Union (BCSU) in the Central Executive Committee elected on 26 October 2008 (Makhon Lai Karmaker – Ramvajan Koiry's panel); (ii) the subsequent set-up by the Director of Labour, in the interest of the tea workers, of an ad-hoc committee of 30 members, headed by Mr Bijoy Bunarjee to run their activities for an interim period pending new elections of the Central Executive Committee within 120 days as per the BCSU's constitution; (iii) the filing by the aggrieved executive committee of a case with the Labour Court; (iv) the Labour Court's order to suspend the decision of the Director of Labour to create the ad hoc committee; and (v) the writ petition by the ad hoc committee against this order, followed by the High Court's decision to stay the order of the Labour Court for six months. In addition, the Government indicates that: (i) the ad hoc committee has been running its activities as per the direction of the court; (ii) meanwhile, the Supreme Court passed an order with a direction not to hold any election of the union until disposal of the case before the Labour Court (No. 2 of 2010); and (iii) the Labour Court had also directed to dispose of the case as expeditiously as possible.

195. Regarding the violent suppression of demonstrations, the Government indicates that the Department of Labour investigated the matter, and that the Deputy Director of Labour stated in his report that he could not find any evidence of violent suppression, and that there was no case recorded at the local police station in this regard.

C. The Committee's conclusions

196. *The Committee recalls that this case concerns allegations of interference by the authorities in the election of officers to the BCSU's Central Executive Committee, as well as the violent suppression of demonstrations organized to protest this interference.*

197. *With regard to recommendation (a), the Committee notes that the Government mainly reiterates its previous observations. It notes in particular the Government's statement that: (i) the ad hoc committee has been running its activities as per the direction of the High Court; (ii) the Supreme Court has meanwhile passed an order with a direction not to hold any election of the union until disposal of the case before the Labour Court (No. 2 of 2010); and (iii) the Labour Court had also directed to dispose of the case as expeditiously as possible.*

198. *The Committee cannot but regret that the ad hoc committee has now been operating for almost five years in spite of the election (albeit allegedly challenged) of the BCSU Central Executive Committee on 26 October 2008. In a previous examination of the case, the Committee has already recalled the importance it attaches to the principle that, in order to avoid the danger of serious limitation on the right of workers to elect their representatives in full freedom, complaints brought before labour courts by an administrative authority challenging the results of trade union elections should not – pending the final outcome of the judicial proceedings – have the effect of suspending the validity of such elections. The Committee also reiterates that measures taken by the administrative authorities when election results are challenged run the risk of being arbitrary, and that the removal by the Government of trade union leaders from office is a serious infringement of the free exercise of trade union rights [see Case No. 2765 (Bangladesh), 360th Report, paras 286 and 287; and* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 441, 440 and 444]. Therefore the Committee expects that the Government will take measures to recognize the elected Central Executive Committee (Makhon Lal Karmaker – Ramjovan Koiry's panel) without delay and will ensure that it is able to effectively exercise its functions pending any decision by the judicial authorities. With regard to the latter, in view of the fact that three years have elapsed since the filing of the case and that no new elections may be held before the resolution of the case pursuant to the Supreme Court's order, the Committee recalls that justice delayed is justice denied and firmly trusts that the Labour Court will hand down its decision on the abovementioned case without delay. It once again requests the Government to provide, as soon as they are handed down, a copy of the rulings of the Labour Court, as well as of the High Court Division and Appellate Division of the Supreme Court (with regard to the writ petitions filed by both parties). The Committee requests the Government to keep it informed in this respect.*

199. *With regard to recommendation (b), the Committee notes that the Government merely reiterates its statement that the Department of Labour investigated the matter, and that the Deputy Director of Labour stated that he could not find any evidence of violent suppression, and that there was no case recorded at the local police station in this regard.*

200. *The Committee wishes generally to recall the fundamental principle that workers should enjoy the right to peaceful demonstrations to defend their occupational interests [see* ***Digest****, op. cit., para. 133]. The use of the forces of order during trade union demonstrations should be limited to cases of genuine necessity. In cases in which the dispersal of public meetings by the police has involved loss of life or serious injury, the Committee has attached special importance to the circumstances being fully investigated immediately through an independent inquiry and to a regular legal procedure being followed to determine the justification for the action taken by the police and to determine responsibilities [see* ***Digest****, op. cit., paras 49 and 150]. In this regard, the Committee recalls its previous conclusion noting the existence of factual discrepancies between, on the one side, the findings of the Deputy Director of Labour and, on the other side, the allegations made, and the newspaper clippings provided, by the complainant with regard to the violent suppression of the demonstration to protest against interference in the union elections on 20 December 2009 in various places of Moulvibazar District and during another demonstration held in the same district. In view of the contradictory versions of the complainant and the report of the Deputy Director of Labour, Srimongal, the Committee considers that the setting up of an independent inquiry (conferred upon an independent body and not the government) would be a particularly appropriate method of fully ascertaining the facts and, if need be, determining responsibilities, punishing those responsible and preventing the repetition of such actions. The Committee therefore expects that the Government will ensure a thorough and independent investigation into all the allegations of violent suppression of demonstrations, and urges the Government to keep it informed in this regard.*

The Committee's recommendations

201. ***In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee expects that the Government will take measures to recognize the elected Central Executive Committee (Makhon Lal Karmaker – Ramjovan Koiry's panel) without delay and will ensure that it is able to effectively exercise its functions pending any decision by the judicial authorities, and requests to be kept informed in this respect.

(b) The Committee firmly trusts that the Labour Court will hand down its decision on the abovementioned case without delay, and once again requests the Government to provide, as soon as they are handed down, a copy of the rulings of the Labour Court, as well as of the High Court Division and Appellate Division of the Supreme Court (with regard to the writ petitions filed by the parties).

(c) In view of the factual discrepancies between, on the one side, the findings of the Deputy Director of Labour and, on the other side, the allegations made, and the newspaper clippings provided, by the complainant with regard to the violent suppression of the demonstration to protest against interference in the union elections on 20 December 2009 in various places of Moulvibazar District and during another demonstration held in that district, the Committee expects that the Government will ensure a thorough and independent investigation into all the allegations of violent suppression of demonstration and urges the Government to keep it informed in this regard.

CASE NO. 2884

DEFINITIVE REPORT

Complaint against the Government of Chile
presented by
- **the National Association of University Professionals of the Labour Directorate (APU)**
- **the National Association of Public Servants (ANEF)**
- **the National Federation of Public Servant Associations of the Ministry of the Interior and related services (FENAMINSA) and**
- **the National Association of Public Servants of the Office of the Minister and Secretary-General of Government (ANFUSEGG)**

Allegations: The complainants allege acts of anti-union discrimination against their leaders in the Labour Directorate and the non-renewal of contracts of members employed by the Ministry of the Interior and the Office of the Minister and Secretary-General of Government

202. The Committee last examined this case at its November 2012 meeting, when it presented an interim report to the Governing Body [see 365th Report, paras 357–408, approved by the Governing Body at its 316th Session (November 2012)].

203. The Government sent its observations in a communication dated 27 February 2013.

204. Chile has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. Previous examination of the case

205. At its November 2012 meeting, after having examined the allegations concerning the non-renewal of the contracts of workers affiliated with ANFUSEGG and FENAMINSA, the Committee made the following recommendations [see 365th Report, para. 408]:

> The Committee urges the Government to reply, without delay, to the allegations made by ANFUSEGG concerning the dismissal of 178 public servants employed on a fixed-term or fee contract from the Ministry for being members of ANFUSEGG and for participating in normal trade union activities, and to those made by FENAMINSA concerning the dismissal of 800 public servants employed on a fixed-term or fee contract, some of whom had served for over 30 years, for being members of the trade union organization.

B. The Government's reply

206. In a communication dated 27 February 2013, the Government states that, as regards the allegations made by FENAMINSA, the Ministry of the Interior and Public Safety sent its observations informing the Committee that it is necessary to bear in mind that, in accordance with the provisions of article 3 of the Administrative Statute (Act No. 18834), fixed-term posts are temporary in nature and that article 10 of the same text provides that the duration of fixed-term contracts shall not exceed 31 December each year. According to the ruling of the Office of the Comptroller General of the Republic, public servants employed on a fixed-term contract cannot claim ownership of the post they occupy, unlike officially appointed public servants. Persons occupying fixed-term posts may be dismissed in two ways: firstly, by not renewing their contracts before 31 December each year; and, secondly, by terminating their contract early by means of an administrative act, which will only be effective if the respective act of appointment included the formula "as long as their services are necessary". The posts of the persons whose contracts were not renewed were removed in keeping with the law, which was known to those persons because of the presumption of knowledge of the law mentioned in article 8 of the Civil Code and because of the nature of their appointment, of which, as public servants, they could not have been unaware. Furthermore, the Government supports the actions of the Ministry of the Interior and Public Safety and the ruling handed down on 1 July 2011 by the Court of Appeal of Santiago, which rejects the appeal for protection filed by FENAMINSA against the Ministry. It also supports the ruling handed down by the Supreme Court of Chile on 13 December 2010 in favour of the legality of the "early termination" of the fixed-term contracts in the public sector.

207. The Ministry of the Interior and Public Safety states that it aligned itself with the laws in force and with the legal and administrative jurisprudence in that area, which has led both the Office of the Comptroller General of the Republic and the courts to rule in favour of its actions. The Ministry adds that there are no grounds to support the statement of the complainant organization to the effect that the dismissal of the workers employed on a fixed-term contract was motivated by their affiliation with that organization or by their

political ideology, particularly since it has not even been proven that all or at least the majority of the dismissed public servants were associated with the trade union organization. The Ministry also points out that the complainant organization is entitled to make use of all the powers conferred upon it by the legal system to benefit its members and that the complainant organization has taken representative action on behalf of those persons on its own initiative, despite the fact that the Ministry has done nothing to impede their activities.

208. As regards the allegations made by ANFUSEGG, the Government attaches the observations of the Office of the Minister and Secretary-General of Government, which indicate that public servants on both regular and fixed-term contracts are affiliated with the organization and that 152 of the 364 public servants thought to be currently employed by the Office of the Minister and Secretary-General of Government are members thereof. The Office of the Minister and Secretary-General of Government adds that it has fully respected the provisions of article 19 of the Constitution, which guarantees the right to join a union in the manner provided for in the law regulating associations of public servants employed by the State administration, and that ANFUSEGG has been functioning normally from 11 March 2010 to the present day and that it has enjoyed the full support of the authorities in that endeavour. The Office of the Minister and Secretary-General of Government indicates that, to date, no complaint has been filed with the Office of the Comptroller General of the Republic or with the courts regarding a violation of the right to join a union by the Office of the Minister and Secretary-General of Government. Lastly, the Office of the Minister and Secretary-General of Government points out that the dismissals of public servants carried out from March 2010 to the present day, referred to by ANFUSEGG, can be attributed to the end of their period of employment having been reached, to the needs of the service and to voluntary resignations, but cannot in any way be attributed to their membership of the trade union organization or to their participation in normal trade union activities.

209. Lastly, the Government states that reading the complaint and the information provided by both State departments is not sufficient to determine whether or not Convention No. 151 has been violated. The dismissals in question, in both cases, were carried out in strict accordance with constitutional and legal norms, the international conventions in force, and with the jurisprudence of the Office of the Comptroller General of the Republic and that of the courts of appeal and the Supreme Court.

C. The Committee's conclusions

210. *The Committee recalls that when it examined this case at its November 2012 meeting, it requested the Government to send without delay its observations on the allegations made by ANFUSEGG concerning the dismissal of 178 public servants employed on fixed-term or fee contracts from the Office of the Minister and Secretary-General of Government for being members of ANFUSEGG and for participating in normal trade union activities, and by FENAMINSA concerning the dismissal of 800 public servants employed on a fixed-term or fee contract, some of whom had served for over 30 years, for being members of the trade union organization [see 365th Report, para. 408)].*

211. *As regards the allegations concerning the dismissal of 178 public servants employed on fixed-term or fee contracts from the Office of the Minister and Secretary-General of Government for being members of ANFUSEGG and for participating in normal trade union activities, the Committee takes note of the Office of the Minister and Secretary-General of Government's statement to the effect that: (1) it has fully respected the provisions of article 19 of the Constitution, which guarantees the right to join a union in the manner provided for in the law regulating associations of public servants employed by the State administration; (2) ANFUSEGG has been functioning normally from 11 March*

2010 to the present day and that it has enjoyed the full support of the authorities in that endeavour; (3) the dismissal of public servants carried out from March 2010 to the present day, referred to by ANFUSEGG, can be attributed to the end of their period of employment having been reached, to the needs of the service and to voluntary resignations, but cannot in any way be attributed to their membership of the trade union organization or to their participation in normal trade union activities; and (4) to date, no complaint has been filed with the Office of the Comptroller-General of the Republic or with the courts regarding a violation of the right to join a union by the Office of the Minister and Secretary-General of Government. In the light of this information, the Committee will not pursue its examination of these allegations.

212. *As regards the allegations made by FENAMINSA concerning the dismissal of 800 public servants employed on a fixed-term or fee contract, some of whom had served for over 30 years, for being members of the trade union organization, the Committee takes note of the Ministry's statement to the effect that: (1) in accordance with the provisions of article 3 of the Administrative Statute (Act No. 18834), fixed-term posts are temporary in nature and that article 10 of the same text provides that the duration of fixed-term contracts shall not exceed 31 December each year; (2) according to the ruling of the Office of the Comptroller-General of the Republic, public servants employed on a fixed-term contract cannot claim ownership of the post they occupy, unlike officially appointed public servants; (3) persons occupying fixed-term posts may be dismissed in two ways: firstly, by not renewing their contracts before 31 December each year; and, secondly, by terminating their contract early by means of an administrative act, which will only be effective if the respective act of appointment included the formula "as long as their services are necessary"; (4) the posts of the persons whose contracts were not renewed were removed in keeping with the law, which was known to them because of the presumption of knowledge of the law mentioned in article 8 of the Civil Code and because of the nature of their appointment, of which, as public servants, they could not have been unaware; (5) the Government supports the actions of the Ministry of the Interior and Public Safety and the ruling handed down on 1 July 2011 by the Court of Appeal of Santiago, which rejects the appeal for protection filed by FENAMINSA against the Ministry. It also supports the ruling handed down by the Supreme Court of Chile on 13 December 2010 in favour of the legality of the "early termination" of the fixed-term contracts in the public sector; and (6) there are no grounds to support the statement of the complainant organization to the effect that the dismissal of the workers employed on a fixed-term contract was motivated by their affiliation with that organization or by their political ideology, particularly since it has not even been proven that all or at least the majority of the dismissed public servants were associated with the trade union organization. In the light of this information, the Committee will not pursue its examination of these allegations.*

213. *The Committee recalls that it does not have the mandate and will not pronounce itself with respect to the advisability of recourse to fixed-term or indefinite contracts. Nevertheless, the Committee wishes to draw to attention that, in certain circumstances, the renewal of fixed-term contracts for several years may affect the exercise of trade union rights. However, this case does not raise this problem.*

The Committee's recommendation

214. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to consider that the present case does not call for further examination.***

CASE NO. 2912

DEFINITIVE REPORT

Complaint against the Government of Chile
presented by
- **the Confederation of Municipal Health Officials (CONFUSAM)**
- **the National Association of Public Servants (ANEF)**
- **the National Inter-enterprise Trade Union of Metallurgy, Communications, Energy and Allied Workers (SME)**
- **the National Unitary Confederation of Transport and Related Workers of Chile (CONUTT)**
- **the Trade Union Federation (FESINEM)**
- **the Tenth Region Federation of Trade Unions of Fishing Industry Workers (FETRAINPES)**
- **the National Seafarers' Confederation (CONGEMAR)**
- **the National Federation of University Health Service Professionals (FENPRUS)**
- **the Temporary Trade Unions**
- **the Coordinating Confederation of Commerce Trade Unions**
- **the Temporary Workers' Federation**
- **the Pharmacies Federation**
- **the North-West Trade Union**
- **the Banking Confederation and**
- **the Tresmontes Lucchetti Subcontractors**

Allegations: The complainants allege that the Government has recently submitted a bill to Parliament that seeks to introduce amendments to the Penal Code and which, if approved, would violate the principles of freedom of association and Conventions Nos 87, 98 and 135, as it not only criminalizes a range of legitimate trade union protests and actions (occupying workplaces and streets) but also makes workers' representatives who organize such activities criminally liable for any public disorder that occurs

215. The complaint is contained in a communication from the Confederation of Municipal Health Officials (CONFUSAM), the National Association of Public Servants (ANEF), the National Inter-enterprise Trade Union of Metallurgy, Communications, Energy and Allied Workers (SME), the National Unitary Confederation of Transport and Related Workers of Chile (CONUTT), the Trade Union Federation (FESINEM), the Tenth Region Federation of Trade Unions of Fishing Industry Workers (FETRAINPES), the National Seafarers' Confederation (CONGEMAR), the National Federation of University Health Service Professionals (FENPRUS), the Temporary Trade Unions, the Coordinating Confederation of Commerce Trade Unions, the Temporary Workers' Federation, the Pharmacies

Federation, the North-West Trade Union, the Banking Confederation and the Tresmontes Lucchetti Subcontractors, dated 20 October 2011.

216. The Government sent its observations in a communication dated 28 February 2013.

217. Chile has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

218. In their communication of 20 October 2011, the CONFUSAM, ANEF, SME, CONUTT, FESINEM, FETRAINPES, CONGEMAR, FENPRUS, the Temporary Trade Unions, the Coordinating Confederation of Commerce Trade Unions, the Temporary Workers' Federation, the Pharmacies Federation, the North-West Trade Union, the Banking Confederation and the Tresmontes Lucchetti Subcontractors allege that the Government has recently submitted a bill to Parliament which, if approved, would – as is the case with most current legislation – violate the principles of freedom of association and Conventions Nos 87, 98 and 135, as it not only criminalizes a range of legitimate trade union protests and actions (occupying workplaces and streets) but also makes workers' representatives who organize such activities criminally liable for any public disorder that occurs. Furthermore, public disorder has been upgraded from a minor to a more serious offence.

219. The complainants consider that, if approved, this legal initiative would criminalize strikes, occupations and pickets, and that hundreds of social and union leaders would be prosecuted and held in custody while on trial, even if the accused were innocent. Specifically, the bill contains the following provisions:

> Section one. Amend the Penal Code as follows:
>
> (1) In section 261, add the following subparagraph 2: "This section shall be understood to cover members of the forces of law and order and public security and officials of the Gendarmerie of Chile going about their duties."
>
> (2) Replace section 262 with the following:
>
> Section 262. The offences referred to in the previous section shall be punishable by a short-term prison sentence of medium length if any of the following circumstances pertain:
>
> 1a. If an attack involves the use of weapons.
>
> 2a. If, as a result of coercion, the authorities agree to the perpetrators' demands.
>
> If attacks involve assault against the authorities or those coming to their aid, the penalty shall be a short-term prison sentence of minimum to medium length.
>
> If these circumstances do not apply, the penalty shall be a short-term prison sentence of minimum length.
>
> In determining whether an attack has involved the use of weapons, the provisions of section 132 and the Arms Control Act, No. 17798 shall apply.
>
> The penalties stipulated in this section shall be imposed if an attack against the authorities does not constitute an offence for which a greater penalty is established in law, in which case only the greater penalty shall be imposed.
>
> (3) Substitute the following for section 269:
>
> Section 269. Those who take part in disorder or any other act of force or violence involving any of the following shall be punishable by a short-term prison sentence of medium length:

1. Paralysing or interrupting any public service, such as hospital or emergency services or those that provide electricity, fuel, drinking water, communications and transport;

2. Invading, occupying or looting houses, offices or commercial, industrial, educational, religious or any other establishments, whether private, public or municipal;

3. Impeding or altering the free movement of persons or vehicles along bridges, roads, highways or other similar areas used by the public;

4. Attacking the authorities or their agents contrary to sections 261 or 262 or in any of the ways set out in sections 416, 416bis, 416ter and 417 of the Code of Military Justice or in sections 17, 17bis, 17ter and 17quater of Decree Law No. 2460 of 1979 or in sections 15A, 15B, 15C and 15D of Decree Law No. 2859 of 1979, as applicable;

5. Using firearms, cutting or stabbing implements, or explosive, incendiary, chemical or other devices or materials capable of causing harm to persons or property; or

6. Causing damage to the property of others, whether publicly, municipally or individually owned.

The penalty provided for in the preceding paragraph shall be imposed without prejudice to any other penalty, as appropriate, to which the perpetrators may also be liable for their involvement in damage, arson, attacks, robbery, offences under the Arms Control Act, No. 17798 or, in general, other offences committed in connection with the disorder or acts of force or violence.

Those who incite, promote or encourage disorder or other acts of force or violence that involve any of the factors mentioned in the first paragraph, provided that their occurrence was foreseen by the perpetrators, shall be punishable by a short-term prison sentence of medium length.

(4) Add, after section 269, the following new sections 269-A and 269-B:

Section 269-A: Any person who impedes or hinders the actions of members of the Fire Brigade or other public services intended to provide assistance in emergencies or other disasters or incidents that pose a threat to the safety of persons shall be punishable by a short-term prison sentence of medium length, unless their actions constitute another offence incurring a greater penalty.

Section 269-B: For the offences covered by paragraphs 1, 1bis and 2 of this part, the perpetrators shall incur the maximum penalty, if the penalty has only one degree, or a penalty other than the minimum, if it has two or more degrees, if the offence was committed with faces obscured or in any other manner such as to impede, hinder or delay the identification of those responsible.

Section two …

This bill is signed by the President of the Republic, the Minister of the Interior and the Minister of Justice, as provided for in law.

220. According to the complainants, this bill is a legal aberration that seeks to resolve social conflicts by jailing those who dissent or who do not agree with the decisions or actions of the Government, a ministry, an enterprise or a service, and thereby seriously undermines the basis of a plural and democratic society. According to the complaints, their opinion of the bill is shared by experts in relevant legal matters, who, among other things, have pointed out that the legislation as drafted would give rise to many doubts among judges in view of the significant problems of placing an interpretation on "violence or public disorder"; "disorder offences have always been problematic, because the description given by the legislator is never sufficient to cover all circumstances"; and looting is robbery with force and the State Security Act exists to punish incitement to violence, so new legislation is not required.

221. The complainants add that a significant group of trade union leaders from various sectors and branches of production in both the public and private sphere recently requested the Government to withdraw this legal initiative, but without success; they will therefore shortly request Parliament not to process this governmental initiative. The complainants express their concern at the fact that the Government has chosen the logic of repression to tackle social conflicts and is continuing along the path of failing to honour its international commitments, is not respecting ILO Conventions that it freely agreed to ratify and, far from rectifying this unlawful behaviour, is attempting to reduce its compliance even further. Lastly, the complainants request that a mission be sent to Chile to meet all those concerned, with the aim of finding specific ways to halt the systematic violation of ILO standards that Chile has ratified and to amend legislation and make the necessary administrative changes to harmonize all Chilean laws with the ILO standards ratified by the Chilean State.

B. The Government's reply

222. In its communication of 28 February 2013, the Government states that the bill to strengthen public order is intended to protect those who wish to demonstrate peacefully and punish those who resort to violence and cause serious public disorder when strikes occur. According to the Government, it is vital to point out that this bill is not an existing provision of Chilean legislation, but merely a proposal from the Executive Authority submitted to the National Congress in October 2011 for due parliamentary debate by democratically elected representatives. It is currently being discussed by the National Congress and has not been approved.

223. The Government adds that, as a result of the discussion among deputies in the National Congress, the content of the above bill has changed substantially since the complaint was presented (the Government has sent the most recent version of the bill, bulletin No. 7975-25, approved by the Public Security and Drugs Committee of the House of Deputies in August 2012). Lastly, the Government reiterates that approval or rejection of this legal initiative by the National Congress is still pending. Nevertheless, even if it is approved as currently drafted, it would not violate the ILO Conventions cited by the complainants either in form or in substance, as it protects those who demonstrate peacefully and punishes those who cause serious public disorder with violence or intimidation. In reality, the provisions of the bill that are referred to, as well as representing common sense, are fully in line with the fundamental principles of trade unionism and the relevant criterion established by bodies involved in monitoring compliance with ILO Conventions.

C. The Committee's conclusions

224. *The Committee observes that the complainants allege that the Government has submitted a bill to Parliament which, if approved, would violate the principles of freedom of association and Conventions Nos 87, 98 and 135, as it not only criminalizes a range of legitimate trade union protests and actions (occupying workplaces and streets) but also makes workers' representatives who organize such activities criminally liable for any public disorder that occurs.*

225. *In this respect, the Committee takes note of the Government's statements that: (1) the bill to strengthen public order is intended to protect those who wish to demonstrate peacefully, punishing those who resort to violence and cause serious public disorder when a demonstration occurs; (2) this is not an existing provision of Chilean legislation, but merely a proposal from the Executive Authority, submitted to the National Congress in October 2011 for due parliamentary debate by democratically elected representatives,*

which is currently being discussed by the National Congress and has not been approved; (3) as a result of discussion among deputies in the National Congress, the content of the above bill has changed substantially since the complaint was presented (the Government has sent the most recent version of the bill, bulletin No. 7975-25, approved by the Public Security and Drugs Committee of the House of Deputies in August 2012); (4) approval or rejection of this legal initiative by the National Congress is still pending but, nevertheless, even if it is approved as currently drafted, it would not violate the ILO Conventions cited by the complainants, as it protects those who demonstrate peacefully and punishes those who cause serious public disorder with violence or intimidation; and (5) the provisions of the bill are fully in line with the fundamental principles of trade unionism and the relevant criterion established by bodies involved in monitoring compliance with ILO Conventions.

226. *The Committee observes that the content of the bill, as provided by the complainants, includes provisions intended to punish those who commit or instigate disorder or acts of force or violence involving, among other things: paralysing or interrupting hospital or emergency services or those that provide electricity, fuel, drinking water, communications and transport; invading, occupying or looting houses, offices or commercial, industrial, educational, religious or any other establishments, whether private, public or municipal; or impeding or altering the free movement of persons or vehicles along bridges, roads, highways or other similar areas used by the public. However, the Committee observes that a new version of the bill, supplied by the Government, differs in that, for instance, it provides for those who take part in "serious" disorder to be punishable by a short-term prison sentence of minimum to medium length and that public disorder shall be considered serious if it involves any of the following: (1) paralysing or interrupting, by means of force against property or violence or intimidation against persons, any public service, such as hospital or emergency services or those that provide electricity, fuel, drinking water, communications and transport; (2) invading, with violence or intimidation against persons and without the consent of the owners, houses, offices or commercial, industrial, educational, religious or any other establishments, whether private, public or municipal; (3) looting houses, offices or commercial, industrial, educational, religious or any other establishments, whether private, public or municipal; (4) impeding or altering, with violence or intimidation against persons, free movement along bridges, roads, highways or other similar areas used by the public and resisting actions by the authorities; (5) attacks on the authorities; (6) use of firearms; and (7) causing damage to the property of others.*

227. *The Committee recalls that "the principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike" and that "trade unions should respect legal provisions which are intended to ensure the maintenance of public order; the public authorities should, for their part, refrain from any interference which would restrict the right of trade unions to organize the holding and proceedings of their meetings in full freedom", in particular "during labour disputes" [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 667, 147 and 131]. The Committee also recalls that the right to demonstrate and the right to strike, peacefully exercised, are essential elements of freedom of association and that, in exercising the rights provided for in this Convention, workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land. Moreover, the Committee indicates that the authorities should not resort to arrests and imprisonment in connection with the organization of, or participation in, a peaceful strike; such measures entail serious risks of abuse and are a grave threat to freedom of association (see* ***Digest****, op. cit., paragraph 671).*

228. *Under these circumstances, observing that the bill to which the complainants object has been replaced by another text supplied by the Government, the Committee emphasizes that the final text of the bill must not allow for interpretations susceptible to infringe the right to carry out peaceful demonstrations and strikes, and firmly expects that consultations will*

be held on the bill in question with the most representative workers' and employers' organizations and that the above principles and considerations will be duly taken into account.

The Committee's recommendation

229. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:***

The Committee firmly expects that consultations will be held with the most representative workers' and employers' organizations on the final draft of the bill to introduce certain amendments to the Penal Code and that the principles referred to in its conclusions will be duly taken into account.

CASE NO. 2796

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of Colombia presented by the General Confederation of Labour (CGT)

Allegations: The complainant organization reports the anti-union transfer of the President of the National Trade Union of Health Service Workers (SINALTRAINSALUD) employed at the Hospital San José de Buga, and the imposition of a collective accord and anti-union dismissals in the company AJE Colombia SA and death threats to the President of SINTRAAJE Colombia

230. The Committee last examined this case at its November 2011 meeting, when it presented an interim report to the Governing Body [see 362nd Report, paras 501–543, approved by the Governing Body at its 312th Session (November 2011)].

231. The Government sent its observations in communications dated August, September and November 2012.

232. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

233. At its meeting of November 2011, the Committee formulated the following recommendations relating to the outstanding allegations [see 362nd Report, para. 543]:

(a) As regards the allegations regarding the transfer of the President of SINALTRAINSALUD, Mr José Ancizar Gallego Cardona, from his post as a porter at the Hospital San José de Buga to a workplace outside the hospital premises, with inferior working conditions, suggesting anti-union harassment, the Committee urges the Government to send detailed observations on this allegation.

(b) Recalling that, pursuant to Article 4 of Convention No. 98, the Government must guarantee that direct negotiations of collective agreements with employees are possible only in the absence of a trade union and that such negotiations should not be used in practice for anti-union purposes, the Committee requests the Government to ensure respect for this principle at the company AJE Colombia EU, and to keep it informed of new developments in this regard.

(c) As regards the dismissals of trade union members, Mr Luis Enrique Peña Aroca, Mr Carlos Samir Sierra Farfan and Mr Hernando López Puentes, the Committee requests the Government to indicate whether the workers have initiated any proceedings before the labour judge.

(d) As regards the dismissals of trade union officials, Ms Sandra Patricia Mejía Rendón, Ms Any Dahiary Ramírez Díaz, Mr Nelson Darío Garzón Parra, and Mr John Henry Aguazaco Castañeda, and the proceedings under way to suspend trade union immunity, the Committee requests the Government to keep it informed in this regard and to communicate a copy of any court rulings handed down.

(e) As regards the alleged threats against union official, Mr John Henry Aguazaco, the Committee invites the complainant organization to report these threats to the competent authority, and trusts that the Government will take all the necessary measures to conduct an independent investigation into these allegations and to ensure protection of the union official in question from any act of intimidation.

(f) As regards the allegations concerning Mr Alexander Zuluaga Camel, Mr Henry Cruz Correa, Mr Ender Buelvas Catalan and Mr Omar Ospina Ramírez, the Committee requests the Government to send its observations on this matter.

B. The Government's reply

234. In its communication of August, the Government provides information with respect to the allegations concerning the transfer of the President of SINALTRAINSALUD, Mr José Ancizar Gallego Cardona, from his post as a porter at the Hospital San José de Buga to a workplace outside the hospital premises, with inferior conditions of work which, according to the complainant, constitutes a proof of anti-union harassment. In particular, the Government indicates that: (1) Mr Ancizar was reinstated in his job as a porter; (2) on 3 February 2012 in the First Labour Court of the Circuit of the Municipality of Guadalajara, the company and the worker agreed to put their differences aside; and (3) under the Special Committee on the Handling of Conflicts referred to the ILO (CETCOIT) framework, the Government will continue to assist the parties in seeking consensus.

235. In its communications of September and November 2012, in relation to the recommendation on the signing of collective agreements, the Government indicates that: (1) the trade union organizations SINTRAAJE and SINALTRALAC signed a collective agreement in 2010 with the company AJE Colombia SA and on 25 May 2012 a new collective agreement was signed, with validity from 1 March 2012 to 28 February 2014 (the Government sends a copy of a communication from the General Confederation of Labour to CETCOIT dated 27 September 2012, confirming this information and sending a copy of the collective agreement); (2) the company reported that non-unionized workers had presented a list of claims and on that basis a collective labour accord had been signed; (3) in Colombia collective accords are permitted, but jurisprudence and the Ministry of Labour establish that the benefits of collective accords must not exceed those of collective agreements; (4) the Government improved its protection of freedom of association by

adopting Act No. 1453 of 2011, which sanctions persons entering into collective accords granting better conditions overall to non-unionized workers by comparison with the conditions established in collective agreements with unionized workers in the same company; (5) furthermore, the Ministry of Labour initiated the Programme for capacity building, prevention and control for companies with simultaneous collective accords and agreements, which will soon be complemented with a special inspection, surveillance and control initiative in that area; and (6) in this case, the unionized workers enjoy additional benefits such as trade union allowances, leave and special disciplinary treatment.

236. With regard to the allegations concerning the dismissal of Mr Luis Enrique Peña Aroca, Mr Carlos Samir Sierra Farfan and Mr Hernando López Puentes, members of SINTRAAJE Colombia, the Government reports that they took action before the labour courts in which the claims brought against the company were dismissed (the Government sends a copy of a communication from the CGT to CETCOIT, dated 27 September 2012, confirming this information and indicating that the courts dismissed the case at the first and second instance in 2010).

237. With regard to the allegations concerning the dismissals of the union leaders, Ms Sandra Patricia Mejía Rendón, Ms Any Dahiary Ramírez Díaz, Mr Nelson Darío Garzón Parra, Mr John Henry Aguazaco Castañeda, and the proceedings under way to suspend trade union immunity, the Government reports that on mutual agreement and with a view to improving relations with trade unions, the workers in question and the company AJE Colombia SA ended the proceedings to suspend trade union immunity and those workers continue to provide services in the same conditions and exercising their right to organize (the Government sends a copy of the communication of the CGT addressed to CETCOIT, dated 27 September 2012, confirming this information).

238. Regarding the alleged threats to the union leader, Mr John Henry Aguazaco, the Government reports that the company decided to take all the precautions required by the situation and change the worker's route to make him feel safer in the exercise of his duties. The Government also reports that it has a protection programme for union leaders at risk (the abovementioned communication from the CGT indicates that the threats made against the President of SINTRAAJE Colombia ceased as a result of the company's intervention, reassigning him to other routes).

239. With regard to the allegations concerning Mr Alexander Zuluaga Camel, Mr Henry Cruz Correa, Mr Ender Buelvas Catalán and Mr Omar Ospina Ramírez, the Government reports that they continue working pursuant to their work contracts.

C. The Committee's conclusions

240. *The Committee recalls that the allegations still pending concerned the transfer of the President of the trade union organization SINALTRAINSALUD, employed at the Hospital San José de Buga, the imposition of a collective accord and anti-union dismissals in the company AJE Colombia SA, and death threats against the President of SINTRAAJE Colombia.*

Recommendation (a)

241. *With regard to the allegations concerning the transfer of the President of SINALTRAINSALUD, Mr José Ancizar Gallego Cardona, from his post as a porter at the Hospital San José de Buga to a workplace outside the hospital premises, with inferior working conditions, the Committee notes with interest that the Government reports that: (1) Mr Ancizar was reinstated to his post as a porter; (2) on 3 February 2012, in the First*

Labour Court of the Circuit of the Municipality of Guadalajara, the company and the worker reached an agreement to put their differences aside; and (3) under the CETCOIT framework, the Government will continue to assist the parties in seeking consensus.

Recommendation (b)

242. *With regard to the allegation concerning the imposition of a collective accord in the company AJE Colombia SA, the Committee notes that the Government's indication that: (1) the trade union organizations SINTRAAJE and SINALTRALAC signed a collective agreement in 2010 with the company AJE Colombia SA and that on 25 May 2012 a new collective agreement was signed, with validity from 1 March 2012 to 28 February 2014 (the Government sends a copy of a communication of the CGT addressed to CETCOIT dated 27 September 2012, confirming this information and sending a copy of the collective agreement); (2) the company reported that non-unionized workers had presented a list of claims and on that basis a collective labour accord had been signed; (3) in Colombia collective accords are permitted, but jurisprudence and the Ministry of Labour establish that the benefits of collective accords must not exceed those of collective agreements; (4) the Government improved its protection of freedom of association by adopting Act No. 1452 of 2011, which sanctions persons entering into collective accords granting better conditions overall to non-unionized workers by comparison with the conditions established in collective agreements with unionized workers in the same company; (5) likewise, the Ministry of Labour initiated the programme for capacity building, prevention and control for companies with simultaneous collective accords and collective agreements, which will soon be complemented with a special inspection, surveillance and control initiative in that area; and (6) in this case, the unionized workers enjoy additional benefits such as trade union allowances, leave and special disciplinary treatment.*

243. *The Committee welcomes the signature of a new collective agreement by the company and the trade union organizations concerned, as well as the measures adopted by the Government to avoid collective accords being signed for anti-union purposes. Recalling once again that, pursuant to Article 4 of Convention No. 98, the Government must guarantee that direct negotiations of collective agreements with employees are possible only in the absence of a trade union and that such negotiations should not be used in practice for anti-union purposes, the Committee requests the Government to ensure respect for this principle and to keep it informed of developments in this regard.*

Recommendation (c)

244. *In relation to the dismissal of the union members Mr Luis Enrique Peña Aroca, Mr Carlos Samir Sierra Farfan and Mr Hernando López Puentes, the Committee notes that the Government reports that they took an action before the labour courts in which the claims brought against the company were dismissed (the CGT confirmed this information and indicated that the courts dismissed the case at the first and second instance in 2010).*

Recommendation (d)

245. *With regard to the alleged dismissal of the union leaders, Ms Sandra Patricia Mejía Rendón, Ms Any Dahiary Ramírez Díaz, Mr Nelson Darío Garzón Parra, Mr John Henry Aguazaco Castañeda, and the proceedings under way to suspend trade union immunity, the Committee notes that the Government reports that on mutual agreement and with a view to improving relations with trade unions, the workers in question and the company AJE Colombia SA ended the proceedings to suspend trade union immunity and those workers continue to provide services in the same conditions and exercising their right to organize (the CGT confirmed this information).*

Recommendation (e)

246. *With regard to the alleged threats to the union leader Mr John Henry Aguazaco, the Committee takes note that the Government indicates that the company decided to take all the precautions required by the situation and to change the worker's route to make him feel safer in the exercise of his duties. The Committee observes that the CGT indicates that the threats ceased as a result of the company's intervention, reassigning the worker to other routes, and welcomes the initiatives taken to protect the life of this union leader. The Committee can only encourage the Government wholeheartedly to promote further such initiatives.*

Recommendation (f)

247. *With regard to the allegations concerning Mr Alexander Zuluaga Camel, Mr Henry Cruz Correa, Mr Ender Buelvas Catalán and Mr Omar Ospina Ramírez, the Committee notes that the Government indicates that the company AJE Colombia SA continues to abide by its work contracts. In the light of this information, the Committee will not pursue the examination of these allegations.*

The Committee's recommendation

248. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:***

> ***The Committee requests the Government to ensure respect for the principle relating to the direct negotiation of "collective accords" as set out in its conclusions, and to keep it informed of any steps taken in this regard.***

CASE NO. 2880

DEFINITIVE REPORT

Complaint against the Government of Colombia presented by the Union of Workers of the Municipality of Villavicencio supported by the General Confederation of Labour (CGT)

Allegations: The complainant alleges that the labour relationship of 36 employees of the Municipality of Villavicencio, who were entitled to legal, constitutional and international protection of their right to join a trade union, was terminated on the grounds that their posts had been suppressed pursuant to Municipal Decrees Nos 176 of 29 December 1997 and 116 of 12 June 2001

249. The complaint was presented in a communication dated 27 May 2011 from the Union of Workers of the Municipality of Villavicencio. It was supported by the General Confederation of Labour (CGT).

250. The Government sent its observations in a communication dated 14 September 2012.

251. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

252. In its communication dated 27 May 2011, the Union of Workers of the Municipality of Villavicencio alleges that the labour relationship of 36 employees of the Municipality of Villavicencio, who were entitled to legal, constitutional and international protection of their right to join a trade union, was terminated on the grounds that their posts had been suppressed. It states that this legal procedure is acceptable under national legislation provided that certain legal requirements are complied with, including an agreement signed by the municipal council empowering the Mayor to reorganize the administration of the territory; the carrying out of a technical survey of staffing requirements; approval from the administrative department of the public service; the earmarking of funds by the Ministry of Finance to finance the new staffing arrangements; and the issuance of a decree by the Executive Chief – in this case the Mayor of the Municipality of Villavicencio – setting up the new administrative structure and staffing plan. The complainant states that, without the said legal requirements having been complied with, six of the workers listed were notified of the decision to suppress their posts pursuant to Municipal Decree No. 176 of 29 December 1997 and the other 30 workers pursuant to Municipal Decree No. 116 of 12 June 2001.

253. The complainant states that on 1 June 2011, the Public Prosecutor's Office of the province of Villavicencio made a public declaration to the effect that the technical survey that the Office of the Mayor of Villavicencio should have conducted did not exist as it had not been officially presented by the enterprise contracted to carry it out officially. The complainant adds that, when the public servants were individually notified that their posts were being suppressed, they had decided to establish the Trade Union Association of Public Employees of the Municipality of Villavicencio (ASOSIEMPUVI). Their decision, along with the names of the founder members and the members of the union's executive board, was communicated to the Mayor on 19 June 2001, and to the Ministry of Social Welfare on 20 June 2001. The complainant states that all the employees concerned lodged an appeal with the Administrative Tribunal of the department of El Meta to have the decision declared null and void and their labour rights restored in accordance with article 85 of the Administrative Disputes Code. According to the complainant, all the decisions handed down by the Tribunal on the 36 appeals and confirmed by the Council of State were negative, that is, in not a single case were grounds found for declaring null and void or irregular the decision taken pursuant to the decrees issued by the Mayor of Villavicencio.

254. The complainant organization states that, following the suppression of some 200 public service posts since July 2006, the Administrative Tribunal of El Meta and the Council of State decided to reverse the case law and declared Decree No. 116 of 12 June 2001 to be null and void in 15 cases concerning employees, most of whom were not involved in the founding of ASOSIEMPUVI, and ordered that they be reinstated. The complainant organization states that, given the reversal of the case law and the fact that every one of the employees whose appeal was rejected was in the same situation as those who were

reinstated, they decided to request court protection against the decisions that had gone against them. The Council of State, which is the competent judicial body in such matters, ruled against their requests for protection against the violation of their fundamental rights and ruled that they were irreceivable.

B. The Government's reply

255. In its communication of 14 September 2012, the Government states that the complaint does not meet the requirements to be admissible under ILO's procedures, as the complainant organization states explicitly that the union was established after the employees had been notified of the suppression of their posts. The Government considers that, under the circumstances, it is impossible to claim that their freedom of association was violated and that certain aspects of the case directly affected the organization. The Government asserts that no workers affiliated to the union were dismissed since, as noted, the organization was established after the communication notifying them of the suppression of their jobs. The Government also recalls that the Committee has in the past considered that it is only called upon to rule on allegations regarding restructuring and streamlining programmes or processes that have given rise to acts of anti-union discrimination or interference in union affairs, which is not the situation of the case under examination.

256. The Government adds that the freedom of association of a trade union organization that did not exist can hardly have been violated and that it is hard to see how restructuring can have infringed Convention No. 87, as there is no evidence to suggest that any attempt was made to undermine freedom of association. The Government states that, as the complainant organization itself notes, the judicial authorities have already ruled on each individual case and have handed down rulings rejecting the appeals presented by the employees concerned. It adds that, although the Council of State has, on several occasions, examined the legality of Decree No. 116 of 2001, it has declared the appeals by the individual employees to be partially null and void. The Government cites the following ruling handed down by the Council of State: "The jurisprudence of the Section has been upheld in so far as, where a service is discontinued following the suppression of a post, and specifically in respect of individual administrative decisions against which an appeal is lodged, it is impossible to generalize or lay down a rule that can be applied equally to every case; each suppression of a post by the Administration therefore has to be analysed on its own merits."

257. The Government states further that the Municipality of Villavicencio has informed it that: (1) each of the persons cited in the list sent by the complainant organization received due compensation as required by the law; (2) the 15 employees concerned were notified by the Vice-Secretariat for Human Development that, by virtue of Decrees Nos 176 of 1997 and 116 of 2001, the post that they occupied had been removed from the list of posts of the central administration of the Mayor's Office, and that they could choose between a preferential right to reinstatement or the payment of compensation, for which they were given five days to make known their decision in writing; (3) at the time they were notified of the suppression of their posts, none of the 36 officials had trade union immunity and all of them received due compensation; and (4) none of the appeals for legal protection or for the decisions regarding the suppression of posts to be declared null and void was upheld in respect of the employees referred to by the complainant.

C. The Committee's conclusions

258. *The Committee observes that, in the case under examination, the complainant alleges that the labour relationship of 36 employees (identified by name) of the Municipality of*

Villavicencio in the Department of El Meta, who were entitled to legal, constitutional and international protection of their right to join a trade union, was terminated on the grounds that their post had been terminated pursuant to Municipal Decrees Nos 176 of 29 December 1997 and 116 of 12 June 2001. The complainant states that the Administrative Tribunal of El Meta and the Council of State rejected all the appeals lodged by the employees concerned and that, following the suppression of some 200 posts, the Council of State ordered the reinstatement of 15 workers (other than the 36 workers mentioned by the complainant) and declared that the application of Decree No. 116 of 12 June 2001 was null and void.

259. *The Committee takes note of the Government's indication in this respect that: (1) the complainant organization states explicitly that the trade union was established after the employees had been notified of the suppression of their posts and that it was therefore impossible to claim that their freedom of association had been violated or that the case raised issues that directly affected the trade union; (2) that no workers affiliated to the union had been dismissed since, as noted, the organization was established after the communication notifying them of the suppression of their posts; (3) the freedom of association of a trade union organization can hardly have been violated if it did not exist and it is hard to see how restructuring can have infringed Convention No. 87, as there is no evidence to suggest that any attempt was made to undermine freedom of association; (4) as the complainant notes, the judicial authorities have already ruled on each individual case and handed down rulings rejecting the appeals presented by the employees referred to in the complaint; and (5) although the Council of State has on several occasions examined the legality of Decree No. 116 of 2001, it has in individual instances declared the Decree to be partially null and void (nonetheless, these cases do not concern the 36 dismissed workers mentioned in the allegations). The Committee also takes note of the Government's indication that the Municipality of Villavicencio has informed it that: (1) each of the persons cited in the list sent by the complainant organization received due compensation as required by the law; (2) the employees concerned were notified by the Vice-Secretariat for Human Development that, by virtue of Decrees Nos 176 of 1997 and 116 of 2001, the post that they occupied had been removed from the list of posts of the central administration of the Mayor's Office, and that they could choose between a preferential right to reinstatement or the payment of compensation, for which they were given five days to make known their decision in writing; (3) at the time they were notified of the suppression of their posts, none of the 36 officials had trade union immunity and all of them received due compensation; and (4) none of the appeals for legal protection or for the decisions regarding the suppression of posts to be declared null and void was upheld in respect of the employees referred to by the complainant.*

260. *Given the circumstances, and bearing in mind all the information provided and, specifically, that the suppression of posts concerned a large number of employees (some 200 according to the complainant) and not just the 36 identified in the complaint, that the ASOSIEMPUVI was established after the decision was taken to suppress the posts in the Municipality of Villavicencio and that the various jurisdictional bodies rejected the appeals lodged by the workers listed in the complaint, as well as the length of time that has passed since the restructuring, the Committee will not proceed any further with its examination of the allegations presented in this case.*

The Committee's recommendation

261. ***In the light of its foregoing conclusions the Committee invites the Governing Body to decide that the present case does not call for further examination.***

CASE NO. 2933

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of Colombia presented by the Bogota Telecommunications Company Workers' Union (SINTRATELEFONOS) supported by the Single Confederation of Workers (CUT)

Allegations: The complainant organizations allege anti-union practices and dismissals in the Bogota Telecommunications Company SA ESP

262. The complaint is contained in a communication dated 6 March 2012 from the Bogota Telecommunications Company Workers' Union (SINTRATELEFONOS), which is supported by the Single Confederation of Workers (CUT). SINTRATELEFONOS sent additional information in a communication dated 8 July 2012.

263. The Government sent its observations in a communication dated December 2012.

264. Colombia has ratified the Freedom of Association and Protection of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

265. The complainant organizations allege that, in 2008, SINTRATELEFONOS initiated a process aimed at capitalizing the company by linking up with a strategic partner, thereby paving the way for the privatization of this public company. The Executive Committee of SINTRATELEFONOS demonstrated its total rejection of this process by organizing marches and demonstrations. The complainant organizations state that, as a means of retaliation and intimidation, between 6 October 2008 and 30 May 2011, the company dismissed, with compensation, 27 workers affiliated with the trade union without just cause, whose names appear below: Danilo Henrique Hernández R., Hernando Canencio Benavides, Adel Fabian Ruales Alvear, Óscar Aldana Mejía, Luz Nidia Regalado González, Waldemiro Padilla Madrid, Jorge Eliecer Solorzano Morales, Julio Ediberto Pérez Yañez, Álvaro Henry Jimenez Vasquez, Norma Constanza Villanueva S., Héctor Mauricio Mantilla Alba, Mauricio Puerto Rangel, Sandra Yaneth Castelblanco C., Martha Sulay Valcarcel M., Arnulfo Alfredo Mejía Ortiz, Jhon Bairon Martínez Rodríguez, José Alonso Gualtera Silva, Raúl Enrique Camargo Susa, Adriana Marcela Acosta, Mauricio Arturo Suárez León, Luis Orlando Guevara Ruiz, Yamel Antonio Santana Millán, Dolly Chávez Quiroz, Nirza Pantevis, Isabel González Serrano, José Andres Moreu Pineda, and Ylbey Mora Morales.

266. The complainant organizations indicate that SINTRATELEFONOS filed several applications for protection against the company in order to secure the reinstatement of the dismissed workers, alleging that the company had conducted itself in a manner that was anti-union in nature. Bogota Circuit Criminal Court No. 18 ordered, in the second instance, the reinstatement of 15 dismissed workers in a ruling handed down on 12 February 2010. In another ruling, handed down on 26 May 2010, this time in the first instance, Bogota Municipal Criminal Court No. 36 ordered the reinstatement of a further three workers.

267. The complainant organizations add that the ruling handed down by Bogota Circuit Criminal Court No. 18 was overturned by the Constitutional Court in ruling T-660 of 2010 on the grounds that, in that case, the application for protection was inadmissible. They state that the ruling handed down by Bogota Municipal Criminal Court No. 36 was partially overturned in the second instance by Circuit Criminal Court No. 50 in its ruling of 12 July 2010. Both rulings entailed the dismissal, for the second time, of the workers who had been reinstated. Thirteen workers, several of whom were affected by the rulings being overturned, are in the process of initiating judicial proceedings before the labour courts of the city of Bogota in an attempt to secure their reinstatement.

268. The complainant organizations also denounce the fact that the dismissals appear to have led many workers to leave the union for fear of reprisals at the hands of their employer. In addition, the introduction of voluntary retirement measures was allegedly weakening the trade union organization.

B. The Government's reply

269. In a communication dated December 2012, the Government transmits the company's reply to the allegations made by the complainant organization. The company maintains that the complainant organization cannot provide evidence to support its claim that acts of anti-union discrimination and repetitive and systematic dismissals took place, or that the company violated the trade union organization's right to express itself, to demonstrate and to defend itself. The company adds that terminating a contract without just cause, as long as the correct amount of legal compensation is paid, is a power conferred upon the company by law, subject to criteria of reasonable objectivity. The company states that the 27 contract terminations mentioned by the complainant organization took place over a period of two-and-a-half years within a company that employed more than 3,000 workers in 2009–10, and 2,702 workers in May 2011, 2,304 of whom benefited from the collective agreement. The company states that these figures demonstrate that the 27 terminations were not the expression of an anti-union policy pursued by the entity in question. The company also indicates that the Constitutional Court has already ruled on the matter and that it did not find there to be any violation of the right of workers to join a union. Lastly, it states that the voluntary retirement plan offered by the company in 2010 is a valid legal action, of which more than 700 workers availed themselves of their own free will, and that no discrimination based on trade union affiliation occurred.

270. In the same communication, the Government refers to the information provided by the company and finds that the alleged acts do not constitute anti-union discrimination. The Government reiterates that the Constitutional Court, in its ruling T-660 of 2010, determined that the company had not engaged in anti-union practices and did not consider the termination of an employment contract, in and of itself, to constitute a violation of the right to association.

271. The Government also indicates that the acts that are the subject of the present complaint are also the subject of a complaint filed with the labour inspectorate on 9 May 2011 and that the inspectorate will soon take a decision. Lastly, it states that in order to bring the parties together and to reach a consensus on the allegations made, the Special Committee for the handling of cases referred to the ILO (CETCOIT) examined the case at its meeting on 30 November 2012, which resulted in a partial agreement being reached.

C. The Committee's conclusions

272. *The Committee notes that the present case refers to allegations concerning the dismissal of 27 unionized workers from the Bogota Telecommunications Company in the context of changes relating to the capitalization of the company, which were criticized by the trade union organization.*

273. *The Committee takes note of the observations of the Government and the company that coincide, to the effect that:*

– *the company limited itself to exercising its legal power to dismiss a worker without just cause, as long as the correct amount of legal compensation is paid;*

– *the 27 terminations, which were carried out over a period of two-and-a-half years within a company of more than 3,000 workers, more than 2,000 of whom are members of the trade union, were not the expression of an anti-union policy pursued by the company; and*

– *the Constitutional Court did not consider the acts denounced by the trade union to constitute a violation of the right to freedom of association.*

274. *The Committee recalls that it is not called upon to pronounce upon the question of the breaking of a contract of employment by dismissal except in cases in which the provisions on dismissal imply anti-union discrimination [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 779]. In this regard, the Committee notes that, in the present complaint, the complainant organizations allege that the dismissal of 27 unionized workers by the company between 6 October 2008 and 30 May 2011 was an act of retaliation against SINTRATELEFONOS's campaign against the company's capitalization process.*

275. *The Committee notes that the trade union filed several applications for protection on the grounds that its right to freedom of association had been violated; that Bogota Circuit Criminal Court No. 18 ordered, in the second instance, the reinstatement of 15 dismissed workers in a ruling handed down on 12 February 2010, in which it considered the dismissals to denote blatant anti-union persecution, that could push workers to leave the union; and that, in another ruling handed down on 26 May 2010, this time in the first instance, Bogota Municipal Criminal Court No. 36 ordered the reinstatement of a further three workers.*

276. *The Committee also notes that the ruling handed down by Bogota Circuit Criminal Court No. 18 was overturned by the Constitutional Court in ruling T-660 of 2010 on the grounds that, in that case, the application for protection was inadmissible; that the ruling handed down by Bogota Municipal Criminal Court No. 36 was partially overturned in the second instance by Circuit Criminal Court No. 50 in its ruling of 12 July 2010; and that both rulings entailed the dismissal, for the second time, of the workers who had been reinstated.*

277. *The Committee notes that, in the aforementioned ruling, the Constitutional Court recalled its jurisprudence, according to which, when there is reasonable doubt as to the anti-union nature of a dismissal, the employer must provide the objective reasons that justify the termination of the employment contract. However, in this particular case, the Constitutional Court found there to be insufficient factual evidence to constitute reasonable doubt as to the existence of the alleged anti-union persecution. The Committee notes that the Constitutional Court took the following into consideration: the relationship between the number of dismissals that were the subject of the application for protection, the total number of workers affiliated with the trade union (more than 2,000) and the period of time over which the dismissals took place; the fact that, during the period in question, workers affiliated with the trade union and workers not affiliated with the trade union were dismissed; the lack of evidence to indicate whether the unionized workers who were dismissed were trade union officials or activists; and the lack of evidence to prove the alleged impact of the dismissals on other unionized workers.*

278. *The Committee notes that, when the Constitutional Court declared the application for protection inadmissible owing to a lack of evidence, it considered it to be the responsibility of the ordinary courts to determine, by means of a thorough examination of the evidence, whether the right to freedom of association had actually been violated in this case. Taking note of the complainant organization's statement to the effect that several workers are initiating judicial proceedings before the labour courts in an attempt to secure their reinstatement, the Committee requests the Government to keep it informed of the outcome of those judicial proceedings. The Committee also requests the Government to keep it informed of the decision taken by the labour inspectorate on the complaint presented to it regarding this case.*

279. *Lastly, the Committee takes note of the Government's statement to the effect that CETCOIT examined the case at its meeting on 30 November 2012, which resulted in a partial agreement being reached. The Committee recalls that the CETCOIT is a national tripartite body established to resolve disputes relating to freedom of association and collective bargaining. The mechanism of CETCOIT is voluntary and allows for the examination of complaints pending before the Committee on Freedom of Association, as well as the disputes, which have not yet been submitted to the ILO. It aims at facilitating the conclusion of agreements between the parties, based on, among other things, the ILO Conventions on freedom of association and collective bargaining and the principles of the Committee. The Committee notes that the agreement concluded within CETCOIT, on 30 November 2012, indicates that the issue reconciled by that agreement refers to another subject matter not covered in Case No. 2933. The agreement also mentions that if, in the future, the parties reach a similar agreement regarding the complaint that is the subject of Case No. 2933, the complaint will be dropped. The Committee welcomes the process aimed at resolving these issues at the national level through dialogue with the social partners and requests the complainant organization and the Government to keep it informed of any agreements that may be reached before CETCOIT regarding this case.*

The Committee's recommendations

280. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee requests the Government to keep it informed of the outcome of the judicial proceedings initiated before the labour courts by several workers of the company in an attempt to secure their reinstatement, as well as of the decision taken by the labour inspectorate on the complaint presented to it regarding this case.

(b) Welcoming the process aimed at resolving the issues at the national level through dialogue with the social partners, the Committee requests the complainant organization and the Government to keep it informed of any agreements that may be reached before CETCOIT regarding this case.

CASE NO. 2935

DEFINITIVE REPORT

Complaint against the Government of Colombia presented by the Trade Union of Workers and Employees in Public and Autonomous Services and Decentralized and Territorial Institutions of Colombia (SINTRAEMSDES) supported by
– the Single Confederation of Workers (CUT) and
– the National Trade Union of Social Protection Workers and Public Servants (SINALTRAEMPROS)

Allegations: the complainant organizations allege anti-union dismissals following the presentation of a list of demands in the municipality of Yondo, as well as dismissals and other anti-union actions in the National Health Supervisory Body

281. The complaints are contained in a communication from the Trade Union of Workers and Employees in Public and Autonomous Services and Decentralized and Territorial Institutions of Colombia (SINTRAEMSDES) of March 2012 and the National Trade Union of Social Protection Workers and Public Servants (SINALTRAEMPROS) of August 2012. The Single Confederation of Workers (CUT) supported the complaint presented by SINTRAEMSDES in a communication dated 16 March 2012.

282. The Government sent its observations in communications dated 21 October 2012 and February 2013.

283. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

284. In its communication of March 2012, SINTRAEMSDES reports that on 30 August 2002 the trade union presented a list of demands to the municipality of Yondo. The complainant alleges that following the presentation of the list of demands, the municipality dismissed 19 unionized workers (listed by name) between 5 February 2003 and 12 May 2004. The complainant further reports that as a result of collective bargaining, a collective agreement was signed on 12 October 2006. Lastly, SINTRAEMSDES reports that the dismissed workers filed legal proceedings before the national courts claiming that the dismissals

happened during the period of the collective dispute, but that the courts ruled against the workers.

285. In its communication of August 2012, SINALTRAEMPROS reports that on 19 November 2011, more than 25 public servants of the National Health Supervisory Body met in Zipaquirá to form a trade union, thus creating the first trade union branch committee of the Supervisory Body. The complainants indicate that the director of the Supervisory Body was notified of the creation of the union branch committee on 29 December 2011. The complainant organization alleges that as of the creation of the branch committee, the administration began a smear, intimidation and workplace harassment campaign against the trade union leaders and that, in that context, Mr Arcesio Rodríguez Bonilla and Ms Ana María Gaitán Parra were dismissed, workplace harassment was used to force Mr Jesús Alberto Gutiérrez Torres and Ms Francy Leny Cuenca to give up their union activities, and Ms Vivian Marcela Delapena filed a complaint claiming workplace harassment and anti-union persecution.

B. The Government's reply

286. In its communication of 21 October 2012, the Government reports, with regard to the allegations presented by SINTRAEMSDES, that the mayor of the municipality of Yondo indicated that the contracts of the workers listed in the complaint were terminated in an administrative restructuring process carried out in 2003 and that, in keeping with labour standards, all the dismissed workers were awarded compensation. It further indicates that all the workers filed complaints before the labour courts but that the courts ruled in favour of the municipality. Lastly, the Government indicates that freedom of association was not violated and that the restructuring process was pursued in the general interests of the municipality.

287. In its communication of February 2013, the Government indicates that, thanks to the pursuit of consensus and dialogue, the parties to this case have succeeded in reaching an important agreement in the framework of the Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT). The Government supplies a copy of the signed agreement according to which it was decided: (i) to establish a platform of direct and permanent dialogue between the union leaders and the representatives of the National Health Supervisory Body; (ii) that the individual complaints of judicial nature would be resolved by judges and in full compliance with the right to due process of the parties concerned; (iii) that the CETCOIT will remain at the disposal of the parties to find solutions promoting understanding and overcoming any differences that might arise; and (iv) that the complaint presented to the ILO is considered resolved and will be withdrawn.

C. The Committee's conclusions

288. *The Committee notes that in this case the Trade Union of Workers and Employees in Public and Autonomous Services and Decentralized and Territorial Institutions of Colombia (SINTRAEMSDES) reports the dismissal of 19 unionized workers. In this regard, the Committee notes that the Government reports that the mayor of the municipality of Yondo indicated that: (1) the contracts of the workers in question were terminated in an administrative restructuring process carried out in 2003 and that, in keeping with labour standards, all the dismissed workers were awarded compensation; (2) all the workers in question filed complaints before the labour courts but the courts ruled in favour of the municipality. In these circumstances, while taking note of this information, in view of the time elapsed (from six months to a year) between the presentation of the list of demands (August 2002) and the dates on which the workers started being dismissed, and the fact that the courts rejected all the complaints filed by the*

workers in question, the Committee will not proceed with the examination of these allegations.

289. *The Committee also observes that SINALTRAEMPROS alleges that as of the creation of the trade union branch committee in the National Health Supervisory Body, the administration began a smear, intimidation and workplace harassment campaign against the union leaders and that in that context Mr Arcesio Rodríguez Bonilla and Ms Ana María Gaitán Parra were dismissed, and Mr Jesús Alberto Gutiérrez Torres and Ms Francy Leny Cuenca were forced to give up their union activities. In this regard, the Committee notes that the Government indicates that: (1) thanks to the pursuit of consensus and dialogue, the parties to this case have succeeded in reaching an important agreement in the framework of the Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT); and (2) according to the signed agreement, it was decided: (i) to establish a platform of direct and permanent dialogue between the union leaders and the representatives of the National Health Supervisory Body; (ii) that the individual complaints of judicial nature would be resolved by judges and in full compliance with the right to due process of the parties concerned; (iii) that the CETCOIT will remain at the disposal of the parties to find solutions promoting understanding and overcoming any differences that might arise; and (iv) that the complaint presented to the ILO is considered resolved and will be withdrawn. The Committee notes this information with interest and, in these circumstances, will not pursue its examination of the allegations.*

The Committee's recommendation

290. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to decide that the present case does not call for further examination.***

CASE NO. 2786

INTERIM REPORT

Complaint against the Government of Dominican Republic presented by the National Trade Union Confederation (CNUS)

Allegations: Anti-union acts and dismissals in the enterprises "Frito Lay Dominicana", "Universal Aloe" and "MERCASID", as well as the refusal to register various trade unions

291. The Committee last examined this case at its March 2012 meeting when it presented an interim report to the Governing Body [see 363rd Report, paras 487–508, approved by the Governing Body at its 310th Session (March 2012)].

292. Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case. At its March 2013 meeting [see 367th Report, para. 5], the Committee made an urgent appeal and drew the attention of the Government to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, the Committee may present a report on the substance of this case even if the observations or information requested from the Government have not been received in due time. To date, the Government has not sent any information.

293. The Dominican Republic has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

294. At its March 2012 meeting, the Committee made the following recommendations [see 363rd Report, para. 508]:

(a) the Committee requests the Government to indicate whether self-employed workers and contract workers may bargain collectively; and

(b) the Committee requests the Government to provide additional information as regards the allegations of inspection flaws (absence of impartiality and failure to carry out inspections).

B. The Committee's conclusions

295. *The Committee regrets that, despite the time that has elapsed since the previous examination of the case, the Government has not provided the requested information, even though it has been requested to do so several times, including through an urgent appeal. The Committee urges the Government to be more cooperative in the future.*

296. *Under these circumstances and in accordance with the applicable procedure [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee finds itself obliged to present a report on the substance of the case without being able to take into account the information it had hoped to receive from the Government.*

297. *The Committee reminds the Government that the purpose of the whole procedure is to ensure respect for trade union freedoms both in law and in practice; this Committee is therefore convinced that while this procedure protects governments against unreasonable accusations, governments, on their side, must recognize the importance of formulating, for objective examination, detailed and accurate replies on the substance of the allegations made against them [see First Report of the Committee, para. 31].*

298. *Under these circumstances, the Committee reiterates its previous conclusions and recommendations, urges the Government to send the requested information and draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

The Committee's recommendations

299. ***In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee regrets that the Government has not provided the information requested in March 2012 on the matters still pending and requests the Government to be more cooperative in the future.

(b) The Committee once again urges the Government to indicate without delay whether self-employed workers and contract workers may bargain collectively, and draws this aspect of the case to the attention of the

Committee of Experts on the Application of Conventions and Recommendations.

(c) As regards the alleged anti-union practices in the enterprises "Frito Lay Dominicana", "Universal Aloe" and "MERCASID", the Committee urges the Government to provide additional information, in particular regarding the allegations of inspection flaws (absence of impartiality and failure to carry out inspections).

CASE NO. 2980

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of El Salvador presented by the National Association of Private Enterprises (ANEP)

Allegations: Presentation by the authorities, without prior consultation of the tripartite national body, of a proposed reform of 19 laws on official autonomous institutions, which affects employers' interests and empowers the President of the Republic to appoint employer sector representatives on joint and tripartite management boards

300. The complaint was presented in a communication dated 21 August 2012 from the National Association of Private Enterprises (ANEP).

301. The Government sent its observations in a communication dated 26 February 2013.

302. El Salvador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

303. In its communication dated 21 August 2012, the ANEP alleges that, on 16 August 2012, the President of the Republic introduced a proposal to reform 19 organic laws on official autonomous institutions, without consulting the employers' and workers' organizations, and that the reform would modify the former's participation in the said institutions by empowering the President to designate the employer sector's representatives on their management boards, thereby violating ILO Convention No. 87 and, specifically, the right of employers' organizations to choose their representatives freely and the obligation for public authorities to abstain from any intervention that is liable to restrict that right or impede its legal exercise.

304. The ANEP states that the proposed reform violates the principle of independence of employers' and workers' organizations and, by empowering the President to decide who should represent the employer sector in autonomous institutions (which currently have

joint or tripartite management boards), constitutes a form of interference that goes against the provisions of Conventions Nos 87 and 98.

305. The ANEP alleges that this is contrary to the principles laid down by the Committee on Freedom of Association with regard to tripartite consultation and the participation of employers' and workers' organizations in joint and tripartite bodies. According to the Committee on Freedom of Association, preventing an organization from taking part in the joint and tripartite bodies of a sector or industry in which it is representative is an infringement of the principles of freedom of association.

306. The ANEP adds that the Committee of Experts has drawn attention to organizational principles for the governance and proper administration of social security institutions, whereby the process is supervised by the public authorities and administered jointly by employers and workers, whose contributions account for the bulk of the social security system's revenue. A reform such as that proposed, under which it would be the President who appoints the employers' representatives in institutions as important as social security, is contrary to the organizational principles for their proper administration laid down by the ILO in defence of the workers and employers who contribute to the system.

307. The ANEP emphasizes that El Salvador has ratified the ILO's Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which requires States Members to hold national tripartite consultations on any proposed reform of the law. The statutes/rules of El Salvador's Higher Labour Council, which is a tripartite body, stipulate that the Council must be consulted on any proposed new law prior to its introduction. However, no formal or informal tripartite consultations of the workers' and employers' organizations within the Council has been held on the proposed reform of 19 laws, and this violates both the letter and the spirit of ILO Convention No. 144, as well as of the law establishing the Higher Labour Council as the designated consultative body.

308. The ANEP adds that the proposed reform of 19 laws on official autonomous institutions, so as to restrict the free exercise of the employer sector's right to appoint its representatives on the management boards of such institutions as the Social Security Institute (ISSS) and the Social Housing Fund (FSV), undermines the sector's representative capacity. The ANEP recalls that, under article 19, paragraph 5(d), of the ILO Constitution, a State Member that ratifies a Convention commits itself to take such action as may be necessary to make its provisions effective, that is to say the State is under an obligation not just to include the Convention in the country's domestic legislation but also to ensure its implementation in practice.

309. The application of ILO Conventions Nos 87, 98, 142 and 144 entails the conduct of tripartite consultations on any proposal to reform the Social Security Act, the Social Housing Fund Act, etc., and it is thus a fundamental responsibility of the State to consult the sectors concerned before introducing any such reform.

310. The ANEP states that its complaint against the State and Government of El Salvador is presented on the grounds that they are violating the provisions of ILO Conventions Nos 87, 98, 142 and 144 and infringing the Association's right to appoint its representatives freely in 19 autonomous institutions (notably the ISSS, the FSV, etc.), and that the public authorities are guilty of acts of interference in that they are promoting legislative reforms that violate the principle of the independence of employers' organizations in the exercise of their activities, the principle whereby the State is required to hold tripartite consultations before introducing legislative reforms and the principle of equity in the membership of tripartite bodies.

311. Among the reforms it challenges, the ANEP includes that of the National Institute for Vocational Training (NIVT), which the Committee on Freedom of Association has already examined at its March 2013 meeting [see 367th Report, Case No. 2930].

B. The Government's reply

312. In its response to the ANEP's complaint, the Government states in a communication dated 26 February 2013 that on 16 August 2012 the President of the Republic, through the Ministry of Labour and Social Welfare, sent three communications calling on the Legislative Assembly to introduce three draft legislative decrees revising the Vocational Training Act (examined by the Committee on Freedom of Association in a previous case), the Social Security Act and the Social Housing Fund Act.

313. The Government states that the constitutional basis and grounds for the proposed legislative decrees can be found in article 133.2 of the Constitution of El Salvador, which empowers the President of the Republic to introduce legislation through the government ministries, and in article 168.15 of the Constitution, which confers on the President the responsibility and obligation to ensure the efficient management and conduct of public affairs. The proposed legislative reforms are designed to establish a legal mandate for the public administration to select the most competent officials from the private sector by broadening and diversifying the number of the appointees so as to enhance the participation and representation of the employer sector in official autonomous institutions such as the ISSS and the FSV, in full compliance with the President's constitutional powers and duties.

314. The Government notes that, far from reducing the employer sector's participation in the said institutions' management boards, the proposed reforms are designed to broaden, democratize and enhance the representativity of the various branches of private enterprise in official autonomous institutions. The institutions will continue to be autonomous, that is to say they will retain their juridical personality, their own assets and their technical, administrative and financial independence, in accordance with the terms of the Acts under which they were created, but they will be subject to the authority, management and guidance of the central administration so as to be able to provide the community rapidly, appropriately and efficiently with the public services called for under their respective mandates.

315. Regarding the ANEP's allegation that the proposed reforms violate ILO Conventions Nos 87, 98, 142 and 144 by undermining the ANEP's right to appoint its representatives freely on 19 autonomous institutions (notably the ISSS and the FSV), the Government considers that the complainant's claims have no basis in fact and are irrelevant, inasmuch as the proposals are made in the legitimate exercise of the President's attributions and responsibilities under article 168.15 of the Constitution, where they are defined as including "the efficient management and conduct of public affairs".

316. The Government concludes that the international labour standards ratified by El Salvador have not been violated and, in so far as the complainant's allegations have in its opinion no basis in fact, requests that Case No. 2980 be dismissed.

C. The Committee's conclusions

317. *The Committee observes that in the present complaint the ANEP alleges that, without consulting the Higher Labour Council (national tripartite body), the President of the Republic presented the Legislative Assembly with a proposal to reform 19 basic laws on official autonomous institutions in areas that affect the interests of the employers' sector*

(notably the ISSS, the FSV, etc.) and that the proposed reforms would empower the President to appoint the employers' and workers' representatives on the institutions' management boards. The ANEP states that this is an infringement of the right of employers' organizations to elect their representatives freely, of the principle of non-interference by the authorities in the exercise of their activities, of the principle of independence of employers' organizations and of the principle of tripartite consultation and of equity in the membership of bipartite and tripartite bodies, in violation of ILO Conventions Nos 87, 98, 142 and 144 ratified by El Salvador.

318. *The Committee takes note of the Government's statement in its reply that: (1) the President's right to propose legislation is recognized by the Constitution, as is its responsibility and obligation to ensure the efficient management and conduct of public affairs (article 168.15 of the Constitution), and the Government therefore considers that the President's action falls within his legitimate powers and that ILO Conventions Nos 87, 98, 142 and 144 have not been violated; (2) in order to fulfil the said obligation effectively, the President's proposed reforms are designed to enable the public administration to select the most competent officials from the private sector by broadening and diversifying the number of appointees so as to enhance the participation and representation of the employer sector in official autonomous institutions; and (3) the purpose of the proposed reforms is to broaden, democratize and enhance the representativity of the various branches of private enterprise in official autonomous institutions.*

319. *The Committee concludes from the Government's reply that: (1) the proposed reform of 19 laws on autonomous institutions (the ISSS, the FSV and the NIVT) which the Executive presented to the Legislative Assembly were not submitted to the Higher Labour Council so that it could hold the prior consultations provided for in the law establishing this tripartite body; and (2) the Government recognizes that the proposed reform enables the public administration to appoint the representatives of the private sector, which it justifies by the reform's objective of enhancing the representativity of the various branches of private enterprise in official autonomous institutions. In these circumstances, the Committee can only conclude that the legislative proposals in question are in grave conflict with the principle of autonomy, the principle of non-interference by the authorities in the activities of employers' and workers' organizations, the right of those organizations to elect their representatives freely and the principle of prior tripartite consultation in matters of legislation, and that they therefore constitute a direct and serious violation of ILO Conventions Nos 87, 98, and 144. The Committee deplores this situation.*

320. *Given the circumstances, the Committee draws the Government's attention to the principle that tripartite consultation should take place before the Government submits a draft to the Legislative Assembly or establishes a labour, social or economic policy and to the importance that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the appropriate organizations of workers and employers [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 1070 and 1075]. The Committee has emphasized the importance that should be attached to full and frank consultations taking place on any questions or proposed legislation affecting trade union rights [see* ***Digest****, op. cit., para. 1074], and recalls that the process of consultation on legislation helps to give laws, programmes and measures adopted or applied by public authorities a firmer justification and to ensure that they are well respected and successfully applied; the Government should seek general consensus as much as possible, given that employers' and workers' organizations should be able to share in the responsibility of securing the well-being and prosperity of the community as a whole, this being particularly important in light of the growing complexity of the problems faced by societies and of the fact that no public authority can claim to have all the answers or assume that its proposals will naturally achieve all of their objectives [see* ***Digest****,*

op. cit., para. 1076]. The Committee calls upon the Government to abide by these principles fully in the future.

321. *Consequently, the Committee requests the Government to ensure that the representatives of workers' and employers' organizations on tripartite bodies are appointed by them freely, and that in-depth consultations are urgently held with those organizations within the Higher Labour Council, so that mutual agreement can be reached on ensuring the balanced tripartite composition of the management boards of the autonomous institutions referred to in the complaint (notably the ISSS, the FSV and the NIVT), and that the shared decision so reached is submitted without delay to the Legislative Assembly in the course of its examination of the legislative reform previously proposed by the Government.*

The Committee's recommendations

322. ***In the light of the foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee draws the attention of the Government to the principles set out in its conclusions with respect to the free appointment of employers' representatives and to tripartite consultation, and requests the Government to respect those principles fully in the future.

(b) The Committee requests that the Government urgently conduct in-depth consultations with the workers' and employers' organizations within the Higher Labour Council so that mutual agreement can be reached on ensuring the balanced tripartite composition of the management boards of the autonomous institutions referred to in the complaint (notably the ISSS, the FSV and the NIVT), and that the shared decision so reached be submitted without delay to the Legislative Assembly in the course of its examination of the legislative reform previously proposed by the Government.

(c) The Committee requests the Government to keep it informed of the developments in this regard.

CASE NO. 2918

DEFINITIVE REPORT

Complaint against the Government of Spain presented by the Citizens' Service Federation of the Trade Union Confederation of Workers' Commissions (FSC-CCOO)

Allegations: A royal decree-law that suspends a collective agreement relating to an increase in remunerations throughout the public administrations

323. The complaint is set out in a communication from the Citizens' Service Federation of the Trade Union Confederation of Workers' Commissions (FSC-CCOO) of 17 November 2011.

324. The Government sent its reply in the communication of 24 April 2012.

325. Spain has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

326. In its communication of 17 November 2011, the FSC-CCOO declares that it is filing a complaint against the Government of Spain for violating the right to collective bargaining and freedom of association, and in particular for violating ILO Conventions Nos 87, 98, 151 and 154.

327. The FSC-CCOO explains that on 25 September 2009, the Government and Trade Union Agreement for the Public Sector was signed. Agreed on, among other measures, were a wage increase of 0.3 per cent for 2010 and a wage revision clause applicable in 2012, which aimed to maintain the purchasing power of personnel working in the public administrations during the agreement's validity period, as follows:

> *5. Remuneration of personnel working in the public administrations*
>
> 45. Remuneration measures conform to the principle of maintaining the purchasing power of personnel working in the public administrations during the validity period of this agreement. To this end, the following will be taken into account: budgetary development in line with the increase in CPI, the economic growth forecast, the financing capacities of the General State Budget and the calculated increased productivity in the public service based on measures or specific programs.
>
> 46. For 2010 it is agreed that there will be a 0.3 per cent wage increase in the overall wage sum.
>
> 47. To fulfil these objectives, the Government and Trade Unions have agreed on the following clause on wage revision: the Administration commits to take appropriate measures to incorporate, in the 2012 budget, loans needed to compensate for the possible loss of purchasing power of public employees during the validity period of this agreement.
>
> As of 1 January 2012, and within the first trimester of that year, the amount corresponding to the deviation which, where applicable, will have resulted between the increase provided for in the Law on the General State Budget for budgetary years 2010 and 2011, and the actual inflation for those years will be incorporated in the wage sum of 2012.
>
> As of 1 January 2013, and within the first trimester of that year, the amount corresponding to the deviation which, where applicable, will have resulted between the increase provided for in the Law on the General State Budget for 2012, and the actual inflation for that year will also be added to the wage sum of 2013.
>
> 48. Besides the increases indicated above, the fulfilment of the economic agreements established and applicable for the period 2010-2012 is guaranteed. Therefore, the increases in remuneration stated above will be applied irrespective of the remuneration improvements stipulated in the pacts or agreements previously signed by the different public administrations according to their area of competence, including those aimed at incorporating the total specific allowance in special payments.

328. Law No. 26/2009 of 23 December, on the general state budget for 2010, in Chapter I of Title III, laid the foundation and coordination for general economic planning relating to

expenditure on the public service, giving the agreement cited above effect to consider the agreed on salary increase. Paragraph 2 of section 22 stipulates that, as of 1 January 2010, public servants' remuneration shall not undergo an overall increase greater than 0.3 per cent with regard to the remuneration rate of 2009, which, conversely, allows for the application of a wage increase of 0.3 per cent, in accordance with the following terms:

> *On the increased expenditure on the public service*
>
> Section 22. Basis and coordination for general economic planning relating to expenditure on the public service.
>
> […]
>
> Two. As of 1 January 2010, public servants' remuneration, including, where relevant, that which according to special payments comes under the remit of article 21, paragraph 3, of Law 42/2006, of 29 December, on the General State Budget for 2007, as provided for in paragraph 2 of article 22 of Law No. 2/2008, of 23 December, on the General State Budget for 2009, shall not undergo an overall increase greater than 0.3 per cent with regard to the wages of 2009, in terms of uniformity for the two periods under comparison, as regards the number of personnel and their age.
>
> These remuneration increases shall be applied irrespective of the remuneration improvements stipulated in the pacts or agreements previously signed by the different public administrations according to their area of competence.
>
> Three. Besides the general remuneration increase provided for in the preceding paragraph, the administrations, entities and companies referred to in paragraph 1 of this section may allot up to 0.3 per cent of the wage sum to finance employment pension contributions or collective insurance contributions which consist of retirement cover for personnel included in their respective areas, in accordance with the second final provision of the Consolidated Text of the Law on Pension Plans and Funds.

329. The FSC-CCOO adds that on 20 May 2010 the Secretary of State of the Public Service called the trade unions to a meeting of the General Negotiating Table of the Public Administrations with no fixed negotiating agenda, aiming to explain how a 5 per cent cut in public servants' wages would be carried out, which they assured, would be approved in the Council of Ministers to be held that same day. Far from holding "real" negotiations, the Administration at the meeting was not even capable of explaining the content of what was going to be approved a few hours later, directing trade union representatives to listen to the radio from 6 p.m. to 6.30 p.m., when the last press conference would be transmitted to the Council of Ministers taking place that same evening, so that they could find out the details of the restrictions on public servants' wages, which they had announced would be implemented.

330. In this case, negotiations did not take place, nor was any specific information given on their measures and their scope, adopting a fait accompli policy. The measures in question were adopted unilaterally.

331. In the previously cited Council of Ministers of 20 May 2010, a royal decree-law was adopted, containing an "Extraordinary measures plan to reduce public spending by another 15,000 million within two years", which was outlined by the Government in the last press conference as:

> The royal decree-law approved today will enable us to close 2011 with a 6 per cent deficit of GDP for all the public administrations as opposed to the 7.5 per cent deficit previously envisaged.
>
> The approved measures seek to distribute the effort equally between the whole of society and involve all the public administrations.
>
> The plan will reduce public spending by an additional 5,250 million euros this year and by another 10,000 million euros in 2011.

The Council of Minsters has approved a royal decree-law and three agreements that draw up urgent measures for reducing the public deficit. They consist of a set of initiatives drawn up in different areas of the Administration, with the primary objective of accelerating fiscal consolidation provided for in the Stability and Growth Program, which will allow the financial year of 2011 to be closed with a public deficit of 6 per cent of GDP, as opposed to the 7.5 per cent initially envisaged.

This special adjustment plan highlights Spain's contribution to the stability of the joint currency and the coordinated response which the member countries of the Monetary Union have decided to bring to the turbulence that has affected the Euro economies in the last few weeks, and that they have advised to accelerate the fiscal consolidation plans envisaged by a large number of countries in the area.

Likewise, it forms part of the Government's strong commitment to sustain the public finances, which was already established in the State Budget of 2010 with a current expenditure cut equalling 0.8 per cent of GDP. This commitment was further deepened with the Updated Stability and Growth Program which was sent to Brussels last January, stating clearly the objective of reducing the Spanish public deficit by 3 per cent of GDP in 2013.

The document cited above detailed the instruments with which this objective would be met: the Immediate Action Plan 2010, entailing a reduction of 5,000 million euros by adopting non-availability agreements in the State budget expenditure for the current financial year; the Framework Agreements with the Autonomous Communities and Local Corporations to involve the territorial entities in the fiscal consolidation plan; and the 2011-2013 Austerity Plan which puts forward far-reaching cuts to public spending to save up to 2.6 per cent of GDP. It also outlined a deficit reduction path for each of the public administrations according to which the overall public deficit would decrease as follows: 11.2 per cent in 2009; 9.8 per cent in 2010; 7.5 per cent in 2011; 5.3 per cent in 2012; and 3 per cent in 2013.

The measures approved today modify this pattern of decrease, by concentrating almost two thirds of the adjustment between 2010 and 2011 and leaving just one third of the total consolidation for the final two years of the program, so that now the deficit would stand at 9.3 per cent in 2010; 6 per cent in 2011; 4.4 per cent in 2012; and 3 per cent in 2013. To achieve this, the Government has approved, in this royal decree-law and in one of the agreements, a series of adjustment measures in different areas. It is also presenting new framework agreements to the autonomous communities and local corporations so that the territorial entities also cooperate in this new, more ambitious, fiscal consolidation objective.

Measures included in the royal decree-law

The royal decree-law specifies the adjustment measures to be adopted in the next few weeks to achieve the additional reduction of 1.6 points of the GDP of the public deficit in 2011. The predicted savings for public expenditure equal an additional 5,250 million in 2010 and another 10,000 million in 2011.

A reduction of 5 per cent in public wages

The royal decree-law establishes an average reduction of 5 per cent per annum in the wages of public servants. This will be applied progressively to minimise the effect on the lowest wages. The scale will oscillate between 0.56 per cent and 7 per cent according to the income level of the professional group, will affect all personnel in the public administrations and will be applied equally to basic and complementary remuneration. The senior officials will have their wages reduced by between 8 per cent and 15 per cent. This reduction will come into force on payrolls from June, and the wages will remain frozen for 2011.

The savings that this measure should generate for the General State Administration are quantified as 535 million euros in 2010 and 1,035 million in 2011. For the territorial administrations it should result in savings of 1,765 million this year and 3,465 million the next year.

[…]

There are three key factors that will contribute to this adjustment on the expenditure side: withdrawing transitional measures, spending the minimum possible on unemployment benefits due to the need for progressive economic recovery and finally, the measures that the

> Government is going to apply in the next three financial years, which are as follows: freezing public servants' remunerations for 2011 following the 5 per cent reduction foreseen for 2010.

332. Thereby, the complainant organization points out that the result reached through collective bargaining on the public sector was completely eliminated, rendering invalid the binding commitments reached between the parties.

333. The complaint organization notes that Royal Decree-Law No. 8/2012 contains the following:

> Thus in compliance with article 36, section 2, paragraph two and article 38, paragraph 10 of the Law on the Basic Statute of Employees, the General Negotiating Table of the Public Administrations met on 20 May of this year to inform the trade unions about both the suspension of the agreement of 25 September in the terms set forth, and the measures and criteria laid out by the Royal Decree-Law in this area.

334. The Royal Decree-Law which adopts extraordinary measures to reduce the public deficit was validated by the Congress of Deputies on 27 May 2010, in which article 1 modifies Law No. 26/2009 of 23 December, on the general state budget for 2010, which in its new draft (and which remains to be seen once the budget year has advanced) establishes a 5 per cent reduction in the wage sum of public servants, which includes all remunerations relating to wages and other areas, as well as social expenditure. The Preamble states:

> It is necessary to refer to the Government and Trade Union Agreement for the public sector in the context of the social dialogue of 2010-2012, singed on 25 September 2009, in which is adopted, inter alia, a salary increase of 0.3 per cent for 2010 and a wage revision clause to comply with the principle of maintaining the purchasing power of public servants during the agreement's validity period, taking into account the budgetary development in line with the CPI, the economic growth forecast, the financing capacities of the General State Budget and the calculated increased productivity in the public service based on measures or specific programs.
>
> Economic measures in the above Agreement are directly affected by the economic crisis referred to above, rendering it impossible to uphold the remuneration measures agreed upon, and urgent action to reduce the public deficit is called for.
>
> In view of this, the Council of Ministers has agreed, through the Royal Decree-Law, under the provisions of article 38, section 10 of Law No. 7/2007, of 12 April, on the Basic Statute of Public Employees, to partially suspend the application of the clauses referring to the agreement on remuneration.
>
> Additionally, complying with the provisions of article 36, section 2, paragraph two and article 38, section 10 of the Law on the Basic Statute of Public Employees, the General Negotiating Table of the Public Administration met on 20 May of this year to inform the trade unions of both the suspension of the Government and Trade Unions Agreement of 25 September in the terms set forth, and the measures and criteria laid out by the Royal Decree-Law in this area.

335. According to the complainant, the second additional provision of Royal Decree-Law No. 8/2010, seeks to protect the infringement on public servant's remuneration, and completely ignores the wage rights contained in the collective agreements and accords in force; it suspends the Government and Trade Union Agreement for the Public Sector, of 25 September 2009, which adopted, among other measures, a wage increase of 0.3 per cent for 2010 and a wage revision clause for 2012, aimed at maintaining the purchasing power of public servants during the agreement's validity period, as follows:

> Second additional provision. Suspension of the Government and Trade Union Agreement for the public sector within the framework of the 2010-2012 social dialogue. It has been agreed that from 1 June 2010 the partial suspension of the Government and Trade Union Agreement for the public sector within the framework of the 2010-2012 social dialogue signed

on 25 September 2009, shall come into effect, in the necessary timeframe for the correct application of the Royal Decree-Law, and specifically, the economic measures.

336. Nevertheless, as can be seen, the unilateral modification of wage conditions is not confined, as can be seen, to the suspension of the Government and Trade Union Agreement cited above, since this would have led to a wage freeze for the previous year, the moment the wage rise for 2010 consisting in a maximum 0.3 per cent rise, ceased to apply; furthermore, it also entails an average 5 per cent reduction in wages and other types of remuneration for both civil servants and public employees. These wage reductions, imposed unilaterally by the Government, by a royal decree-law, were applied to all public servants' payrolls from June 2010.

337. The complainant organization points out that prior to resorting to legal procedures, it called for a 24-hour strike on 8 June 2010, which concerned all civil servants and public employees, aiming to achieve compliance with the agreements made between the trade unions and the Government, and in particular, strict compliance with the Government and Trade Union Agreement 2010–12 for the Public Sector, signed 25 September 2009, as well as compliance with the clauses of all the agreements and accords reached both in the different public administrations, and also in the wage clauses of the agreements and accords of public entities and companies which the Government simply repealed with no further follow-up.

338. The collective agreements or accords were already in force for these employees when the events that sparked this complaint took place; their [the collective agreements] precepts on remuneration in no way allow for the possibility of a reduction, and much less so if such practises are imposed unilaterally by the Administration. The restrictive measures adopted regarding remunerations apply to both civil servants and public employees in different public sector institutions and companies (in the latter case governed by the private sector workers' regulations). The complainant organization maintains that these measures infringe on the Constitution and the legislation in force.

339. The FSC-CCOO points out that its legal services filed many cases with separate judicial bodies. The first claims brought before the Social Chamber of the National Court, all resulted in orders which urged the issue of constitutionality to be examined, but the Constitutional Court issued a decree on 7 June, published in the *Official State Bulletin (BOE)* of 4 July, which refused to consider the issue of unconstitutionality raised by the Social Chamber of the National Court without assessing the core of the case lodged, asserting that the Royal Decree-Law "neither regulates the general regime of the right to collective bargaining nor does the inviolability of the collective agreement figure as one of its fundamental elements.

B. The Government's reply

340. In its communication of 24 April 2012, the Government denies that Royal Decree-Law No. 8/2010 which adopts extraordinary measures to reduce the public deficit violates the standards set out in the Constitution of Spain or ILO Conventions Nos 87, 98, 151 and 154. It also states that the Government and Trade Union Agreement for the Public Sector within the framework of the 2010–12 social dialogue, of 25 September 2009 (*BOE* 26/10), is not a conventional collective agreement, regulated by part III of the Workers' Statute, but rather an agreement within the framework of social bilateral dialogue between the Government and trade unions which does not set out working conditions, but as a political agreement, sets out a specific line for the expenditure policy on personnel and other areas such as training etc. Indeed, the agreement which is made up of 50 points grouped in six paragraphs does not only focus on compensation but is much broader in scope. It also covers the following: encouraging the good management, quality and efficiency of the

public services; improving working conditions, enhancing the professionalism and productivity of public servants; rationalizing public employment, reducing instability and modernizing the Administration; strengthening trade union rights and supporting channels of collective bargaining; and in addition, it regulates the corresponding Follow-up Commission for the Interpretation and Evaluation of the Agreement. From the above, only that referring to the remuneration of public servants has elicited complaints from the CCOO regarding Royal Decree-Law No. 8/2010.

341. The Government points out that the Memorandum of Understanding was concluded in a context of economic crisis, as is clearly stated by the text itself, and that the position regarding remuneration is also clear: the principle, not the objective, which the remuneration measures comply with, is to maintain purchasing power by taking into account budgetary development in line with the growth of the Consumer Price Index (CPI), the economic growth forecast, the financing capacities of the general state budget and the calculated increased productivity in the public service based on measures or specific programs, and also agreed on is a small rise of 0.3 per cent in the nominative wage sum. The agreement was made under circumstances of economic difficulty and Royal Decree-Law No. 8/2010 was passed under these same circumstances. Consequently, with regard to Royal Decree-Law No. 8/2010, it must be emphasized that the measure agreed on at first, later turned out to be inadequate or insufficient to tackle the demands of the situation. The Government recalls that article 169(1) of the Constitution empowers the State to establish the general planning basis and coordination for economic activity and highlights that the remuneration of both civil servants and public employees of the public administrations weighs heavily on the Public Treasury. The state is empowered to direct general economic activity to achieve economic stability – macroeconomic objective stated in article 40(1) of the Constitution, which the recovery of budgetary equilibrium may gradually contribute to.

342. According to the CCOO, the meeting of the General Negotiating Table of the Public Administrations of 20 May 2010, held without agenda, aimed to explain how the 5 per cent cut in public servants' wages, which was to be approved in the next Council of Ministers, would be carried out. Regarding this issue, the Government adjoins the considerations of the General Directorate of the Public Service, due to both its participation in the proceedings and its responsibility for the application of ILO standards. These considerations state:

> Regarding the meeting of 20 May 2010, of the General Negotiating Table of the Public Administrations, "the minutes from the meeting show that despite the time pressure and the urgency generated by a particularly serious economic situation in Spain and Europe, the integral parts of the General Negotiating Table were aware of the proposals that the Administration planned to introduce in the General State Budget Law for 2010. In this regard, the minutes record how the Secretary of State of the Public Service took the floor and emphasized that convening this meeting was in line with the commitment adopted in the meeting held by the General Negotiating Table on 12 May 2010, to, as soon as possible analyse the measures which the Government planned to apply to reduce the public deficit. In this last meeting of 12 May, the trade unions present made clear their positions on how the aforementioned measures could affect the remuneration of public servants, and requested to call for a new meeting of the General Negotiating Table to carry out a more in-depth analysis of their possible effects. This meeting took place 20 May. It is established, therefore, that each side present at the General Negotiating Table of the Public Administrations held 20 May, was aware of the proposals made by the other, and that each side had the opportunity to propose what it thought necessary to defend its interests, being aware of what was being sought by the other. […]; each side was able to express its position and was aware of what the other side was seeking […].

343. Therefore, without prejudice to the above report of the General Directorate of the Public Service, it should be noted that, following the preamble to Royal Decree-Law No. 8/2010,

the meeting of the trade unions of 20 May aimed to inform these organizations. It was not, and does not purport to be a meeting for negotiations. The aim was to fulfil the Government's commitment to accelerate, in 2010 and 2011, the reduction of the initially predicted deficit, in response to the serious deterioration in the public finances which had to be addressed as a prerequisite for stable and lasting economic recovery. This was also expressed in the preamble to the Royal Decree-Law.

344. The Constitutional Court issued Decree No. 85/2011, of 2 June, in which it refused to consider the issue of the alleged unconstitutionality raised in the conflict with the FNMT. And it also issued Decree No. 101/2011, of 5 July, on the issue of unconstitutionality put forward by the Social Chamber of the National Court in the case on *State Ports and Port Authorities* and Decree No. 104/2011, of 5 July; this last issue of unconstitutionality was raised by the Social Chamber of the High Court of Andalusia, in the personnel labour affairs of the Board of Andalusia.

345. The Government points out that collective agreements resulting from collective bargaining which is constitutionally guaranteed, employ their binding force in the same way as norms in the legal order, within a hierarchical structure in which the norm of superior rank is the law, in material terms. In other terms, only if the Royal Decree-Law had not been validated by the Congress of Deputies, could it be considered that the Government and Trade Union Agreement had suffered an unjustified attack by the Executive Power; however, it was validated by the Congress of Deputies, which did not deem it necessary for it to be processed as a draft law.

346. The Government adds that in line with article 86 of the Constitution: (1) in cases of extraordinary and urgent need, the Government may issue temporary legislative provisions which shall take the form of decree-laws and which may not affect the regulation of the basic State institutions, the rights, duties and liberties contained in part 1, of the system of the Autonomous Communities, or the General Electoral Law; (2) the decree-laws must be submitted forthwith to the Congress of Deputies, which must be summoned for this purpose if not already in session. They must be debated and voted upon in their entirety within thirty days after their promulgation. Congress must expressly declare itself in favour of ratification or repeal within said period of time, for which purpose the Standing Orders shall establish a special summary procedure; (3) during the period established in the foregoing clause, their passage through the Cortes may be the same as for Government bills, by means of the emergency procedure.

347. The Government adds that the legislative provisions in the case of extraordinary and urgent need, were tried by the Constitutional Court with the understanding that as far as exercising political authority (article 97 of the Constitution), which "According to Judgement No. 29/1982 of May (RTC 1982/29) of the Constitutional Court, in principle and with a reasonable margin of discretion, it is the responsibility of the political bodies – the Government and Congress – to determine when the situation, in the case of extraordinary and urgent need, calls for a decree-law to establish regulations. This margin of discretion for legislative provisions conferred to the political bodies does not prevent the Court from controlling it …" (STC 111/1983, 2 December [RTC 1983, 111], FJ 5). Therefore the Government in principle has the competence and can use its initiative to decide when a situation, due to reasons of extraordinary and urgent need, requires legislative action in the form of a decree-law, if these reasons are clearly explained.

348. The Constitutional Court in this case ratified the legislative provisions, emphasizing that "if urgent measures had not been undertaken to radically reduce the public deficit, the speculative attacks on our economy would have intensified and over €27 million euros, which the interest on the debt would have cost in 2011, could have increased geometrically, making it impossible to use the funds saved by the measures referred to

above for productive action which, giving incentive to the real economy, would enable the very serious unemployment situation in our country to be improved as quickly as possible", also taking into account that the length of time it would have taken to process a law, even by means of emergency procedure, would have let to a "serious deterioration in our financial system, affected the credibility of our economy and would have probably hindered us from establishing the foundations for sustainable recovery, since we could not be compelled to geometrically increase the interest to serve the debt". The Government points out that the present one, thus, would figure as a clear decree-law used to handle "problematic economic situations" – a legal instrument, appropriate and suited to overcoming specific situations which, for reasons difficult to foresee, require immediate regulatory action to be carried out within a shorter timeframe than that required by the usual route or by the emergency proceedings for the application of parliamentary laws.

349. The National Court argues that the collective agreement can be modified during its validity period by another collective agreement, making it possible, therefore, for it to be suspended, modified and also suppressed during its validity through a law, which should respect its essential content, and when extraordinary and urgent circumstances arise, comply with the general evaluation test, so that the fulfilment of the legal good or goods protected by such measures, is carried out in a way that least impinges on the right for collective bargaining as well as on its functional side – freedom of association.

350. The Government points out that during the debate and vote on the validation of Royal Decree-Law No. 8/2010 in Congress, also submitted for consideration was to process it as a draft law, but the proposal was rejected by a majority. Effectively, processing it as a draft law and giving separate political representations the opportunity to participate in the process would have improved the provisions, in line with the normal democratic procedures of drafting laws, but nevertheless, the validated Royal Decree-Law has no less constitutional legitimacy, nor is it, as was stated, inferior to the law.

351. In any case, the Constitutional Court rejected the claim of unconstitutionality, considering it manifestly unfounded to determine, in a preliminary examination of the issues raised, its lack of viability and that therefore it was advisable to resolve this claim in the first procedural phase to avoid procedural delays which would affect other proceedings. In Decree No. 85/2011, the claim is dismissed by the following main reasons relating to the "infringement" of rights as the material limit of the Decree-Law: (1) the material limit prohibits the Decree-Law from regulating the general provisions of the disputed right, or from countering the provisions or essential attributes of this right; (2) the provisions of Royal Decree-Law No. 8/2010 under question, "don't regulate the general regime of the right to collective bargaining recognised in article 37(1) of the Constitution, nor do they stipulate anything on the binding force of the collective agreements in general, nor specifically, on those directly affected by them, which retain this binding force which is typical for this type of source, taken from its position in the system of sources of law"; (3) in reference to the binding force, it specifies that intangibility and inalterability should not be confused with the binding force of the collective agreement, and reiterates that, as has already been declared in the ruling of the Constitutional Court No. 210/1990 of 20 December, FFJJ 2 and 3 "the supposed intangibility or inalterability of the collective agreement before the legal standard does not emanate or derive from article 37(1) of the Constitution, even if it is a supervening norm" so that "by virtue of the principle of normative hierarchy, it is the collective agreement that should respect and submit not only to the formal law, but more generally, to the higher-ranking norms, and not the contrary"; (4) given that it negates the infringement of the law on collective bargaining, it does not examine the supposed infringement on freedom of association.

352. The National Court (that pushed forward the question of unconstitutionality), pronounces among others, Judgement No. 115/2011 of 20 July, which, through extensive reference to

the vicissitudes of the process and the Order of the Constitutional Court, dismisses the demands of certain trade union organizations and the National Court goes on to say:

> The doubts concerning constitutionality, raised by the Chamber on the part of the High Court, have been allayed. The Court considers them manifestly unfounded, and in recognizing that a statutorily valid collective agreement may be modified by the Royal Decree-Law for the reasons previously mentioned, we must necessarily conclude that the reduction in remuneration imposed by the National Tax Administration Agency (AEAT) on its employees did not infringe on the provisions of articles 7, 28(1), 37(1) and 86(1) of the Constitution nor those of article 41 ET, since the AEAT is subject to the law and right to conform with the provisions of article 103(1) of the Constitution, being obliged, as a result, to apply the reduction imposed by articles 22(4) and 25 of Law No. 26/2009 of 23 December for the General State Budget of 2010, in the terms stated by article 1 of Royal Decree-Law 8/2010 of 20 May.
>
> […]
>
> We also maintain that there has been no expropriation of any kind since the remuneration of public servants cannot exceed the wage sum established annually by the General State Budget Law, in accordance with the provisions of article 21(2) EBEP. This is precisely the case here, since Royal Decree-Law No. 8/2010 of 20 May, in the context of urgent and extraordinary need, reduced the wage sum of public servants, it being considered by the Constitutional Court that the vehicle used does not affect the essential content of the right to freedom of association in its functional approach to collective bargaining, which this Chamber respects under its own terms, in line with the mandate of article 5(1) LOPJ. Consequently, if the decrease in remuneration imposed by the AEAT was caused by its obligation to fulfil articles 22.4 and 25 of Law No. 26/2009 of 23 December, in the version given by Royal Decree-Law No. 8/2010 of 20 May, it must be concluded without doubt that this intervention was lawful and did not violate articles 7, 28(1), 37(1) and 86(1) of the Constitution, in relation to Article 41 ET, which forces both the primary appeal and the subsidiary one to be dismissed, since the controversial decrease has affected the overall wage sum with a reduction of 5 per cent, making it consequently inadmissible for the wage rate of 31 December 2009 to be maintained.

353. In conclusion, the Government reiterates that the ILO Conventions on collective bargaining and working conditions in the public administrations have been complied with, in short:

– The limitations imposed by the law on expenditure on personnel are feasible and founded and are adjusted to the Constitution of Spain and the overall legal system, in which it is up to the State to establish a wage ceiling for public servants through an inflation-containment policy by reducing the public deficit, and, as a priority, the investments in expenditure.

– The complaint constantly refers to the Government and Trade Unions Agreement of 25 September 2009, which, as previously shown, regulated the working conditions of public servants, but was an agreement made within the framework of social dialogue, which settled on a specific course of action for the expenditure and personnel policy, and, as such, was embodied in the General State Budget Law of Spain for 2010.

– Notwithstanding, the modification of the General State Budget Law by Royal Decree-Law No. 8/2010, affects public workers who fall within the scope of the collective agreements concluded under the original wording of said General State Budget Law, and who have had their wages reduced.

– Royal Decree No. 8/2010 was issued according to the provisions of article 86 of the Constitution, and therefore has the same effectiveness as a law passed in the *Cortes Generales*.

– The collective agreements are to be subject to the corresponding right established by the law, which is superior in the normative hierarchy; in other words, the primacy of the law over the agreement stems from the agreement's submission to the provisions which make this possible.

– Thus, the collective agreement may be altered by a decree-law, in accordance with the principle of normative hierarchy.

C. The Committee's conclusions

354. *The Committee observes that in this case the complainant organization objects to Royal Decree-Law No. 8/2010, approved by the Council of Ministers on 20 May 2010 (published on 24 May 2010) and validated by the Congress of Deputies on 27 May 2010 which: (1) citing the economic crisis and the need for urgent action to reduce the public deficit, suspends the clauses of the Government and Trade Union Agreement for the public service of 25 September 2009, which agree on a wage increase of 0.3 per cent for 2010 and contain a wage review clause applicable in 2012; this unilateral measure is part of a 5 per cent cut in the wage and other types of remuneration of employees working in the different public administrations, but also in the wage and other types of remuneration of a large part of public sector entities, including companies, associations and other public entities whose staff work under the labour standards of the private sector; (2) all public sector employees were covered by collective agreements or accords in which the clauses on remuneration did not provide for the possibility of a decrease. It is alleged that the trade unions were informed of the measures described on 20 May 2010 as a mere formality, not given sufficient detail and negotiations would have been held without them anyway, thus adopting a fait accompli policy.*

355. *As for the allegation of the complainant organization that Royal Decree-Law No. 8/2010 of May 2010, which set down cuts in the wages and other types of remuneration of those working in the public administration and the public sector at large, was adopted unilaterally by the Council of Ministers after a briefing with the Secretary of State of the Public Service, which was a mere formality, the Committee notes that according to the Secretary of State, the parties in the General Negotiating Table (body provided for in the legislation) were aware on 12 May 2010 of the proposed changes that were going to be introduced, (to analyse as quickly as possible the measures that the Government planned to apply to reduce the public deficit), with the trade unions stating their positions on the issue and then requesting a new meeting to carry out a more thorough review of the possible effects, a meeting which took place on 20 May 2010. The Committee notes that the Government highlights the time pressure and urgency that was felt due to the particularly serious economic situation in Spain and Europe. The Committee observes, however, that the text of Royal Decree-Law No. 8/2010 does not refer to any consultations taking place but points out that "the General Negotiating Table of the Public Administrations met on 20 May in order to inform the trade unions of the suspension of the Government and Trade Union Agreement of 25 September in the terms set forth, as well as the measures and criteria which it puts forward in this area".*

356. *The Committee notes that the versions of the complainant and the Government are diametrically opposed; while noting that the Government refers to economic circumstances of extraordinary gravity, which necessitated urgent action, the Committee regrets the absence of a genuine consultation process, particularly when taking into account that the proposed measures were applied to a significant part of the public sector and had the effect of suspending economic clauses in collective agreements. The Committee draws attention to "the importance it attaches to the promotion of dialogue and consultations on matters of mutual interest between the public authorities and the most representative occupational organizations of the sector involved", as well as "the value of*

consulting organizations of employers and workers during the preparation and application of legislation which affects their interests". The Committee highlights the importance of holding detailed consultations and making sure that the parties have sufficient time to prepare and express their points of view and discuss them in depth. The Committee also emphasizes that the process of consultation on legislation helps to give laws, programmes and measures adopted or applied by public authorities a firmer basis and helps ensure they are well respected and successfully applied; the Government should seek general consensus as much as possible, given that employers' and workers' organizations should be able to share in the responsibility of securing the well-being and prosperity of the community as a whole [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 1067 and 1072].*

357. *The Committee highlights the importance of these principles with regard to consultations on legislation that affects the interests of trade unions and their members.*

358. *The Committee wishes to turn to the substantive allegation made by the complainant organization: that is, whether or not the Royal Decree-Law violates Conventions Nos 87, 98, 151 y 154 ratified by Spain, by suspending the clauses on wages and other forms of remuneration in the Government and Trade Union Agreement on the Public Service of 25 September 2009 (which established a 0.3 per cent wage increase for 2010 and a wage revision clause applicable in 2012) as part of a 5 per cent cut in the wage and other forms of remuneration in the different public administrations, and in a large part of public sector, including companies, associations and other public entities (whose staff work under the labour standards of the private sector and under agreements or collective agreements containing clauses on remuneration which, according to the allegations, did not provide for the possibility of reductions in this area).*

359. *The Committee takes note of the statements made by the Government, the legal texts and jurisprudence and judgements it refers to, as well as its assertion that Royal Decree-Law 8/2010 does not violate Convention Nos 87, 98, 151 and 154. The Committee notes that, as transpires from the information given by the Government and from the legal texts and judgments it refers to (some have also been quoted by the complainant trade union): (1) the Government and Trade Union Agreement on the public service of 25 September 2009 was made under economically difficult circumstances, the same difficult circumstances under which the Royal Decree-Law, criticized by the complainant organization, was passed; this being because the Government and Trade Union Agreement later turned out to be inadequate or insufficient to respond to the economic situation; the Royal Decree-Law sought to ensure compliance with the Government's commitment to accelerate in 2010 and 2012 the reduction of the foreseen deficit, in response to a serious deterioration of the public finances which had to be corrected as a prerequisite for a stable and lasting economic recovery; (2) it is up to the Government to assess when a situation, due to extraordinary and urgent reasons, requires normative action in the form of a decree-law (the requirements of this law being regulated by the Constitution and reproduced in the Government's reply); (3) the Congress of Deputies validated the Royal Decree-Law and the Constitutional Court ratified the legislative provisions of urgent need for the Decree-Law to be issued; it also stated that by virtue of the principle of normative hierarchy, the collective agreement should be submitted to not only the law but also generically to the norms of higher judicial rank; the National Court deemed Royal Decree-Law No. 8/2010 to be within the law; the jurisprudence of this judicial body indicates that the suspension or modification of a collective agreement by law is possible in circumstances of extraordinary and urgent need, respecting its essential content and resulting in the least damage to the right to collective bargaining; (4) the Government and Trade Union Agreement for the public service of 25 September 2009 within the framework of social dialogue 2010-2012, is not a conventional collective agreement regulated by the Workers' Statute, but an agreement made within the framework of social bilateral dialogue*

between the Government and Trade Unions, which does not establish working conditions, but as a political agreement, sets out a specific line for the expenditure policy on personnel and many other areas (quality and rationalization of public services, productivity, professionalization etc.). With regards to this, the Committee wishes to point out that the terms of the Government and Trade Union Agreement establish specific and detailed commitments on the subject of remunerations as emerges from the text quoted in the allegations (clause 47) and, in the view of the Committee, the Agreement (which before the decree-law was incorporated in the General State Budget Law regarding the increase in remuneration) falls within collective bargaining covered by the principles of freedom of association and collective bargaining.

360. *Regarding the urgency and need alleged by the Government to draw up the measures in the Royal Decree-Law, and if the non-application of the increase in remuneration concluded in the collective agreements or contracts is justifiable, the Committee observes that the applicable texts provided by or mentioned by the complainant organization and the Government frame the governmental measures as part of the requirements for the stability of the common currency and the coordinated response which the Member States of the Single Currency decided to give to the turbulence that affected the Euro economies and that they advised to accelerate the plans for fiscal consolidation, envisaged by a large number of countries in the area; the extraordinary adjustment plan is also part of the firm commitment of the Government regarding the sustainability of the public finances, which was already enshrined in the provisions of the State of 2010 with a cut in current expenditure equalling 0.8 per cent of GDP and in which, what is more, headway was made with the updated Stability and Growth Programme, which was sent to Brussels in January 2012 and which stated the objective of reducing the Spanish public deficit by 3 per cent of GDP in 2013 (in view of the norms of the European Union).*

361. *The Committee particularly takes note of the arguments made by the Constitutional Court on the need and urgency of the Decree-Law, set out by the Government, on the repercussions of the crisis on sovereign debt and the consequences for State financing:*

> *... if urgent measures had not been undertaken to radically reduce the public deficit, the speculative attacks on our economy would have intensified and over 27 million euros, which the interest on the debt in 2011 would have cost, could have increased geometrically, making it impossible to use the funds, saved by the above measures, for productive action which, providing incentive to the real economy, would enable the very serious unemployment situation in our country to be improved as quickly as possible, also taking into account that the length of time it would have taken to process a law, even by means of the emergency procedure, would have led to a serious deterioration in our financial system, affected the credibility of our economy and would have probably hindered us from establishing the foundations for sustainable recovery, since we could not be compelled to geometrically increase the interest to serve the debt.*

362. *The Committee wishes to highlight the complexity of this case, connected in large part to the commitments stemming from adhesion to the Single Currency of the European Union, moreover in the context of an economic crisis seriously affecting a certain number of countries. The Committee notes that the Government emphasizes that the allegations concerning the supposed infringement on collective negotiation refer to a small nominative rise of 0.3 per cent of the wage sum in circumstances of economic difficulty. The Committee points out that the negotiated increase in question adopted and improved the previous wage and that the decree which suspended it led to a wage cut greater than 5 per cent. Collective bargaining being a fundamental right, the Committee recalls that, in context of economic stabilization, priority should be given to collective bargaining as a means of determining the employment conditions of public servants, rather than adopting legislation to restrain wages in the public sector [see* ***Digest****, op. cit., para. 1040]. The Committee also recalls that, if, as part of its stabilization policy, a government considers*

that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards [see ***Digest****, op. cit, para. 1024]. In addition, in previous cases, the Committee considered that, if a government wishes the clauses of a collective agreement to be brought into line with the economic policy of the country, it should attempt to persuade the parties to take account voluntarily of such considerations, without imposing on them the renegotiation of the collective agreements in force [see 365th Report, Case No. 2820 (Greece), para. 995]. The Committee has highlighted the importance of maintaining permanent and intensive dialogue with the most representative workers' and employers' organizations and that adequate mechanisms for dealing with exceptional economic situations can be developed within the framework of the public sector collective bargaining system [see 364th Report, Case No. 2821 (Canada), para. 378].*

363. *The Committee invites the Government to, in future, within the framework of social dialogue, bear in mind the principles referred to.*

The Committee's recommendations

364. ***In light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) While noting that the Government refers to economic circumstances of extraordinary gravity, which necessitated urgent action, the Committee regrets the absence of a genuine consultation process with the trade unions on Royal Decree-Law No. 8/2010 despite the importance of the wage cuts it contained, and stresses the importance of the principles on consultations referred to in the conclusions.

(b) The Committee invites the Government to, in the future, consider, within the framework of social dialogue, the principles set forth in the conclusions regarding collective bargaining in the event of economic difficulty or crisis.

CASE NO. 2984

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of The former Yugoslav Republic of Macedonia presented by the Independent Union of Journalists and Media Workers in the Republic of Macedonia

Allegations: The complainant alleges acts of anti-union discrimination from the employer, including the dismissal of a trade union leader

365. The complaint is contained in a communication from the Independent Union of Journalists and Media Workers in the Republic of Macedonia dated 2 September 2012.

366. The Government sent its observations in a communication dated 9 October 2012.

367. The former Yugoslav Republic of Macedonia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

368. In a communication dated 2 September 2012, the Independent Union of Journalists and Media Workers in the Republic of Macedonia alleges that its President, Ms Tamara Chausidis, who was employed for an indefinite period by the Broadcasting Company, ALSAT-M DOO, was dismissed by the company, in August 2011, to prevent her from pursuing her union activities. In particular, the complainant alleges that, before her dismissal, Ms Chausidis had been active in seeking information from the employer in relation to the dismissal of Mr Bobi Hristov (at the time a union representative in the company), allegedly done through a false resignation agreement, which the union considered was an act of anti-union discrimination (Mr Hristov filed a complaint which is still pending before the Basic Court No. 2 of Skopje).

369. The complainant indicates that Ms Chausidis was informed of the termination of her employment on the basis of an agreement that she states she had never seen nor signed. At her request, the State Labour Inspectorate conducted an inspection into these allegations. The Inspectorate's report states that "during this inspection it was established that on 1 August 2011 a written agreement was concluded for the termination of the employment agreement", pursuant to section 62(4) and 69(1) of the Labour Relations Act. The report further states that if Ms Chausidis believed that her signature was forged she should refer to the official institutions in the Ministry of Interior, and that, if she believed that her rights were violated, she can address the authorized Court, pursuant to article 181 of the Labour Relations Act. The complainant adds that Ms Chausidis subsequently submitted, in August 2011, an application to the Basic Court No. 2 of Skopje and that the case is still pending before the court.

370. The complainant requests the Committee to recommend that Ms Chausidis be reinstated in her previous position and adequately compensated, and that adequate measures be adopted to avoid the repetitions of acts of anti-union discrimination in the future.

B. The Government's reply

371. In its communication dated 9 October 2012, the Government indicates that the national legislation contains a number of provisions protecting workers from anti-union discrimination, including the right to protection of trade union representatives by the State Labour Inspectorate, as well as the possibility for employees to seek court protection.

372. In the particular case of Ms Tamara Chausidis, the Government indicates that, after the intervention of the State Labour Inspectorate, litigation proceedings have been initiated and are still in progress. Should the Court reach a final decision finding that her employment has been unlawfully terminated, she is entitled to return to work, if she so requests, with full compensation.

373. The Government confirms that Ms Chausidis addressed the State Labour Inspectorate in order to protect her rights. The very next day, the Inspectorate conducted control procedures and inspection of the employer, and found that the employment had been terminated on the grounds of a consent signed by both the employee and the employer, which meant that this was a case of amicable termination of employment (pursuant to

article 69 of the Labour Relations Act). While noting that the employee has contested the validity of the signature on the consent, the Government indicates that the validity of the signature cannot be determined by the State Labour Inspectorate, but only by the court.

C. The Committee's conclusions

374. *The Committee notes that, in a communication dated 2 September 2012, the Independent Union of Journalists and Media Workers in the Republic of Macedonia alleges that its President, Ms Tamara Chausidis, who was employed for an indefinite period by the Broadcasting Company, ALSAT-M DOO, was dismissed by the company, in August 2011, to prevent her from pursuing her union activities. In particular, the complainant alleges that, before her dismissal, Ms Chausidis had been active in seeking information from the employer in relation to the dismissal of Mr Bobi Hristov (at the time a union representative in the company), allegedly done through a false resignation agreement, which the union considered was an act of anti-union discrimination (Mr Hristov filed a complaint which is still pending before the Basic Court No. 2 of Skopje).*

375. *The Committee further notes that the complainant indicates that Ms Chausidis has been informed of the termination of her employment on the basis of an agreement that she states she had never seen nor signed. Both the complainant and the Government indicate that, at Ms Chausidis' request, the State Labour Inspectorate conducted an inspection into these allegations which concluded that on 1 August 2011 a written agreement was signed for the consensual termination of the her employment, pursuant to section 62(4) and 69(1) of the Labour Relations Act. Ms Chausidis subsequently submitted, in August 2011, an application to the Basic Court No. 2 of Skopje and the case is still pending before the court.*

376. *The Committee further notes that, in its communication dated 9 October 2012, the Government indicates that the validity of the signature on the consensual termination agreement cannot be determined by the State Labour Inspectorate, and specifies that should the court reach a final decision finding that her employment has been unlawfully terminated, Ms Chausidis is entitled to return to work, if she so requests, with full compensation.*

377. *The Committee notes with regret that the labour inspectorate did not apparently address or consider the allegations of anti-union discrimination raised by Ms Chausidis and merely limited itself to taking note of an allegedly consensual agreement. The Committee recalls in this regard that it has considered that governments should take the necessary measures to enable labour inspectors to enter freely and without previous notice any workplace liable to inspection, and to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the legal provisions – including those relating to anti-union discrimination – are being strictly observed [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 834]. Moreover, the Committee observes with concern that this is the second alleged case of false resignation or termination agreement at the Broadcasting Company, ALSAT-M DOO and that both cases are still pending consideration at the court of first instance nearly two years after the termination of the employment relationship. The Committee requests the Government to take the necessary measures to ensure that, in the future, labour inspectors fully inquire into allegations of anti-union discrimination so as to ensure that such matters are examined rapidly and effectively, and requests the Government to keep it informed of developments in this regard.*

378. *Moreover, recalling that, in a case in which proceedings concerning dismissals had already taken 14 months, the Committee requested the judicial authorities, in order to*

*avoid a denial of justice, to pronounce on the dismissals without delay and emphasized that any further undue delay in the proceedings could in itself justify the reinstatement of these persons in their posts [see **Digest**, op. cit., para. 827], the Committee requests the Government to ensure that the legal proceeding filed by Ms Chausidis is concluded without delay and to keep it informed of the outcome. Pending the conclusion of the legal proceedings, and taking into account the fact that Ms Chausidis is a union leader, the Committee requests the Government to ensure her immediate reinstatement. Furthermore, if the termination of her employment is found to constitute an act of anti-union discrimination, the Committee expects her to receive adequate compensation which would constitute a sufficiently dissuasive sanction against anti-union dismissals.*

The Committee's recommendations

379. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee requests the Government to take the necessary measures to ensure that, in the future, labour inspectors fully inquire into allegations of anti-union discrimination so as to ensure that such matters are examined rapidly and effectively, and requests the Government to keep it informed of developments in this regard.

(b) The Committee requests the Government to ensure that the legal proceeding, filed by Ms Chausidis is concluded without delay and to keep it informed of the outcome. Pending the conclusion of the legal proceeding, and taking into account the fact that Ms Chausidis is a union leader, the Committee requests the Government to ensure her immediate reinstatement. Furthermore, if the termination of her employment is found to constitute an act of anti-union discrimination, the Committee expects her to receive adequate compensation which would constitute a sufficiently dissuasive sanction against anti-union dismissals.

CASE NO. 2914

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of Gabon presented by the Gabonese Labour Confederation-Force libre (CGT-FL) and supported by the World Federation of Trade Unions (WFTU)

Allegations: The complainant organization reports acts of anti-union discrimination against members of the enterprise trade union SYLET, in particular the dismissal of seven trade union officials, and also acts of interference by the employer

380. The complaint is contained in a communication dated 9 January 2012 from the Gabonese Labour Confederation-Force libre (CGT-FL). The World Federation of Trade Unions (WFTU) supported the complaint in a communication dated 9 January 2012.

381. The Government sent information in a communication dated 8 February 2013.

382. Gabon has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

383. In its communication dated 9 January 2012, the CGT-FL reports acts of anti-union discrimination against officials of an affiliated organization, the TELECEL Employees' Free Trade Union (SYLET), the enterprise trade union at the Atlantique Télécom Gabon (MOOV-GABON) enterprise.

384. The complainant describes the context which resulted in the dispute between the trade union and the company and led to the submission of the complaint to the Committee, particularly the notice of strike action given by SYLET on 19 August 2009 with a view to getting the management of the enterprise to negotiate with regard to a number of demands concerning improvements to workers' living conditions. The complainant also denounces the company's refusal to implement measures relating to matters which were referred to conciliation by the labour court (records of 24 March and 2 September 2010). The complainant describes the following sequence of events:

- At the employer's request, negotiations resumed on 28 October 2011.
- SYLET sent written reminders to the enterprise concerning implementation of the agreements resulting from the negotiations.
- Notice of strike action was given.
- SYLET filed a complaint against the enterprise in the court of first instance of Libreville.
- SYLET applied to a bailiff for attachment (seizure) of the company's assets at various banks.
- The company suspended the members of the SYLET executive committee.
- The company dismissed seven of the ten SYLET executive committee members.

385. The complainant demands the reinstatement of the seven SYLET executive committee members who it considers to have been wrongfully dismissed. It also reports anti-union acts by the employer (surveillance of trade union officials, threats against trade unionists, intimidation of workers, use of strike-breakers). The complainant also denounces the excessive length and ineffectiveness of the labour directorate's mediation and arbitration procedures.

B. The Government's reply

386. In a communication dated 8 February 2013, the Government indicates firstly that the late transmission of its observations is due to the legal remedies sought by the parties to the

dispute and to the changes that have occurred, especially in the administration responsible for handling the matter.

387. The Government explains that the labour dispute at MOOV-GABON (hereinafter, the enterprise) essentially concerned the following points:

- The application of the 2010 administrative regulations, adopted in the wake of strikes, which provided for a number of social benefits (pay rise, regularization of employee reclassifications, increase in the housing allowance, payment of the company performance bonus, etc.).

- The application of the policy for assistance with vehicle purchase, which is based on two agreements. The first agreement is concerned with purchase by the employer of official vehicles which would be transferred to workers on payment of 20 per cent of the vehicle value after depreciation. The second agreement is concerned with facilitating the purchase of private cars through interest-free loans to workers. Implementation of the second agreement was postponed until the following month because of unfinished negotiations with the suppliers.

- The application of certain legal and regulatory provisions, especially with regard to the establishment of the Standing Committee for Economic and Social Cooperation (CPCES).

388. The Government indicates that the dispute was brought before the labour inspectorate, in accordance with sections 357 ff. of the Labour Code, and was referred to conciliation conducted by the Provincial Directorate of Labour, the Workforce and Employment of Estuaire province on 2 September 2010. Under the terms of the conciliation agreement, the employees undertook to cancel the notice of strike action, the employers agreed to refrain from any retaliation against the workers who had taken part in the protests leading to the notice of strike action, and both parties pledged to observe the timetable for the implementation of commitments laid down in the agreement.

389. According to the Government, because of procrastination by the employer in implementing its commitments, SYLET requested intervention by a bailiff to enforce the terms of the conciliation agreement. The bailiff ordered the enterprise to pay 407,124,199 CFA francs (XAF) (US$812,625) to cover company performance bonuses, dirty work allowances and the vehicle purchase plan (car plan). Since payment of the specified amount was not received, the bailiff ordered the attachment (seizure) of the enterprise’s financial assets at several banks in June 2011.

390. The enterprise, considering this act unjustified and inappropriate, took legal action to challenge the attachment. The urgent applications judge found that the conciliation agreement approved by the court made no mention of a jointly agreed amount that would constitute an enforceable order under the law and declared the attachment in progress to be null and void on account of this legal defect (court of first instance, urgent applications judge, Ordinance No. 149/2010-2011 of 29 July 2011).

391. Further to the decision of the court, the enterprise demanded explanations from the employees who had instigated the attachment of the bank accounts, on the grounds that the procedure had been harmful to the company. Of the 11 SYLET members who were questioned, four were exonerated on account of their conciliatory attitude. The enterprise argued that the attachment undertaken at the request of SYLET had disrupted its operations since it had been obliged to defer tax payments and payments to suppliers and employees. The enterprise considered that the SYLET officials had overstepped their rights and abused their prerogatives as trade union representatives, undermining industrial relations and the

company's financial interests. The enterprise therefore sent a request to the labour inspectorate to authorize the dismissal of the SYLET officials for serious misconduct, on the grounds of a breach of trust that would prevent any continuation of the contractual relationship.

392. Further to the request for dismissal, the labour inspectorate held adversarial hearings in connection with the preliminary investigation and subsequently granted the authorization of dismissal for serious misconduct (Decision No. 0538/MTEPS/SG/DGTMOE/DPTMOEE of 20 October 2011). Consequently, the enterprise notified the workers concerned of their dismissal on 24 November 2011.

393. On the day following the notification of dismissal, the dismissed workers filed a hierarchical appeal with the Directorate-General of Labour, the Workforce and Employment to seek reversal of the labour inspectorate's decision. On examining the appeal, the Directorate-General of Labour found that dismissal was not applicable to the 11 employees concerned by the measure and stated that this gave the impression of differentiated treatment contrary to the principle of non-discrimination. Consequently, the Directorate-General of Labour overturned the authorization of dismissal granted by the labour inspectorate.

394. The decision to overturn the authorization of dismissal was sent to the Director-General of the enterprise in correspondence dated 29 December 2011. The Directorate-General of Labour called for the reinstatement of the seven employees, the payment of their wages and also the granting of benefits in kind backdated to the day of their suspension. According to the Government, this decision of the Directorate-General of Labour received widespread comment in the national press.

395. The enterprise filed a hierarchical appeal with the Labour Minister seeking reversal of the decision of the Directorate-General of Labour. However, on 16 January 2012, the Minister upheld the Labour Directorate-General's decision. In response to an appeal filed by the enterprise on 12 January 2012, the highest administrative authority ordered that the file should be handed over to the Director-General of Labour and the Legal Officer of the Treasury for a reply within 15 days (Council of State, Ordinance No. 038/PP-CE/27 February 2012).

396. The Government holds the view that the administrative and judicial authorities have discharged their role in the collective labour dispute and considers that the allegations of trade union rights violations in Gabon presented by the complainant are unfounded.

C. The Committee's conclusions

397. *The Committee notes that the present case concerns the refusal by an enterprise to implement agreements resulting from a conciliation procedure and the dismissal of members of the executive committee of the enterprise trade union.*

398. *The Committee notes from the information supplied by the complainant that, further to a labour dispute, SYLET gave notice of strike action on 19 August 2009 with a view to getting the management of the MOOV-GABON company (hereinafter, the enterprise) to negotiate with regard to a number of demands concerning improvements to workers' living conditions. In September 2010, an agreement on several points was found by means of a conciliation procedure. However, the enterprise refused to implement the points of agreement despite reminders from SYLET. Negotiations resumed on 28 October 2011 at the request of the enterprise. Nevertheless, SYLET filed a complaint against the enterprise in the court of first instance of Libreville and applied to a bailiff for attachment of the assets of the enterprise at various banks. In retaliation for the action by SYLET, the*

enterprise suspended the members of the SYLET executive committee and dismissed seven of them.

399. *The Committee notes the complainant's demand for the reinstatement of the seven SYLET executive committee members, who it considers to have been wrongfully dismissed. The Committee further notes that the complainant denounces the excessive length and ineffectiveness of the mediation and arbitration procedures of the Labour Directorate-General.*

400. *The Committee notes the Government's explanations concerning the dispute between SYLET and the enterprise. According to the Government, the dispute was brought before the labour inspectorate and was referred to conciliation conducted by the Provincial Directorate of Labour, the Workforce and Employment of Estuaire province on 2 September 2010. Under the terms of the conciliation agreement, the employees undertook to cancel the notice of strike action, the employers undertook to refrain from any retaliation against the workers who had taken part in the protests leading to the notice of strike action, and both parties pledged to observe the timetable for the implementation of commitments laid down in the agreement. However, because of procrastination by the employer in implementing its commitments, SYLET requested intervention by a bailiff to enforce the terms of the conciliation agreement. The bailiff ordered the enterprise to pay 407,124,199 CFA francs (US$812,625) to cover company performance bonuses, dirty work allowances and the vehicle purchase plan (car plan). Since payment of the specified amount was not received, the bailiff ordered the attachment of the enterprise's financial assets at several banks in June 2011.*

401. *The Committee notes the Government's indication that the enterprise took legal action to challenge the attachment and secured a nullification of the attachment by the urgent applications judge. Further to the decision of the court, the enterprise demanded explanations from the employees who had instigated the attachment of the bank accounts, on the grounds that the procedure had been harmful to the company.*

402. *The Committee notes the indication that, of the 11 SYLET members who were questioned by the enterprise, four were exonerated on account of their conciliatory attitude. However, the enterprise argued that the attachment undertaken at the request of SYLET had disrupted its operations since it had been obliged to defer tax payments and payments to suppliers and employees. Holding the view that the SYLET officials had abused their prerogatives as trade union representatives, undermining industrial relations and the financial interests of the enterprise, the enterprise sent a request to the labour inspectorate to authorize the dismissal of the SYLET officials for serious misconduct, on the grounds of a breach of trust that would prevent any continuation of the contractual relationship. The labour inspectorate, having granted the authorization in October 2011, the enterprise notified the workers concerned of their dismissal on 24 November 2011.*

403. *The Committee notes that, following the notification of dismissal, the workers concerned filed a hierarchical appeal with the Directorate-General of Labour, the Workforce and Employment (Directorate-General of Labour) to seek reversal of the labour inspectorate's decision. On grounds of discriminatory treatment, the Labour Directorate-General overturned the authorization of dismissal granted by the labour inspectorate. In the decision to overturn the authorization of dismissal sent to the Director-General of the enterprise in correspondence dated 29 December 2011, the Directorate-General of Labour called for the reinstatement of the seven employees, the payment of their wages and also the granting of benefits in kind backdated to the day of their suspension. According to the Government, this decision of the Directorate-General of Labour received widespread comment in the national press.*

404. *The Committee notes that the enterprise filed a hierarchical appeal with the Minister of Labour seeking reversal of the decision of the Directorate-General of Labour. However, on 16 January 2012, the Minister upheld the Directorate-General of Labour's decision. Moreover, in response to an appeal filed by the enterprise on 12 January 2012, the Council of State ordered that the file should be handed over to the Director-General of Labour and the Legal Officer of the Treasury for a reply within 15 days (Council of State, Ordinance No. 038/PP-CE/27 February 2012).*

405. *The Committee notes the Government's view that the administrative and judicial authorities have discharged their role in this matter and that the allegations of trade union rights violations presented by the complainant are unfounded.*

406. *The Committee observes that, for its part, the complainant organization denounces anti-union acts by the enterprise (surveillance of trade union officials, threats against trade unionists, intimidation of workers, use of strike-breakers). Noting that the Government has not sent any observations regarding these serious allegations, the Committee requests it to take the necessary steps, particularly through the inspection services, to investigate their veracity and to keep it informed of the outcome and any follow-up action taken.*

407. *With regard to the suspension of the members of the SYLET executive committee and the dismissal of seven of them for applying to the court for attachment of the assets of the enterprise to honour the commitments made in the conciliation agreement, the Committee recalls that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. One way of ensuring the protection of trade union officials is to provide that these officials may not be dismissed, either during their period of office or for a certain time thereafter except, of course, for serious misconduct. In no case should it be possible to dismiss a trade union officer merely for having presented a list of dispute grievances; this constitutes an extremely serious act of discrimination [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 799, 804 and 808].*

408. *The Committee notes the various legal remedies sought by the parties which resulted, in particular, in a decision of 16 January 2012 from the Minister of Labour calling for the reinstatement of the seven SYLET members, upholding a decision of the Directorate-General of Labour. The Committee notes the intervention of the administrative and judicial authorities in this matter, in accordance with the legislation in force, and the decision taken. However, the Committee notes with regret that, more than a year after the imposition of a ministerial order on the enterprise, the Government has not sent any information on the follow-up action taken, in particular indicating whether the seven SYLET members were actually reinstated by the enterprise. The Committee requests the Government to indicate whether the seven SYLET executive committee members who were dismissed have been reinstated by the enterprise as required by the decision of the Directorate-General of Labour in October 2011 and upheld by a ministerial decision of January 2012. If not, the Committee expects that all possible steps will be taken to enforce the administrative decision without delay and that the workers will be reinstated under the prescribed conditions. Should there be any compelling and objective reasons why reinstatement proves impossible, the Committee requests the Government to take the necessary steps to ensure that appropriate compensation is paid, such as to constitute an adequate deterrent against acts of anti-union discrimination.*

409. *With regard to observance of the agreements reached, the Committee recalls the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations. Moreover, agreements should be binding on the parties [see* ***Digest****, op. cit., paras 934 and 939]. The Committee requests the Government to indicate the extent to which effect has been given to the agreements reached in September 2010 between SYLET and the enterprise as a result of the conciliation procedure.*

The Committee's recommendations

410. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) Noting that the Government has not sent any observations regarding the serious allegations of anti-union acts, the Committee requests it to take the necessary steps, particularly through the inspection services, to investigate their veracity and to keep it informed of the outcome and any follow-up action taken.

(b) The Committee requests the Government to indicate whether the seven SYLET executive committee members who were dismissed by the MOOV-GABON company have been reinstated as required by the decision of the Directorate-General of Labour in October 2011 and upheld by a ministerial decision of January 2012. If not, the Committee expects that all possible steps will be taken to enforce the administrative decision without delay and that the workers will be reinstated under the prescribed conditions. Should there be any compelling and objective reasons why reinstatement proves impossible, the Committee requests the Government to take the necessary steps to ensure that appropriate compensation is paid, such as to constitute an adequate deterrent against acts of anti-union discrimination.

(c) The Committee requests the Government to indicate the extent to which effect has been given to the agreements reached in September 2010 between SYLET and the enterprise as a result of the conciliation procedure.

CASE NO. 2445

INTERIM REPORT

Complaint against the Government of Guatemala presented by
– the World Confederation of Labour (WCL) and
– the General Confederation of Workers of Guatemala (CGTG)

Allegations: Murders, threats and acts of violence against trade unionists and their families; anti-union dismissals and refusal by private enterprises or public institutions to comply with judicial reinstatement orders; harassment of trade unionists

411. The Committee last examined this case at its June 2012 meeting, when it presented an interim report to the Governing Body [see 364th Report, approved by the Governing Body at its 314th Session (June 2012), paras 519 to 537].

412. The Government sent partial observations in communications dated 31 October 2012 and 28 February and 5 March 2013.

413. Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

414. At its June 2012 meeting, the Committee made the following recommendations [see 364th Report, para. 537]:

(a) The Committee regrets that, despite the time that has elapsed since its last examination of the case, the Government has not sent observations on all the allegations pending from its examination of the case at its March 2010 and March 2011 meetings. Emphasizing that some of the alleged events are extremely serious and occurred in 2004, the Committee expects the Government to send all the information requested in the very near future.

(b) With regard to the allegations relating to the absence of measures by the authorities to promote collective bargaining between the El Carmen Estate and the trade union, the Committee regrets that the Government has not supplied the information requested in its previous examination of the case. Taking note of the Government's statement that the proceedings have stalled, the Committee requests the Government to take the necessary steps to resolve the problem and to keep it informed of any measure taken to promote collective bargaining at the El Carmen Estate.

(c) Lastly, with regard to the remaining allegations, in view of the lack of observations from the Government, the Committee once again reiterates the following recommendations:

– As regards the allegation concerning death threats against members of the Trade Union Association of Itinerant Vendors of Antigua, including its general secretary, the Committee notes that the competent court was unable to initiate proceedings owing to the lack of information from the trade union. The Committee is bound to observe with regret that this situation results in impunity for those who issued the death threats and requests the Government to take steps to ensure that an

independent investigation into these allegations is launched without delay and to keep it informed of its results.

– As regards the allegations concerning the attempted murder of trade unionist Mr Marcos Álvarez Tzoc, noting the Government's indication that the ruling issued by the Constitutional Court against Mr Julio Enrique de Jesús Salazar Pivaral is not yet enforceable, the Committee requests the Government to keep it informed with respect to the enforcement of the penalty imposed by the ruling of the Court of Criminal Judgment.

– As regards the murder of Mr Julio Rolando Raquec, the Committee regrets that the investigations have not enabled the perpetrators to be identified and urges the Government to continue to take steps towards this end and to keep it informed of any developments in the investigation in question.

– As regards the necessary measures to safeguard the lives of the wife and children of the murdered trade unionist, Mr Julio Rolando Raquec, the Committee requests the Government to make all efforts to discover the whereabouts of Ms Lidia Mérida Coy, the chief eyewitness to the murder of her partner Mr Julio Rolando Raquec. The Committee once again urges the Government to take steps to ensure her safety and that of her children.

– The Committee once again requests the Government to communicate the outcome of the inquiries carried out by the national police and the Prosecutor-General for Human Rights into the allegation concerning the selective surveillance and theft of laptop equipment belonging to Mr José E. Pinzón, Secretary-General of the CGTG.

– With regard to the alleged dismissal of workers at the El Tesoro Estate (municipality of Samayac), for submitting lists of claims during negotiations on a collective agreement, despite a judicial reinstatement order, the Committee again requests the trade union to which these trade unionists belong, to request the competent legal authority to implement the reinstatement order.

– With regard to the alleged threats against the employees of the General Directorate of Civil Aviation who participated in a protest in front of the building against the constant abuse by the administration (according to the allegations, the General Directorate's chief maintenance officer threatened that they would be reported and subsequently dismissed, if they were five minutes late back to work, and then took photographs of them) and with regard to the intimidation by security officers against the members outside the room where the union's general assembly was to be held, the Committee regrets that the Government has not sent its observations and urges it to do so without delay.

(d) The Committee calls the Governing Body's attention to the extreme seriousness and urgent nature of this case.

B. The Government's reply

415. In its communications of 31 October 2012 and 28 February 2013, the Government has sent confidential information concerning the murder, on 28 November 2004, of Mr Julio Rolando Raquec Ishen, General Secretary of the Trade Union Federation of Informal Workers. Based on information provided by the Public Prosecution Services, the Government states that the case has been shelved for lack of cooperation from the victim's widow, Ms Mérida Coy, an eyewitness to the murder. The Government states that the victim's widow had initially identified, from a photograph album, a suspect accused of various offences and convicted of a separate murder. The investigation gave rise to the hypothesis that Mr Julio Rolando Raquec Ishen had been murdered because of the extortion suffered by his wife. It is hoped that another eyewitness, who also identified the suspect, will cooperate in the future. The Government adds that the official's widow, alleging fear of reprisals, had requested relocation to the United States with her family and payments of US$3,000 a month. When presented with a much lower offer, in May 2012,

she again refused to cooperate with the investigation, stating that her refusal was final in view of the fact that her requests had not been met.

416. In its communication of 28 February 2013, the Government reports that a group of investigators had been contracted and, under the guidance of the relevant prosecution services, were working to speed up the investigations regarding the violent deaths of trade unionists and identify possible common patterns that might enable to pinpoint any state or other policy behind these crimes.

417. In its communication of 5 March 2013, the Government reports that the Public Prosecution Services have decided to institute a high-level round table with the country's main trade union associations to analyse cases of violence against trade unionists. This body will meet once a month from 7 March 2013. In addition, the Government reiterates the Public Prosecution Services' request to the ILO for technical assistance to tackle anti-union violence more effectively.

C. The Committee's conclusions

418. *The Committee regrets that, despite the time that has elapsed since its last examination of the case, the Government has not sent observations on all the allegations pending from its examination of the case at its March 2010, March 2011 and June 2012 meetings. Emphasizing that some of the alleged events are extremely serious and occurred in 2004, the Committee urges the Government to send all the information requested without delay.*

419. *The Committee takes note of the information provided by the Government concerning the investigations into the murder of trade union official Mr Julio Rolando Raquec, which indicates that a possible motive for the crime could be the extortion of money suffered by the victim's widow. The Committee regrets that, despite the investigations having identified a suspect, they have not led to those responsible being prosecuted or punished. The Committee recalls that the absence of judgments against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 52]. The Committee underlines the fact that it is essential to the fight against impunity for those who planned and carried out this murder and the motives for the crime to be identified and for the perpetrators to be prosecuted and punished by the courts. The Committee urges the Government to take all necessary steps in this regard and to keep it informed of any developments.*

420. *The Committee takes note of the information provided by the Government concerning Ms Mérida Coy, the wife of Mr Julio Raquec, indicating that, in May 2012, due to fear of reprisals and because she had received a much lower offer of support than she had hoped for to relocate to the United States, she definitively refused to cooperate in the investigation into her husband's murder. The Committee expects that, regardless of Ms Mérida Coy's participation in the investigation, the Government will take the appropriate steps to guarantee her safety and that of her children.*

421. *The Committee regrets that it has not received new observations from the Government concerning death threats against members of the Trade Union Association of Itinerant Vendors of Antigua, including its General Secretary. The Committee had noted that the court had been unable to initiate proceedings owing to the lack of information from the trade union. The Committee once again regrets that this situation results in impunity for those who issued the death threats. In line with the commitments assumed by the Government of Guatemala in the Memorandum of Understanding signed on 26 March 2013 with regard to the institution of independent and expeditious judicial inquiries and*

protecting trade union members and officials from violence and threats, the Committee urges the Government to take immediate steps to establish a protection mechanism for persons who receive threats and to launch an independent investigation into these allegations without delay. The Committee requests the Government to keep it informed of the outcome of these actions.

422. *The Committee regrets that it has not received new observations from the Government with regard to the allegations concerning the attempted murder of trade unionist Mr Marcos Álvarez Tzoc. The Committee again requests the Government to keep it informed with respect to the enforcement of the penalty imposed by the Court of Criminal Judgment and, recalling the commitments made by the Government when it signed the Memorandum of Understanding on 26 March 2013, the Committee urges the Government to take immediate steps to establish a mechanism to protect Mr Marcos Álvarez Tzoc. As to the remaining allegations, in the absence of the Government's observations, the Committee yet again reiterates its previous recommendations, as reproduced above under the title of the previous examination of the case.*

423. *Finally, the Committee notes with interest the Government's statement that the Public Prosecution Services have decided to institute a high-level round table with the country's main trade union associations to analyse cases of violence against trade unionists. The Committee also notes with interest the signing, on 26 March 2013, of a Memorandum of Understanding between the Government of Guatemala and the Workers' group of the ILO Governing Body, in which the Government undertook, among other things, to: institute, through the competent bodies of the State, independent and expeditious judicial inquiries as soon as possible to determine responsibilities and punish those who planned and carried out the murders of trade unionists; and guarantee the safety of workers through effective measures to protect trade union members and officials from violence and threats so that they can pursue their union activities. The Committee firmly expects that these commitments will be translated into actions and tangible results with respect to the allegations still pending in this case and urges the Government to inform it of the results of these actions as soon as possible.*

The Committee's recommendations

424. ***In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee regrets that, despite the time that has elapsed since its last examination of the case, the Government has not sent observations on all the allegations pending from its examination of the case at its March 2010, March 2011 and June 2012 meetings. Emphasizing that some of the alleged events are extremely serious and occurred in 2004, the Committee urges the Government to send all the information requested without delay.

(b) With regard to the investigations into the murder of union official Mr Julio Raquec, the Committee urges the Government to take all necessary steps to identify the instigators and perpetrators of this murder and the motives for the crime and to ensure that the guilty parties are prosecuted and punished by the courts. The Committee requests the Government to keep it informed of any developments.

(c) With regard to the situation of Mr Julio Raquec's widow, the Committee expects that the Government will take the appropriate steps to guarantee her safety and that of her children.

(d) With regard to the death threats against members of the Trade Union Association of Itinerant Vendors of Antigua, the Committee urges the Government to take immediate steps to establish a protection mechanism for the persons who receive these threats and to institute an independent and expeditious judicial inquiry into these allegations without delay. The Committee requests the Government to keep it informed of the outcome of these actions.

(e) As regards the allegations concerning the attempted murder of trade unionist Mr Marcos Álvarez Tzoc, the Committee once again requests the Government to keep it informed with respect to the enforcement of the penalty imposed by the ruling of the Court of Criminal Judgment and urges the Government to take immediate steps to establish a mechanism to protect Mr Marcos Álvarez Tzoc.

(f) As to the remaining allegations, in the absence of the Government's observations, the Committee yet again reiterates its recommendations, which are reproduced below:

- ***the Committee once again requests the Government to communicate the outcome of the inquiries carried out by the national police and the Prosecutor General for Human Rights into the allegation concerning the selective surveillance and theft of laptop equipment belonging to Mr José E. Pinzón, Secretary-General of the CGTG;***

- ***with regard to the alleged dismissal of workers at the El Tesoro Estate (municipality of Samayac) for submitting lists of claims during negotiations on a collective agreement, despite a judicial reinstatement order, the Committee again requests the trade union to which these trade unionists belong, to request the competent legal authority to implement the reinstatement order; and***

- ***with regard to the alleged threats against the employees of the General Directorate of Civil Aviation who participated in a protest in front of the building against the constant abuse by the administration (according to the allegations, the General Directorate's chief maintenance officer threatened that they would be reported and subsequently dismissed, if they were five minutes late back to work, and then took photographs of them) and with regard to the intimidation by security officers against the members outside the room where the union's general assembly was to be held, the Committee regrets that the Government has not sent its observations and urges it to do so without delay.***

(g) The Committee firmly expects that the commitments assumed by the Government in the Memorandum of Understanding signed on 26 March 2013 between the Government of Guatemala and the Workers' group of the ILO Governing Body will be translated into actions and tangible results with respect to the allegations still pending in this case. The Committee urges the Government to inform it of the results of these actions as soon as possible.

(h) The Committee draws the Governing Body's attention to the extreme seriousness and urgent nature of this case.

CASE NO. 2609

INTERIM REPORT

Complaints against the Government of Guatemala presented by
– the Movement of Unions, Indigenous and Peasants of Guatemala (MSICG)
– the Trade Union Confederation of Guatemala (CUSG) and
– the Trade Union of Workers of Guatemala (UNSITRAGUA) supported by
the International Trade Union Confederation (ITUC)

Allegations: The complainants allege numerous murders and acts of violence against trade union members and acts of anti-union discrimination, as well as obstacles to the exercise of trade union rights and social dialogue, denial of legal status to several unions and system failures leading to impunity with regard to criminal and labour matters

425. The Committee last examined this case at its March 2012 meeting, when it presented an interim report to the Governing Body [see 363rd Report approved by the Governing Body at its 313th Session (March 2012), paras 574–619].

426. The Movement of Unions, Indigenous and Peasants of Guatemala (MSICG) sent additional information and new allegations in communications dated 26 September 2012 and 15, 17, 18, 20 and 22 February 2013. The Trade Union Confederation of Guatemala (CUSG) also sent new allegations in a communication dated 11 April 2012.

427. The Government sent its observations in communications dated 21 and 27 March; 24, 25, 26, 27 and 30 April; 7, 16 and 22 May; 6 June; 8, 9, 21 and 27 August; 12, 27 and 28 September; 15 and 30 October; 29 November; 6, 10 and 27 December 2012; 11 and 15 January; 11, 14 and 25 February; 5 and 15 March; 19 April and 6 May 2013.

428. Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

429. The Committee made the following recommendations at its March 2012 meeting [see 363rd Report, para. 619]:

(a) The Committee expresses its deep concern at the gravity of this case, given the numerous murders, attempted murders, assaults and death threats, kidnappings, harassment and intimidation of trade union officials and members, and also the allegations of blacklisting and the climate of total impunity. The Committee deeply regrets that the Government only provides a partial reply in respect of the allegations made.

Previously examined allegations of violence

(b) With regard to the murders of Mr Mario Caal and Mr Jaime Nery González, the Committee requests the complainant to indicate, in addition to the date on which the events occurred, the location of the events and the judicial authority with which the complaint was filed.

(c) With regard to the murders of union official Mr Israel Romero Istacuy and union members Mr Diego Gustavo Chite Pu and Mr Sergio Alejandro Ramírez Huezo, the Committee urges the Government once again to send information without delay on the investigations into these murders.

(d) The Committee requests the Government to keep it informed of the outcome of the investigations into the murders of union members Ms Olga Marina Ramírez Sansé and Mr Pedro Antonio García. The Committee urges the Government once again to conduct independent judicial investigations without delay into the murders of Mr Víctor Alejandro Soyos Suret and Mr Luis Arnaldo Ávila, and to keep it informed of their outcome and the subsequent criminal proceedings.

(e) With regard to the attempted murder of Mr Julián Capriel Marroquín, the Committee requests the Government to keep it informed of the outcome of the investigation in progress.

(f) With regard to the alleged death threats against SITRABI, the Committee urges the Government once again to send its observations on the matter without delay.

(g) With regard to the murder of union official Mr Marco Tulio Ramírez Portela, the Committee requests the Government to keep it informed of the outcome of the investigation in progress.

(h) With regard to the disappearance of the minor Ms María Antonia Dolores López, the Committee requests the Government to indicate whether any investigations have been conducted into this matter.

(i) With regard to the death threats against Ms Lesvia Morales and the attempted murder of Mr Leocadio Juracán, the Committee requests the complainant organization to indicate the place where the complaint was filed so that the Government can take follow-up action.

(j) With regard to the allegations of violence to which the Government has not replied, the Committee emphasizes their seriousness and regrets the lack of information from the Government. The Committee urges the Government to take steps to ensure that the investigations opened are concluded without delay so that the perpetrators are duly punished and requests the Government to provide detailed information on the outcome of the investigations. The Committee refers to the following investigations:

- the investigations concerning the injured workers from the Union of Small Traders and Allied Workers;
- the investigations concerning the death of a trade unionist following the use of excessive force and concerning the allegations of attempted extrajudicial killings, death threats and injuries to union members;
- the investigations concerning the death threats received by members of the National Health Union;
- the investigations concerning the criminal proceedings brought against officials of the Union of Workers of the Municipality of Zacapa; and
- the observations in relation to the allegations of harassment and intimidation submitted by SITRAPETEN, the CCDA and the MSICG.

(k) The Committee deeply deplores the acts of violence described in the complaint and expresses its deep concern at the large number of trade union officials and members who have been murdered and draws the Government’s attention to the fact that trade union rights can only be exercised in a climate that is free of violence, pressure or threats of any kind against trade unionists, and it is for governments to ensure that this principle is respected. The Committee once again observes with deep concern that the Government does not report on any murder suspects being detained. The Committee requests the Government to take measures as a matter of urgency to combat the total impunity

observed in relation to these allegations and urges the Government to take steps to ensure that the investigations opened are concluded without delay so that the perpetrators are duly punished and requests the Government to provide detailed information on the outcome of the investigations and the criminal proceedings instituted in this regard.

(l) Regretting that the Government has not supplied any information on the following aspects of several other of its previous recommendations, namely:

– the investigations concerning alleged blacklisting;

– the investigations concerning the alleged violation of freedom of association at the Las Américas SA and Crown Plaza Guatemala hotels;

– the registration and recognition of trade unions; and

– the outcome of the decisions taken by the judicial authorities regarding the reinstatement orders and dismissals affecting the Union of Workers of the Municipality of Chimaltenango, the Committee urges the Government to send the requested information relating to these allegations.

New allegations relating to acts of violence

(m) The Committee underlines the extreme seriousness of these allegations. The Committee deeply deplores the murders of 12 union officials and 13 union members (between 2007 and 2010), apart from the numerous cases already referred to in the context of the present case, and reiterates the principles referred to above. The Committee urges the Government to conduct independent inquiries without delay into the murders of the following union officials and members: Julio Cesar Ixcoy García, Pedro Zamora, Rosalio Lorenzo, Armando Sánchez, Maura Antonieta Hernández, Pedro Ramírez de la Cruz, Julio Pop Choc, Gilmer Orlando Borror Zet, Evelinda Ramírez Reyes, Samuel Ramírez Paredes, Juan Fidel Pacheco Coc, Bruno Ernesto Figueroa, Liginio Aguirre, Salvador del Cid, Licinio Trujillo, Aníbal Ixcaquic, Norma Sente Ixcaquic, Matías Mejía, Juana Xoloja, Willy Morales, Víctor Gálvez, Jorge Humberto Andrade, Adolfo Ich, Luis Felipe Cho and Héctor García. The Committee requests the Government to keep it informed of the outcome of the investigations and the subsequent criminal proceedings.

(n) As regards the murder of Mr Miguel Angel Felipe Sagastume, founder and former Seceretary-General of the Finca El Real Workers' Union, the Committee requests the Government to send its observations on the matter without delay.

(o) With regard to the attack against Ms Maria de los Angeles Ruano Almeda and Ms Ingrid Migdalia Ruano on 7 November 2011, the Committee requests the Government to provide its observations thereon without delay.

Other allegations

(p) With regard to the deduction of payments by the municipality of Malacatán, the Committee requests the Government to keep it informed of further developments.

(q) With regard to the climate of impunity which is mentioned repeatedly on account of undue delays amounting to a denial of justice, the Committee requests the Government to send its observations in this regard without delay.

(r) The Committee draws the special attention of the Governing Body to the serious and urgent nature of this case.

B. Additional information and new allegations from the complainants

Additional information

430. In its communication dated 26 September 2012, the MSICG states that from 2007 to 25 September 2012 there were 73 murders of trade union members and union rights' defenders. In 97 per cent of these cases, the victims and their organizations were involved

in disputes over labour grievances or over issues relating to indigenous people's rights. The MSICG indicates that most of these cases were duly reported to the Public Prosecutor's Office of Guatemala. In addition, there were 269 violent incidents against trade union members and union rights' defenders over the same period, including, inter alia, attempted extrajudicial killings, kidnappings, torture, rape, injuries and threats.

431. The complainant indicates that it is pointless to try to end the very serious situation of anti-union violence with social dialogue initiatives while the criminal investigation bodies are still completely ineffective. The weakness of the Public Prosecutor in pursuing crimes against trade unionists is evident as it has only dealt with some cases, and these exclusively concerned trade union leaders. The Public Prosecutor's Office is made up of only five officials who are all in the capital, and this unit is not capable of seriously investigating cases of anti-union violence. Furthermore, the complainant states that the information that the Government provided the Committee about the progress of the investigations and of the criminal procedures in the cases of anti-union violence is often inconsistent and very superficial. The complainant firmly rejects the policy of the Public Prosecutor's Office of systematically dismissing the possibility that the crime was motivated by anti-union sentiment even when the perpetrators and masterminds behind these murders have not been convicted or when there has been no investigation.

432. With regard to the murder of Mr Jaime Nery González, the MSICG indicates that it reported this murder to the Public Prosecutor's Office in 2008, that the case is before the Public Prosecutor's Office in Jalapa (agency No. 1) and that the guilty party has still not been identified despite the amount of time that has passed. The MSICG states that it reported the murder of Mr Mario Caal to the Public Prosecutor's Office in 2008, that the case is being handled by the unit for crimes against trade union members, that criminal proceedings have not been conducted and that no guilty party has been identified. The complainant considers that in denying the existence of these cases, the State of Guatemala shows its anti-union policy.

433. Regarding the murder of Mr Víctor Alejandro Soyos Suret, the MSICG indicates that he was a Public Prosecutor's Office official and a member of the Union of Employees of the Criminal Investigation Directorate of the Office of the Public Prosecutor (SITRADICMP), who was murdered in 2007; that the case is before the Public Prosecutor's Office for offences against life, under file No. MP 001/2009/59368; and that those responsible for this crime are still unknown. The complainant provides a communication concerning this case addressed to SITRADICMP from the Office of the Public Prosecutor dated 13 September 2012, which states that the Office intends to claim that Mr Víctor Alejandro Soyos Suret was not a trade union member in order to avoid investigating the case.

434. With regard to the death threats against Ms Lesvia Morales and the attempted murder of Mr Leocadio Juracán, the MSICG indicates that both cases were reported to the district Public Prosecutor and the Human Rights Ombudsman based in the capital. The MSICG adds that temporary protective measures have been coordinated with the Ombudsman until Mr Leocadio Juracán left the country with his family.

435. In communications dated 15 and 17 February 2013, the MSCIG provides additional information concerning the climate of labour impunity resulting from a significant backlog of labour-related cases and from not reinstating workers who were victims of anti-union dismissals. The complainant claims that the labour and social welfare courts' practice of suspending the reinstatement of dismissed trade union members if the employer challenges the court order for reinstatement violates labour legislation and the jurisprudence of the Constitutional Court, according to which reinstatement should not just be arranged within 24 hours but must actually be carried out within that same period. The complainant notes the case of many workers at the Tax Authority and the Guatemalan League against Heart

Diseases, who were dismissed for setting up trade unions and who have still not been reinstated. The complainant also alleges that in the case of the dismissal of members of the Finca la Soledad Workers' Union in the municipality of Patulul (SITRASOLEDAD), the employer has repeatedly refused to comply with the reinstatement orders with the complicity of the judicial authorities and without the Supreme Court agreeing to apply the law against judges who delay the administration of justice.

436. In a communication dated 20 February 2013, the MSCIG provides additional information concerning alleged obstacles standing in the way of unions gaining recognition and being registered. The complainant provides a list of 21 trade unions which have been refused registration in 2012 and 2013, and ten instances where the application to register trade unions has led to an employer filing their opposition which is then reviewed by the State for denying registration. The complainant adds that the attempts to form the Trade Union with Principles and Values of the Tax Authority (SITRAPVSAT), the Trade Union for the Dignity of the Tax Authority Workers (SIPROSAT) and the Guatemalan League against Heart Diseases Workers' Union (SIDETRALICO) reflect the State's anti-union policy which, in turn, explains the steady decline in union membership at the national and sectoral levels.

New allegations of violence

437. In a communication dated 11 April 2012, the CUSG alleges that Mr Roberto Oswaldo Ramos Gómez, Secretary for Labour and Disputes at the Workers' Union of the Municipality of Coatepque and member of the advisory council of the CUSG, was shot dead on 2 April 2012 while working in the booth at the municipal car park. The CUSG states that the murder remains unsolved. In addition, the CUSG indicates that the workers in the Municipality of Coatepeque are being threatened, intimidated and dismissed in violation of the existing collective agreement, and the Ministry of Labour and Social Welfare has not reacted.

438. In its communication of 26 September 2012, the MSICG alleges that Mr Manuel de Jesús Ramírez, Secretary-General of the Technical and Administrative Support Workers' Union of the Public Criminal Defence Institute, was murdered on 1 June 2012. He had been previously reinstated after a long trial following his anti-union dismissal, and was the subject of criminal proceedings brought by his employer.

Other allegations

439. In communications dated 18 and 22 February 2013, the MSICG alleges that the Workers' Union of the Guatemalan Social Security Institute, the Professional Workers' Union of the Guatemalan Social Security Institute, the Organized Workers' Union of the National Attorney-General's Office and the Workers' Union of the Office of the Comptroller General of United Accounts for Development were harassed and criminally prosecuted.

C. The Government's reply

Murders

440. In a communication dated 28 February 2013, the Government states that it contracted a group of investigators who, under the direction of the relevant public prosecutors, worked to speed up the investigations related to the murder of trade unionists and to identify any common patterns that would have made it possible to identify a state policy or other type of policy behind these crimes. In this context, the Government provides an analytical study

of 51 cases of deaths presented to the Committee on Freedom of Association. The Government indicates that of the 51 cases analysed, 15 are assigned to the Public Prosecutor's Office for crimes against life, eight to the specially created Public Prosecutor's Office for hearing cases of crimes against trade union members, four to the municipal Public Prosecutor's Office of Coatepeque-Quetzaltenango, and the rest are distributed among other Public Prosecutor's Offices across the country. The Government maintains that the limited number of cases assigned to the Public Prosecutor's Office for crimes against trade union members is justified because, in the majority of the cases, the motive of the murder is not related to the victims' union activities. Based on the documentation available or based on the claims of the victims' families, 12 victims were union leaders, ten were union members, while in 19 cases there is no evidence documenting the union affiliation of the victims. In addition, five people belonged to community organizations and another five people died during a conflict between informal traders and the town hall of Coatepeque about an issue related to the municipal market.

441. As for the main hypotheses for the motives behind the killings, the Government indicates that in 33 cases the motive for the deaths was related to common crime, three cases were clearly related to the victims' union activity, four cases were related to social demonstrations, six cases were related to a confrontation between the Coatepeque municipal authorities and the market traders from that community, a politically motivated case, a case which occurred in the context of State security forces, one for inter-union differences and in two cases the motive remains unknown.

442. Additionally, the Government maintains that a sentence was handed down in six of these cases, an arrest warrant was issued or is forthcoming in eight of these cases, a hearing is pending for one case, three cases are expected to be resolved soon, an indictment was issued in one case, 11 cases are still under investigation and in 18 cases the investigation has stalled and these cases are temporarily closed.

443. In the same communication dated 28 February 2012, the Government provides up-to-date information from the Public Prosecutor's Office about the progress made in the investigations and the criminal proceedings for a series of murders about which the Committee had requested information in its March 2012 recommendations:

– the murder of Mr Mario Caal, who was identified by the complainant as leader of the Committee for Agricultural Worker Unity: the Government states that the victim could not have been a union member and that the case is yet to be solved. The victim died as a result of injuries he sustained during police intervention (tear-gas canister) in a social dispute in which the police were attempting to rescue hostages. The person who caused his death has yet to be indentified;

– the murder of Mr Jaime Nery González, who was identified by the complainant as Deputy Secretary-General and grassroots member of the Union of Commercial Traders from the department of Jutiapa: the Government states that the victim could not have been a trade union member. The results of the investigations indicate that the death was probably the result of an armed robbery. The investigation has stalled pending new forms of investigation;

– the murder of Mr Romero Istacuy, registered by the Public Prosecutor as José Romero Israel Estacuy, who was the Secretary-General of the Union of the Municipal Utility Company of Retalhuleu: the Government states that the investigation suggests that the crime is of an anti-union nature. The victim had published a flyer on the increase in electricity prices put in place by the mayor. The person responsible for perpetrating his murder is dead, but the preliminary hearing for the person who orchestrated the crime is pending;

– the murders of Mr Diego Gustavo Chite Pu and Mr Sergio Alejandro Ramírez Huezo, who were identified by the complainant as members of the Commercial Workers Union of Coatepeque: the Government states that both people were traders at the Coatepeque market and that, according to testimony from other market workers, they did not belong to a union. They died as a result of the use of excessive force after the municipal police opened fire on informal traders who refused to be removed. On 27 May 2011, the Criminal Court responsible for Narcotics Offences and Crimes against the Environment from the municipality of Coatepeque sentenced the head of the municipal police to 52 years and six months in prison;

– the murder of Ms Olga Marina Ramírez Sansé, registered by the Public Prosecutor's Office as Olga Ramírez Saneé, member of the Chiguimula Market Union: the Government states that, according to the investigations, her death was due to personal differences. The perpetrator of her murder has already died. The investigation has stalled pending new forms of investigation;

– the murder of Mr Pedro Antonio García, the leader of the Municipal Workers' Union of Malacatán, according to the complainant; the Disputes Secretary for the Municipal Workers' Union of San Marcos, according to the Government: the Government states that the investigation indicates the anti-union nature of the crime. A certain armed group is suspected. This case is under investigation. Statements have been taken from the victim's colleagues who say that they have never been threatened because of their union work;

– the murder of Mr Víctor Alejandro Soyos Suret, an advisory council member for the Union of Employees of the Criminal Investigation Directorate of the Office of the Public Prosecutor: the Government states that the trade union member died during a carjacking, and that the case is under investigation;

– the murder of Mr Luis Arnaldo Ávila, registered by the Public Prosecutor's Office as Luis Haroldo García Ávila and identified by the complainant as a member of the Commercial Workers' Union of Coatepeque: the Government states that the victim could not have been a trade union member, but rather that he informally helped Coatepeque market traders in their dispute with the town hall and the police. The Government says that the motive for the murder could be because Coatepeque market was relocated or because of a romantic relationship between the victim and a married woman. The case is under investigation;

– the murder of Mr Julián Capriel Marroquín, Deputy Secretary-General of the Traders' Union of the Public Square of Jocotán, according to the complainant; a member of the Traders and Allied Workers' Labour Union of Jocotán, according to the Government: the Government states that he died as a result of personal differences with his sons-in-law. The investigation has stalled pending new forms of investigation;

– the murder of Mr Marco Tulio Ramírez Portela, the Secretary-General of the Finca Yuma sub-branch of Izabal Banana Workers' Union (SITRABI): the Government states that the victim was murdered on a political election day. The investigation suggests that the deceased had had a dispute with a member of a political party. Although the masterminds behind the crime have been identified, the investigation has stalled because the witness does not wish to testify for fear of reprisals;

– the murder of Mr Julio César Ixcoy García, member of the executive committee of the Workers' Union of the Municipality of Miguel Pochuta: the Government indicates that a violent gang from the region where the murder took place attacked the bus in which the victim was travelling. The investigation has stalled pending new forms of investigation;

– the murder of Mr Pedro Zamora, the Secretary-General of the Workers' Union of Quetzal Port: the Government states that, according to investigations, he was killed for personal reasons. Although a suspect was identified and brought to trial, the Criminal Court responsible for Narcotics Offences and Crimes against the Environment acquitted the suspect for lack of evidence. Subsequent appeals were denied;

– the murder of Mr Rosalio Lorenzo, identified by the complainant as the head of the Motorcycle Taxi Union of Jalapa: the Government states that he could not have been a union member. The crime was a personal vendetta. The investigation has stalled pending new forms of investigation;

– the murder of Ms Maura Antonieta Hernández, identified by the complainant as a member of the executive committee of the trade union (being formed) of the prison service: the Government states that she could not have been a union member because she worked in the prison service where trade unions are not permitted by law. Her death was due to a gang-related retaliation against the prison service. The case is in the process of being resolved as arrest warrants have been issued for the leaders of the gang involved in the crime;

– the murder of Mr Pedro Ramírez de la Cruz, identified by the complainant as a member of the National Indigenous, Rural Workers and People's Council: the Government states that, based on testimony from family members, the victim was not a trade union member. The deceased had reported mismanagement of various financial aids. Those accused were acquitted of wrongdoing. An appeal was raised, but was denied;

– Mr Julio Pop Choc, identified by the complainant as the head of a branch of the National Health Union, while the Government said he was a member of that union: the Government states that he was killed during a robbery and the investigation has been closed;

– the murder of Mr Gilmer Orlando Borror Zet, community leader of San Juan Sacatepéque, registered by the Public Prosecutor's Office as Inmer Orlando Borror Set: the Government states that his death is connected with social demonstrations and that he was killed during a protest. An investigation cannot be carried out because the witnesses will not cooperate and they cannot access the victim's home. The investigation has stalled pending new forms of investigation;

– the murder of Ms Evelinda Ramírez Reyes and Mr Víctor Gálvez, leaders of the Front for the Resistance and Fight for Natural Resources and People's Rights (FRENA): the Government states that the crimes are related to social demonstrations organized by the victims concerning the electricity supply by the company Deocsa Deorsa. A criminal network in the municipality of Malacatán has been identified as the perpetrator of these crimes. The investigation is ongoing in Ms Evelinda Ramírez Reyes' case. Several suspects have already been identified in Mr Víctor Gálvez's case. Two of these suspects are awaiting the beginning of court proceedings and an arrest warrant is expected to be issued for another suspect;

– the murder of Mr Samuel Ramírez Paredes, the Secretary-General of the Banana Workers' Union of Panchoy: the Government states that the crime was a personal vendetta. The investigation has stalled pending new forms of investigation;

– the murder of Mr Juan Fidel Pacheco Coc, the Secretary-General of the Union for Migration Employees: the Government states that the investigations point to the hypothesis that the crime was the result of an inter-union dispute between the three

organizations which form the Directorate General for Migration. The case is under investigation;

– the murder of Mr Bruno Ernesto Figueroa, the Financial Secretary for a subsidiary of the National Health Workers' Union: the Government states that the investigations indicate that the attack in which the trade union member died was not directed at him, but was instead directed at a group of bus drivers who were at the scene of the crime. The case is under investigation. A single witness was cited, but they refused to testify;

– the murder of Mr Salvador del Cid, identified by the complainant as a member of the Workers' Union from the Municipality of Acasaguastlán: the Government states that the victim was not a trade union member. His death was the result of a personal vendetta. An arrest warrant has been issued for the suspect who has yet to stand trial;

– the murder of Mr Licinio Trujillo, member of the National Health Union in the subsidiary of Puerto Barrios: the Government states that the investigations indicate that he died as a result of personal differences with colleagues who did not agree with the victim's promotion. The investigation has stalled pending new forms of investigation;

– the murder of Mr Aníbal Ixcaquic, identified by the complainant as a member of the Union of the Guatemalan Traders' Front: the Government states that the victim could not have been a union member. The crime was committed by a gang who was attempting to extort the deceased. The investigation has stalled pending new forms of investigation;

– the murder of Ms Norma Sente Ixcaquic, registered by the Public Prosecutor's Office as Norma Jeannette Zente Ordoñez, identified by the complainant as a member of the Union of the Guatemalan Traders' Front: the Government states that the victim could not have been a union member. The Government says that she was the sister-in-law of Mr Aníbal Ixcaquic and they were murdered together, and therefore the motives for the crime were the same. The investigation has stalled pending new forms of investigation;

– the murder of Mr Matías Mejía, identified by the complainant as a member of the National Front for the Defence of Public Services and Natural Resources: the Government states that this name is not on the database of fatalities at the Public Prosecutor's Office;

– the murder of Ms Juana Xoloja, registered by the Public Prosecutor's Office as María Juana Chojlán Pelicó, identified by the complainant as a member of the Committee Association for Rural Worker Development: the Government states that the victim could not have been a union member. According to the investigations, the victim was killed in a dispute with two neighbours who had threatened to kill her. One witness is expected to be interviewed as the others did not wish to testify for fear of reprisals;

– the murder of Mr Willy Morales, identified by the complainant as a member of the National Front for the Defence of Public Services and Natural Resources and registered as Wilson Odair Morales Cordón: the Government states that the victim could not have been a union member. His relatives said that he was a member of a committee that fought against malpractice by the municipal authorities. The Government said that he died in a traffic accident, and the driver could not be identified. The investigation has stalled pending new forms of investigation;

– the murder of Mr Jorge Humberto Andrade identified by the complainant as a member of the National Front for the Defence of Public Services and Natural

Resources: the Government states that he was a community leader and that he died as the result of personal disputes. An arrest warrant has yet to be issued against the perpetrator of his murder;

– the murder of Mr Adolfo Ich identified by the complainant as a member of the National Front for the Defence of Public Services and Natural Resources: the Government states that the victim was a community leader. The victim was allegedly killed by security agents from the Guatemalan Nickel Corporation during a road blockade. An arrest warrant was issued for the suspects;

– the murder of Mr Luis Felipe Cho, a member of the Trade Union for the Municipality of Santa Cruz: the Government states that investigations indicate that he could have been killed as a result of a personal dispute with a worker. A suspect was identified and has yet to be arrested and appear before the court;

– the murder of Mr Héctor García, a member of the Professional Worker's Union of the Hotel Las Américas LLC: the Government states that investigations show that the victim was killed as his motorcycle was being stolen. The investigation has stalled pending new forms of investigation;

– the murder of Mr Miguel Ángel Felipe Sagastume who was identified by the complainant as the founder and former Secretary-General of the Workers' Union of the El Real Finca: the Government states that, according to statements taken from his colleagues, the victim was a member of the Union of Banana Workers (SITRAGSA). The investigations indicate a personal motive for the crime. The identified perpetrator of the crime and the victim were allegedly seeing the same woman. An arrest warrant has been issued and has yet to be executed;

– the murder of Mr Roberto Oswaldo Ramos Gómez, the Secretary for Labour and Disputes at the Workers' Union of the Municipality of Coatepeque and a member of the advisory council of the CUSG: the Government states that investigations indicate that the crime was committed because the victim had confronted a criminal while carrying out his community responsibilities. After this criminal reportedly died, several members of the union led by Mr Roberto Oswaldo Ramos Gómez decided to testify about the numerous threats they had received from this person. The case is under investigation;

– the murder of Mr Idar Joel Hernández Godoy, the Financial Secretary for SITRABI: the Government states that he was murdered while driving a vehicle owned by SITRABI. The motive for the crime could be personal. A colleague of the victim is still to be interviewed to further the investigations;

– the murder of Mr Manuel de Jesús Ramírez, the Secretary-General of the Technical and Administrative Support Workers' Union of the Institute of Public Criminal Defence: the Government states that the investigations indicate that the death of the union leader constitutes an act of anti-union repression. The case is under investigation although no suspects have yet been identified.

444. In a communication dated 5 March 2013, the Government indicates that the Public Prosecutor's Office of Guatemala had decided to institutionalize a high-level working group in the spirit of the central union principles of the country to analyse cases of violence against trade union members, which will be held every month from 7 March. In addition, the Public Prosecutor's Office reiterates its request for ILO technical assistance to effectively combat anti-union violence.

445. In a communication dated 19 April 2013, the Government reports the first actions it has taken to apply the Memorandum of Understanding signed on 26 March 2013 by the Government of Guatemala and the Chairman of the Workers' group of the Governing Body of the ILO. A meeting was held on 17 April 2013 which was attended by the Guatemalan Minister of Interior (responsible for internal security), the Labour Minister and the main union leaders of Guatemala, and that they agreed to adopt the following mechanisms:

– creating a permanent policy committee of State ministers and union leaders to be held every month;

– setting up a technical committee made up of representatives from the represented federations and confederations and authorities from the Ministry of Interior, to find out about and address specific acts of violence;

– establishing specific meetings between the Ministry of Interior and specific federations and confederations to address the particular security problems of their leaders;

– establishing a hotline to the Ministry of Interior for immediately reporting threats and crimes in order to prevent and combat these issues.

Other acts of violence and threats against trade union members

446. The Government provides the following information, in communications dated 21 and 27 August and 30 October 2012, in relation to non-fatal acts of violence and anti-union threats about which the Committee had requested urgent information on the progress of the investigations and criminal prosecutions:

– in relation to the death threats against union member Ms Lesvia Morales, the Government states that the fact that the full name of the person who received the alleged threats was not given, makes it impossible for the Public Prosecutor's Office to search for the relevant files;

– in relation to the death threats made against the union member Mr Leocadio Juracán, the Government states that according to the Public Prosecutor's Office, there is no report on the grounds raised in the complaint and, therefore, no investigation can take place;

– in relation to the injured workers from the Union of Small Traders and Allied Workers, the Government states that the Ninth Lower Criminal Court responsible for Narcotics Offences and Crimes against the Environment on 27 June 2011 at the request of the Public Prosecutor's Office ordered that the complaint made by the workers be dismissed on the grounds that street vending is not allowed on the footpaths, and the police therefore can remove any person who violates this;

– concerning the threats made against union members from the National Health Union, the Government indicates that the investigations are coming to a close regarding three victims because Mr Henry Giovanny Hernández Castro and Ms María Antonieta Gaitán Monzón withdrew their reports on 27 August 2012 and because Ms Olga Marina Santos García agreed to take her case to a conciliation board which should take place 5 October. Regarding the threats allegedly made against Mr César Orlando Jiménez, the Secretary-General of the subsidiary of Hermano Pedro de Betancurt Hospital, the Public Prosecutor's Office has reported that the case has been dismissed.

Regarding the gun shots fired at the home of the General Secretary of the district hospital of San Benito, Mr Edgar Neftaly Aldana Valencia, and the death threats made against him, the report was submitted to the Public Prosecutor's Office. The San Benito Lower Criminal Court responsible for Narcotics Offences and Crimes against the Environment authorized the dismissal of the report on 27 June 2011 because the victims had withdrawn their complaint;

– in relation to the allegations that the members of the Commercial Workers' Union of Coatepeque received death threats and were injured in a police operation to force them out of their jobs, the Government again refers to the judgment from 27 May 2011 where the Criminal Court responsible for Narcotics Offences and Crimes against the Environment of the municipality of Coatepeque convicted the head of the municipal police of various crimes against the physical integrity of the Coatepeque market lessees committed on 6 April 2009. The Government adds that, according to General Directorate of Labour, of the many people affected by police violence, only three were members of the Commercial Workers' Union of Coatepeque;

– in relation to the attack on Ms María de los Ángeles Ruano Almeda and Ms Ingrid Migdalia Ruano, the heads of MSICG, the Government indicates in its communication dated 27 August 2012 that the 11th Lower Criminal Court responsible for Narcotics Offences and Crimes against the Environment dismissed the case on 25 May 2010;

– in relation to the alleged kidnapping, torture and rape of Ms María Vásquez, the Deputy Secretary-General of the Workers' Union for the company Winners, the Government indicates that, according to the Public Prosecutor's Office, there are many contradictions in the account given by the alleged victim and her emotional reaction is inconsistent, so it was suggested that further investigation take place. The victim left the country in March 2010 without providing information. As there is no other source of information about the alleged events, it has been requested that the report be dismissed by the Lower Criminal Court responsible for Narcotics Offences and Crimes against the Environment of the municipality of Guatemala;

– regarding the allegations of death threats against Ms Selfa Sandoval Carranza, a SITRABI leader, the Government states that, according to the Public Prosecutor's Office, there is no report with these names, and thus no investigation can be carried out on this issue;

– in relation to the allegations of illegal removal with the use of excessive force against the members of the Workers' Union of the Petén Distribution Company (SITRAPETEN), the Government indicates that a criminal magistrate's court judge, who was presented with a writ of habeas corpus for several members of SITRAPETEN, went to the area of the city where the members were. The judge ordered the Director of the National Civil Police, as an interim order, to take the necessary steps to protect the life and physical integrity of those affected as well as to protect their constitutional rights. On 14 December 2009, the Eighth Lower Criminal Court responsible for Narcotics Offences and Crimes against the Environment ordered habeas corpus in favour of the members of SITRAPETEN. In its final decision dated 18 December 2009, the same Court overturned the habeas corpus in so far as the office of the General Directorate of the National Civil Police established that security had already been provided to the members and which, therefore, did not have the remit which the law provides for habeas corpus. As for the illegal arrest and intimidation of the members of SITRAPETEN in various hotels across the country, the Government states in its communication dated 30 October 2012 that the Public Prosecutor's Office indicates that the Case Management Computer System Department (SICOMP) did not register any such complaints.

447. In regard to this list of cases of alleged violence and threats, the Government requests that: the complainant broaden the information helping identify the report that is mentioned in the complaint so that an investigation corresponding to these cases may be carried out, and that the case be definitively closed when the Public Prosecutor's Office requests its dismissal.

Union recognition and registration

448. In a communication dated 14 February 2013, the Government states that under the Regulations of the General Directorate of the Prison Service, all personnel working in the General Directorate of the Prison Service are considered security personnel, and therefore not allowed to participate in trade unions. Thus, the Government has decided to reject the application for recognition because the right to organize within the prison service is expressly forbidden.

449. Regarding the alleged refusal to register the Workers' Union of the Municipality of Río Bravo, the Government requires the complainant to provide more information to locate this organization because the database of the General Directorate for Labour only contains the registration of the Municipal Workers' Union of the Municipality of Río Bravo from the Department of Suchitepequez (SITRAMURB), which was registered 30 March 2005 and is currently inactive due to a lack of legal representation.

450. Regarding the Union of Workers of the Ministry of the Environment and Natural Resources (SITRAMARN), the Government indicates that this union was registered in 2006 and that the union's legal status was registered on 25 November 2010. The Government also states in its communication dated 6 December 2012 that the Supreme Court and the Constitutional Court declared the protection petition filed by the National Attorney-General's Office against the decision of the Ministry of Labour and Social Welfare to register SITRAMARN inadmissible.

Climate of labour impunity

451. In a communication dated 27 December 2012, the Government sent its observations regarding allegations in relation to the unjustifiable delays in the Guatemalan labour justice system and its actions in terms of anti-union discrimination which would lead to a denial of justice and to a climate of labour impunity. In this regard, the Government states the following:

- the Centre for Labour Justice was set up in September 2011 to harmonize the actions of the lower labour and social welfare courts, the corresponding appeals court chambers, the Centre for Mediation and Conciliation and the Office of the Labour Ombudsman of the Ministry of Labour and Social Welfare. By implementing shorter ordinary labour trials, the judicial backlog was notably reduced in less than one year, with the average procedure time dropping from three years to eight months;

- a zero tolerance plan for corruption is being implemented;

- the complainant's reports and complaints should specify the particular cases which they refer to and these should be discussed with the national institutions. The Government believes that developing generic complaints affects the consolidation of the changes and weakens public institutions;

- on the claim that, under the Labour Code, labour judges should order the reinstatement of workers (dismissed for anti-union reasons) within 24 hours, the

Government states that under article 209 of the Labour Code and article 12 of the Constitution on the right to due process, reinstatement cannot be made final straight away if the employer contests the court's ruling;

– according to the report by the General Secretariat of the Presidency of the Judiciary for 2012, judges presiding in lower labour courts ordered 742 reinstatements over the year.

452. Regarding the dismissal of 13 workers from the Guatemalan Committee for the Blind and Deaf in 2003, who had not been reinstated as per a court ruling, the Government indicates in a communication dated 14 March 2013, that in a ruling on 20 November 2009 the Constitutional Court declared that the appeal filed by the employer was unfounded and that, to date, eight of the 13 workers have been effectively reinstated while the other five preferred to receive compensation rather than be reinstated.

Exercising freedom of association in the maquila *(export processing zones) sector*

453. In a communication dated 15 January 2013, in response to allegations examined by the Committee in previous reports concerning this case, the Government sent information on the existence of trade unions in the *maquila* sector and on labour inspections in this sector. In regard to the first issue, the Government states that it does not have exact information on the unions in the *maquila* sector, but that it can give the names of four active trade unions for companies in this sector, namely: the Workers' Union for Textiles Modernos LLC (STETMSA), the Workers' Union for Winners LLC (SITRAWINSA), the Workers' Union for Koas Modas LLC (SITRASEOKHWASA) and the Workers' Union for Serigrafía Seok Hwa LLC (SITRASEOKHWASA). As for the second issue, the Government indicates that 699 visits were made to companies in the *maquila* sector in 2012, 76 of which were made ex officio.

Detention of members of the Union of Heavy Goods Transport Drivers

454. By a communication dated 6 May 2013, the Government sends its observations on the allegations of illegal detention of 49 members of the Union of Heavy Goods Transport Drivers and criminal proceedings against them following their participation in a peaceful protest in May 2008. The Government indicates that in order to avoid the effects of the stoppage of heavy goods transport on the health, food and transport services, the President declared, in accordance with the Constitution, the state of prevention throughout the country, which limits certain fundamental rights but aims to protect the lives and safety of people.

455. The Government states that, according to the data of the National Civil Police, on 8 May 2008, 35 people who blocked the road to the Pacific were arrested. Of these 35 people, two have been prosecuted for blocking the road. They were released on bail the same day they were arrested and subsequently received conditional suspension of criminal prosecution for the offence of activities against the internal security of the nation, which expired on 11 November 2011. The Government states that the Union of Heavy Goods Transport Drivers does not appear in the records of the Ministry of Labour and the only registered union is called the General Union of Heavy Transport, inactive since 1972. Because of the absence of the registration, the Government is not able to confirm whether the people who were prosecuted for their participation in the event were members of a union or were trade union leaders. It therefore requests that the MSICG shares the information provided by the Union of Heavy Goods Transport Drivers.

456. Finally, the Government points out that the third person, Rolando Eliveo Hernández Aguilar, is remanded in custody since July 2012 for offences of extortion carried out by a criminal gang since 2011 against carriers. The fourth person, Marcelo Martínez Gómez, was the subject of a conditional conviction for illegal possession of firearms, offence committed in 2007, that is to say, before the event.

D. The Committee's conclusions

457. *The Committee recalls that, in the present case, the complainants allege numerous murders and acts of violence against trade union members and acts of anti-union discrimination, as well as obstacles to the exercise of trade union rights and social dialogue, denial of legal status to several unions and system failures leading to impunity with regard to criminal and labour matters.*

458. *For the fifth time, the Committee deeply deplores the numerous acts of violence denounced in the complaint and expresses its deep and growing concern for the high number of murdered union leaders and members. The Committee once again draws the Government's attention to the fact that union rights can only be exercised in a climate free from violence, intimidation and threats of any kind against trade union members, and that it is for governments to ensure that this principle is respected [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 44].*

459. *The Committee observes that since this case was last examined, a complaint regarding Guatemala's breach of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), has been filed by several Workers' delegates at the 101st Session (2012) of the International Labour Conference under article 26 of the Constitution of the ILO. The Committee notes that at its March 2013 session, the ILO Governing Body decided, in view of the signing of a Memorandum of Understanding between the Government of Guatemala and the Workers' group of the ILO Governing Body on 26 March 2013, to defer its decision on the appointment of a Commission of Inquiry to its October 2013 session.*

460. *The Committee notes with interest that in this Memorandum of Understanding, the Government of Guatemala pledges, inter alia: to institute, through the competent bodies of the state, independent and expeditious inquiries at the earliest date to determine responsibilities and punish the intellectual and material authors of murders of trade unionists; and to guarantee the safety of workers, and through effective protection measures, that of trade union officials and leaders as well as union property, against violence and threats so that they can carry out their trade union activities. The Committee firmly hopes that the commitments made by the Government in the Memorandum of Understanding will translate into concrete actions and results. In this regard, the Committee notes with interest the information provided by the Government on the first actions it has taken to apply the Memorandum of Understanding signed on 26 March 2013, and in particular: the creation of a permanent policy committee of State ministers and union leaders to be held every month; the setting up of a technical committee made up of representatives from the represented federations and confederations and authorities from the Ministry of Interior, to find out about and address specific acts of violence; the establishment of specific meetings between the Ministry of Interior and specific federations and confederations to address the particular security problems of their leaders; and the establishment of a hotline to the Ministry of Interior for immediately reporting threats and crime in order to prevent and combat these issues. The Committee urges the Government to keep it informed at the earliest opportunity of the full range of actions taken to apply the Memorandum of Understanding and of the results achieved.*

Allegations of violence which have already been examined

461. *The Committee notes the statements made by the MSICG relating to the complete inefficiency of the criminal investigation agencies, the weakness of the Special Public Prosecutor for Offences against Trade Union Members and the practice of the Public Prosecutor's Office of dismissing the possibility that the crime was motivated by anti-union sentiment from the outset.*

462. *The Committee notes that the Government of Guatemala indicates that the Public Prosecutor's Office of Guatemala has decided to institutionalize a high-level working group with the country's main trade union federations to analyse cases of violence against trade union members, which will meet every month after March 7 and that, in addition, the Public Prosecutor's Office reiterates its request for ILO technical assistance to more effectively tackle anti-union violence.*

463. *The Committee notes the information provided by the Government on the progress of the investigations and criminal prosecutions concerning 51 murders examined by the Committee on Freedom of Association, most of them in the context of this case. The Committee observes that the Special Public Prosecutor for Offences against Trade Union Members deals with a minority of the murders identified, that the Public Prosecutor's Office considers that a substantial number of victims do not have trade union links, and that most of the murders are cases of ordinary crime. The Committee also observes that judicial sentences have been handed down in six cases, one of which was a prison sentence, that the investigations had stalled in 18 cases and that the investigations or next steps of the criminal proceedings of the other murders will continue.*

464. *Regarding the murders of Mr Diego Gustavo Chite Pu and Mr Sergio Alejandro Ramírez Huezo, the Committee notes the information provided by the Government stating that they died as a result of the use of excessive force by the municipal police who fired upon informal traders who had refused to be removed on 27 May 2011, and that the Criminal Court for Narcotics Offences and Crimes against the Environment of the municipality of Coatepeque sentenced the chief of the municipal police to a prison term of 52 years and six months.*

465. *Regarding the murders of Mr Pedro Zamora and Mr Pedro Ramírez de la Cruz, the Committee notes criminal courts' acquittals of the possible perpetrators of these murders. The Committee deeply regrets the situation of impunity that results from this situation. The Committee recalls that the absence of judgments against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights [see* ***Digest****, op. cit., para. 52]. The Committee urges the Government to reopen the investigations so that all those who took part in these murders (perpetrators and instigators) as well as the motives for the crimes are identified, and that those responsible are prosecuted and held to account by the courts. The Committee requests the Government to keep it informed of any developments in this regard.*

466. *The Committee notes the information provided by the Government regarding the initiation of criminal proceedings in connection with the murders of Mr Romero Estacuy, Mr Víctor Gálvez, Mr Jorge Humberto Andrade and Mr Adolfo Ich and of the ongoing investigations concerning the murders of Mr Mario Caal, Mr Pedro Antonio García, Mr Manuel de Jesús Ramírez, Ms Víctor Alejandro Soyos Suret, Mr Juan Fidel Pacheco Curec, Ms Evelinda Ramírez Reyes, Mr Salvador del Cid, Ms María Juana Chojlán Pelicó, Mr Miguel Ángel Felipe Sagastume and Mr Idar Joel Hernández Godoy. Recalling the need, in a case in which judicial inquiries connected with the death of trade unionists seemed to be taking a*

*long time to conclude, of proceedings being brought to a speedy conclusion [see **Digest**, op. cit., para. 53], the Committee requests the Government to keep it informed of the progress and results of these proceedings and investigations.*

467. *With regard to the ongoing investigation into the murder of Mr Idar Joel Hernández Godoy, a SITRABI leader, the Committee observes that the Public Prosecutor's Office is not considering the possibility that the crime was motivated by anti-union sentiment even though another leader from the same union was murdered in recent years (Mr Marco Tulio Ramírez Portela), the union reported receiving death threats against its leaders and members, and the victim was travelling in a union-owned vehicle. The Committee therefore urges the Government to explain at the earliest opportunity the reasons why the Public Prosecutor's Office disregarded the possible anti-union motive behind the murder and that the necessary steps be taken to identify and bring to justice those responsible for the murder.*

468. *With regard to the murders of Marco Tulio Ramírez Portela, Jaime Nery González, Julián Capriel Marroquín, Lisinio Aguirre Trujillo, Julio César Ixcoy García, Rosalio Maldonado Lorenzo, Norma Jeannette Zente Ordoñez, Julio Pop Choc, Inmer Orlando Borror Set, Samuel Ramírez Paredes, Héctor García, Walter Aníbal Ixcaquic Mendoza, Norma Jeannette Zente Ordoñez, Wilson Morales and Olga Marina Ramírez Saneé, the Committee notes with the utmost concern the Government's information that the investigations have stalled. The Committee observes with particular concern that, in the majority of cases, the Public Prosecutor's Office does not supply substantial amounts of information about the steps taken to identify possible links between the victims' union activities and their murder.*

469. *With regard to the murder of Ms Maura Antonieta Hernández, named by the complainant as a member of the prison service union executive committee (being formed), the Committee observes that the Government states that the victim could not have been a trade unionist because she worked in the prison service where there are no unions by law. While also noting the Government's indication that the present case is the result of a retaliation by the Salvatrucha gang against the prison service, the Committee nevertheless wishes to recall the principle whereby prison staff should enjoy the right to organize [see **Digest**, op. cit., para. 232]. In addition, the Committee observes that, within the context of this case, the complainants have indicated that requests for prison service unions to be registered were made and that the Government indicates that these requests were turned down due to current legislation prohibiting the right to organize for workers at the Directorate General of the Prison Service. The Committee therefore requests the Government to take the necessary measures to ensure that the possible anti-union motive behind the crime is fully taken into consideration throughout the inquiry and criminal proceedings associated with this case. The Committee requests the Government to keep it informed of any developments in this regard.*

470. *With regard to the murder of Mr Matías Mejía, named by the complainant as a member of the National Resistance Front, the Committee notes that the Government indicates that no one of that name appears in the Public Prosecutor's Office's database of fatalities. In addition, with regard to the allegations of death threats against SITRABI board member Ms Selfa Sandoval Carranza on the one hand and the allegations of the illegal detention and intimidation of SITRAPETEN members in several hotels across the country on the other, the Committee notes the Government's indication that no incidents were reported under those names for either case. The Committee therefore requests the complainants to indicate, in relation to these three cases, as precisely as possible, the names of the victims, the places where the incidents took place, the authorities to whom the incidents were reported, as well as any other information they may have.*

471. *With regard to the murders of Mr Armando Sánchez, advisor to the Union of Coatepeque Traders and Mr Liginio Aguirre, member of the Union of Guatemalan Health Workers, the Committee once again regrets that the Government has not supplied any information pertaining to these cases. Therefore, the Committee once again urges the Government to provide information about these murder investigations without delay.*

472. *The Committee notes that the Government communicated some information pertaining to non-fatal acts of violence and anti-union threats in response to the Committee's urgent request for an update on the progress of the investigations and criminal trials. With regard to the death threats made against trade union member Ms Lesvia Morales, the Committee notes both the MSICG's reassertion that the incident was reported to the district Public Prosecutor's Office and the Government's observation that the absence of written confirmation of the alleged death threat victim's full name makes it impossible for the Public Prosecutor's Office to look for the corresponding documents. The Committee observes that the issue of identifying the complaint registered about the death threats made against Ms Lesvia Morales has remained unresolved for a long time. The Committee therefore urges the Government and the complainant to work together in good faith to identify the corresponding document.*

473. *With regard to the allegations of attempted murder and death threats against Mr Leocadio Juracán, leader of the Comité Campesino del Altiplano (CCDA) and the MSICG, the Committee notes that the complainant and the Government disagree over whether a complaint was registered with the Public Prosecutor's Office. The Committee also notes the complainant's assertion that the case was also reported to the Human Rights Ombudsman, which coordinated temporary protective measures for the union leader before he left the country. The Committee therefore requests the Government to contact the Human Rights Ombudsman without delay to identify the case in question so as to be able to give full information about the actions the State has taken regarding this complaint.*

474. *With regard to the allegations of attempted extrajudicial killings, death threats and injuries sustained by the trade union members from the Commercial Workers Union of Coatepeque, the Committee notes the Government's indication that the Criminal Court responsible for Narcotics Offences and Crimes against the Environment in the municipality of Coatepeque convicted the chief of the municipal police on 27 May 2011 of various offences against the physical integrity of Coatepeque market lessees committed on 6 April 2009. The Government specifies that, according to information from the General Directorate for Labour, out of the many people affected by police violence, only three were listed as members of the Commercial Workers' Union of Coatepeque. While noting this information, the Committee observes that the allegations relating to the Comercial Workers' Union of Coatepeque do not just pertain to the removal of the Coatepeque market lessees on 6 April 2009 but also to attempted extrajudicial killing and repeated death threats. Therefore, the Committee once again urges the Government to launch an independent judicial inquiry into the allegations of attempted extrajudicial killing and death threats. The Committee requests the Government to keep it informed of all the details of these investigations and the resulting criminal proceedings.*

475. *With regard to the injured workers from the Union of Small Traders and Allied Workers, the Committee notes the Government's indication that the union's complaint was dismissed because setting up a street vending point on the footpath is banned and it is within the remit of the police to remove any infringing vendors. In addition, with regard to SITRAPETEN members' allegations of illegal removal with use of excessive force, the Committee notes the Government's indication that the writ of habeas corpus produced was overruled by the appropriate authority. Upon observing that there are several instances of the police using excessive force against demonstrators or crowds of workers in this case, the Committee recalls the principle that the authorities should resort to the use of force*

only in situations where law and order is seriously threatened. The intervention of the forces of order should be in due proportion to the danger to law and order that the authorities are attempting to control and governments should take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations which might result in a disturbance to the peace [see ***Digest****, op. cit., para. 140]. The Committee requests the Government to take all the necessary measures, such as issuing instructions, drawing up a code of conduct or holding training and awareness courses, so that the forces of order are able to fully apply this principle. The Committee requests the Government to keep it informed of any developments in this regard.*

476. *With regard to the allegations of death threats against workers from the National Health Union, the Committee takes note of the information provided by the Government pertaining to the withdrawal of complaints by Mr Henry Giovanny Hernández Castro, Ms María Antonieta Gaitán Monzón and Mr Edgar Neftaly Aldana Valencia.*

477. *With regard to the complaints of kidnapping, torture and rape registered by Ms María Vásquez, Deputy Secretary-General of the Worker's Union for the company Winners and the complaints of assault registered by MSICG leaders Ms María de los Ángeles Ruano Almeda and Ms Ingrid Migdalia Ruano, the Committee takes note of the Government's indication that their cases were dismissed by the competent courts.*

478. *With regard to the disappearance of the minor Ms María Antonia Dolores López, the investigations linked to the criminal action launched against leaders of the Workers' Union of the Municipality of Zacapa, the Committee once again regrets that the Government has not supplied any information about this matter. Therefore, the Committee once again urges the Government to provide information on the investigations launched in connection with these cases without delay.*

New allegations of violence

479. *The Committee notes with the utmost concern the CUSG's allegation that Mr Oswaldo Ramos Gómez, Secretary for Labour and Disputes at the Workers' Union of the Municipality of Coatepeque and member of the CUSG advisory council, was shot dead on 2 April 2012. The Committee deeply deplores this new murder and reiterates the principles mentioned in the paragraphs above. The Committee notes the Government's indication that the investigations show that the crime was committed because the victim had confronted a criminal while carrying out his community responsibilities. The Committee observes, however, that the Government also indicates that many members of the union the victim belonged to received multiple threats from the perpetrator of the crime. The Committee therefore urges the Government to explain at the earliest opportunity the reasons why the Public Prosecutor's Office disregarded the possible anti-union motive of the murder and to take the necessary measures to identify and bring to justice those responsible.*

480. *The Committee notes with the utmost concern the MSICG's allegation that Mr Manuel de Jesús Ramírez, General Secretary of the Union of Technical and Administrative Support Workers at the Public Criminal Defence Institute, was murdered on 1 June 2012. The Committee deeply deplores this new murder and reiterates the principles contained in the paragraphs above. The Committee notes the Government's indication that the investigations show that the death of the union leader was an act of anti-union repression and that the investigations are still under way, although, as yet, no suspects have been identified. Recalling the aforementioned principles relating to the fight against impunity and the need for fast investigations and judicial trials in cases of acts of anti-union violence, the Committee urges the Government to take all necessary measures to identify*

and bring to justice those responsible at the earliest opportunity and to keep it informed of any developments in this regard.

481. *In the light of the different points raised in the paragraphs about the cases of violence that have already been examined and also the new allegations of violence, the Committee observes with great concern that, of the 51 murders on which the Government has supplied information, and despite the fact that many of the crimes date back to 2007, only one guilty judgment has been pronounced to date. The Committee also observes with concern that in the cases of several alleged acts of non-fatal anti-union violence, such as attempted murders, rapes, injuries, kidnappings and death threats, no potential perpetrator has been identified in any case and in most cases, despite the extreme severity of the reported incidents, the authorities have not launched any substantial investigations. In this regard, the Committee also observes the high number of instances where the alleged victim has withdrawn the complaint or where witnesses refuse to testify for fear of reprisals.*

482. *Secondly, the Committee observes that the Public Prosecutor's Office for crimes against trade union members only deals with a small number of cases and that its investigations have not yet led to the sentencing of any guilty party by the criminal courts. The Committee observes, in particular, that in the three murder cases the Public Prosecutor's Office considers to be acts of anti-union repression (Mr Romero Istacuy, Mr Pedro Antonio García and Mr Manuel de Jesús Ramírez), the investigations of the Special Public Prosecutor's Office have not led to any tangible results to date.*

483. *In addition, the Committee observes that there are numerous discrepancies between the conclusions reached by the Public Prosecutor's Office and the allegations made by the complainant regarding the membership of the murder victims to a union. On this point, the Committee observes that in the majority of cases where the union membership of the victims has been disregarded, there is no evidence of an information request having been made to the General Directorate for Labour nor of the Public Prosecutor's Office having contacted the affected union. The Committee also observes that in the majority of the murders examined as part of this case, the information sent by the Government does not contain a considerable number of details regarding the steps taken by the Public Prosecutor's Office to identify possible links between the union activities of the victim and their murder even in cases where there seem to be major indications pointing to that possibility.*

484. *Underlining once again that freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed and also that the absence of judgments against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights [see* ***Digest****, op. cit., paras 43 and 52] and recalling the commitments made by the Guatemalan Government in the Memorandum of Understanding signed on 26 March 2013, the Committee urges the Government to take immediate and decisive measures to fight the impunity that surrounds allegations of anti-union violence and to ensure that the principles of freedom of association are taken into full consideration in all actions taken by the Public Prosecutor's Office and criminal courts. On this point, the Committee especially urges the Government to:*

– *take steps to initiate systematic independent judicial investigations when reports of anti-union incidents are received;*

– *develop and apply effective protective measures for people who agree to collaborate in criminal investigations into acts of anti-union violence;*

– *guarantee that the Public Prosecutor's Office will systematically request information from the unions involved to determine the victims' membership to the trade union movement and to identify possible anti-union motives behind the offences under investigation. In this regard, the Committee requests the Government to ensure, in particular, that the Public Prosecutor's Office works with the unions involved to re-examine all of the murder cases that have not yet led to a conviction, including cases in which the investigation is considered to have stalled;*

– *significantly reinforce the Public Prosecutor's Office's training and resources for freedom of association, in particular those available to the Public Prosecutor's Office regarding crimes against trade union members. In this regard, the Committee takes note of the Government's request for technical assistance.*

Other allegations

485. *With regard to the refusal to register prison service unions, the Committee notes the Government's indication that, under the Regulations of the Directorate General of the Prison Service, any person who works in the Directorate General of the Prison Service is considered to be a member of the security staff, so the law expressly denies the right to organize within the prison service. On this point, the Committee recalls the principle, based on Articles 2 and 9 of Convention No. 87, which states that prison staff should enjoy the right to organize [see* ***Digest****, op. cit., para. 232]. The Committee thus requests that the Government takes without delay the necessary measures to register the prison service unions and to align its legislation with Convention No. 87 and the principles of freedom of association by extending the right to organize to prison staff. The Committee draws the legislative aspects of this issue to the attention of the Committee of Experts on the Application of Conventions and Recommendations (CEACR).*

486. *With regard to the alleged refusal to register the Workers' Union of the Municipality of Río Bravo, the Committee notes the Government's observations and requests the complainant to submit further information so that this organization can be located in the database of the General Directorate for Labour.*

487. *With regard to the Union of Workers of the Ministry of Environment and Natural Resources (SITRAMARN), the Committee notes the Government's indication that the union was registered in 2006, that the legal status of the union was registered on 25 November 2010 and that the Supreme Court and the Constitutional Court ruled the writ of protection issued by the national Public Prosecutor's Office against the Ministry of Labour and Social Welfare's decision to register SITRAMARN to be inadmissible. The Committee trusts that SITRAMARN is now fully registered and able to conduct its union activities completely as normal.*

488. *With regard to the allegations of unjustified delays in the Guatemalan labour justice system and in its dealings with matters of anti-union discrimination which could give rise to the denial of justice and a climate of labour impunity, the Committee notes the Government's indication that:*

– *by creating the Centre for Labour Justice and implementing shorter ordinary labour trials, the judicial backlog was notably reduced in less than one year, with the average procedure time dropping from three years to eight months;*

– *under article 209 of the Labour Code and article 12 of the Political Constitution on the right to due process, reinstatement cannot be made final straight away if the employer contests the court's decision;*

– *judges presiding in lower labour courts ordered 742 reinstatements in 2012.*

489. *The Committee notes the information provided by the Government on the reinstatement of workers from the Guatemalan Committee for the Blind and Deaf who had been dismissed in 2003.*

490. *The Committee also notes the information provided by the Government concerning the arrest of heavy vehicle workers in a protest in May 2008, which, according to the Government, resulted in roadblocks that have endangered the health and safety of the population and which therefore justified the limitation of certain fundamental rights and the declaration of a state of prevention by the President. The Committee notes the Government's observations to the effect that 35 people were arrested on 8 May 2008 for blocking the road to the Pacific, two of whom were prosecuted for activities against the internal security of the nation but were immediately released on bail and then benefited from the conditional suspension of criminal proceedings. In this regard, the Committee recalls that the arrest and detention of trade unionists, even for reasons of internal security, may constitute a serious interference with trade union rights unless attended by appropriate judicial safeguards [see* ***Digest****, op. cit., para. 75].*

491. *The Committee also notes the Government's indication that the Union of Heavy Goods Transport Drivers does not appear in the records of the Ministry of Labour, which prevents it from determining whether people who have been prosecuted for their involvement in the protests were unionized or were union leaders. The Committee requests the complainant to provide more information to locate this union.*

492. *The Committee once again regrets that the Government has not supplied any information in regard to its other previous recommendations:*

– *criminal action against the leaders of the Workers' Union of the Municipality of Zacapa;*

– *investigations into blacklisting;*

– *alleged violations of the freedom of association in the Las Américas LLC and Crown Plaza Guatemala hotels;*

– *the law courts associated with reinstatement orders and dismissals in the Union of Workers of the Municipality of Chimaltenango.*

493. *The Committee once again urges the Government to communicate the requested information pertaining to these allegations. The Committee once again recalls that all practices involving the blacklisting of trade union officials or members constitutes a serious threat to the free exercise of trade union rights and, in general, governments should take stringent measures to combat such practices [see* ***Digest****, op. cit., para. 803].*

494. *The Committee notes the information supplied by the Government on the existence of four unions operating in the* maquila *sector as well as on the labour inspection's actions in that sector.*

495. *Finally, the Committee notes the additional information and new allegations sent by the MSICG in communications dated 15, 17, 18, 20 and 22 February 2013 about the climate of labour impunity, the obstacles to unions' recognition and registration, and incidents of harassment and criminal persecution against the Workers' Union of the Guatemalan Social Security Institute, the Professional Workers' Union of the Guatemalan Social Security Institute, the Organized Workers' Union of the National Attorney-General's*

Office and the Workers' Union of the Office of the Comptroller General of Accounts United for Development. The Committee requests the Government to send observations on these matters at the earliest opportunity.

The Committee's recommendations

496. ***In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee expresses once again its deep and growing concern over the seriousness of this case given the many instances of murder, attempted murder, assault, death threats, kidnapping, persecution and intimidation perpetrated against union leaders and members as well as over the allegations of drawing up blacklists and the climate of total impunity.

(b) The Committee firmly hopes that the commitments made by the Government in the Memorandum of Understanding signed on 26 March 2013 regarding sanctions against those who planned and executed the murders of union members and protection of union members and leaders from violence and threats will translate into concrete actions and results. Noting with interest the information provided by the Government on the first actions taken to apply the Memorandum of Understanding, the Committee urges the Government to keep it informed of the full range of actions taken in this regard as well as the results obtained.

(c) With regard to the murders of Mr Pedro Zamora and Mr Pedro Ramírez de la Cruz, the Committee urges the Government to reopen the investigations in order to identify the perpetrators and instigators of these murders, to discover the motives behind the crimes and to bring those responsible to justice in a court of law. The Committee requests the Government to keep it informed of all developments relating to this matter.

(d) With regard to the murders of Mr Romero Estacuy, Mr Víctor Galvez, Mr Jorge Humberto Andrade, Mr Adolfo Ich, Mr Mario Caal, Mr Pedro Antonio García, Mr Manuel de Jesús Ramírez, Mr Víctor Alejandro Soyos Suret, Mr Juan Fidel Pacheco Curec, Mr Salvador del Cid, Mr Miguel Ángel Felipe Sagastume, Ms Evelinda Ramírez Reyes and Ms María Juana Chojlán Pelicó, the Committee requests the Government to keep it informed of the progress made as well as the results of the judicial trials and ongoing investigations at the earliest opportunity.

(e) With regard to the murder of Mr Idar Joel Hernández Godoy, the Committee urges the Government to explain at the earliest opportunity the reasons why the Public Prosecutor's Office disregarded the possible anti-union motive behind the murder and to take the necessary measures to identify and bring to justice those responsible for the murder.

(f) With regard to the murder of Ms Maura Antonieta Hernández, the Committee requests the Government to take the necessary measures to ensure that the possible anti-union motive behind the crime is considered fully in the course of the investigations and criminal proceedings relating to this case to keep it informed of any developments in this regard.

(g) With regard to the murder of Mr Matías Mejía, the allegations of death threats against SITRABI board member Ms Selfa Sandoval Carranza and the allegations of the illegal detention and intimidation of SITRAPETEN members in several hotels across the country, the Committee requests the complainants to indicate, in relation to these three cases, as precisely as possible, the full names of the victims, the places where the incidents took place, the authorities to whom the incidents were reported, as well as any other information they may have.

(h) With regard to the murders of Mr Armando Sánchez, advisor to the Union of Coatepeque Traders and Mr Liginio Aguirre, member of the Union of Guatemalan Health Workers, the Committee once again urges the Government to provide information about the investigations into these murders without delay.

(i) With regard to the death threats made against the trade union members Ms Lesvia Morales, the Committee urges the Government and the complainant to work together in good faith so that the corresponding file can finally be identified.

(j) With regard to the allegations of attempted murder and death threats against Mr Leocadio Juracán, the Committee requests the Government to contact the Human Rights Ombudsman without delay to identify the case in question and thus be in a position to give full information about the actions the State has taken regarding this complaint.

(k) With regard to the allegations of attempted extrajudicial killings, death threats and the injuries sustained by the members of the Commercial Workers Union of Coatepeque, the Committee once again urges the Government to launch an independent judicial inquiry into the allegations of attempted extrajudicial killings and death threats against union members. The Committee requests the Government to keep it informed of all the details of these investigations and the resulting criminal proceedings.

(l) Recalling that the authorities should resort to the use of force only in situations where law and order is seriously threatened, and that the intervention of the forces of order should be in due proportion to the danger to law and order that the authorities are attempting to control and that governments should take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations which might result in a disturbance to the peace [see* Digest*, op. cit., para. 140], the Committee requests the Government to take all the necessary measures, such as issuing instructions, drawing up a code of conduct or holding training and awareness courses so that the police can fully apply this principle. The Committee requests the Government to keep it informed of any developments in this regard.

(m) With regard to the disappearance of the minor Ms María Antonia Dolores López, and the investigations linked to the criminal action launched against leaders of the Workers' Union of the Municipality of Zacapa, the Committee

once again urges the Government to provide information regarding the investigations launched in connection with these cases without delay.

(n) With regard to the murder of Mr Roberto Oswaldo Ramos Gómez, Secretary for Labour and Disputes of the Workers' Union of the Municipality of Coatepeque, the Committee urges the Government to explain at the earliest opportunity the reasons why the Public Prosecutor's Office disregarded the possible anti-union motive behind the murder and to take the necessary measures to identify and bring to justice those responsible.

(o) With regard to the murder of Mr Manuel de Jesús Ramírez, the Committee urges the Government to take all necessary meausres to identify those responsible for this crime and bring them to justice at the earliest opportunity and to keep it informed of all developments in this regard.

(p) The Committee urges the Government to take immediate and decisive measures to fight the impunity surrounding allegations of anti-union violence and to ensure that the principles of freedom of association are fully taken into consideration in the dealings of the Public Prosecutor's Office and criminal authorities. In particular, the Committee urges the Government to:

- *take steps to initiate systematic investigations when reports of anti-union incidents are received;*
- *develop and apply effective protective measures for people who agree to collaborate in criminal investigations into acts of anti-union violence;*
- *guarantee that the Public Prosecutor's Office will systematically request information from the unions involved to determine the victims' membership to the union movement and to identify possible anti-union motives behind the offences under investigation. In this regard, the Committee requests the Government to ensure, in particular, that the Public Prosecutor's Office works with the unions involved to re-examine the murder cases that have not yet led to convictions, including cases considered as having no new leads;*
- *significantly reinforce the Public Prosecutor's Office's resources and training for freedom of association, in particular those available to the Public Prosecutor's Office regarding crimes against trade union members. In this regard, the Committee takes note of the Government's request for technical assistance.*

(q) The Committee requests the Government to take without delay the necessary measures to register the prison service union and to align its legislation with Convention No. 87 and the principles of freedom of association by extending the right to organize to prison staff. The Committee draws the legislative aspects of this issue to the attention of the CEACR.

(r) With regard to the alleged refusal to register the Workers' Union of the Municipality of Río Bravo, the Committee requests the complainant to

submit further information so that this organization can be located in the database of the General Directorate for Labour.

(s) As regards the detention of members of the Union of Heavy Goods Transport Drivers after a protest in May 2008, the Committee requests the complainant to provide more information to locate this union.

(t) With regard to the criminal action launched against leaders of the Workers' Union of the Municipality of Zacapa, the investigations into the drawing up of blacklists, the alleged freedom of association violations in Las Américas LLC and Crown Plaza Guatemala hotels, the law courts associated with reinstatement orders and dismissals in the Union of Workers of the Municipality of Chimaltenango, the Committee once again urges the Government to communicate the requested information regarding these allegations.

(u) The Committee requests the Government to send its observations about the additional information and new allegations laid out in the MSICG's communications dated 15, 17, 18, 20 and 22 February 2013 at the earliest opportunity.

(v) The Committee once again calls the Governing Body's special attention to the extreme seriousness and urgency of the issues in this case.

CASE NO. 2959

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of Guatemala presented by the Trade Union Confederation of Guatemala (UNSITRAGUA)

Allegations: The complainant organization alleges anti-union practices, violation of the provisions of a collective agreement and dangers to the safety of the members of two trade unions at the Property Registry

497. The complaint is contained in a communication from the Trade Union Confederation of Guatemala (UNSITRAGUA) dated 1 June 2012.

498. The Government sent observations in a communication dated 27 November 2012.

499. Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

500. In a communication dated 1 June 2012, the complainant alleges that the Property Registry Workers' Union (STRGP) and the Property Registry Administrative Workers' Union (STARP) have been subjected by the new Registrar, who was appointed in January 2012, to various anti-union practices, including transfers, recruitment and dismissals in violation of the current collective agreement, the loss of union membership by a worker, Ms Ana María Hernández, in return for a managerial post involving a pay rise, statements in the media by the Registrar likely to endanger registry workers in general and trade union officials in particular, and obstruction of national police action relating to the implementation of security measures requested by both trade unions. The complainant indicates that the STRGP filed complaints between 20 April and 4 May 2012 with the Ministry of Labour and the Human Rights Ombudsman's Office and that it instituted legal proceedings to seek nullification of the appointments made by the Registrar in violation of the provisions of the collective agreement.

B. The Government's reply

501. In its reply dated 27 November 2012, the Government states that since July 2012 there has been direct conciliatory dialogue between the new management of the Property Registry and the STRGP and STARP which has enabled the issues under dispute to be resolved. A forum for dialogue, set up under the auspices of the labour inspectorate, completed its work on 9 August 2012, when the inspectorate established a protocol which was signed by the parties. This contained a list of agreements which had been concluded, particularly those relating to the free exercise of freedom of association at the Property Registry and to observance of the collective agreement relating to employment stability, transfers, appointments and creation of posts. In the protocol drawn up by the inspectorate, the trade unions and the employers indicated that relations are now harmonious between the parties and that any other issues arising between the unions and the management will be resolved directly through dialogue between the parties.

502. The Government also sends a copy of a communication dated 26 October 2012 whereby the STRGP informed the Labour and Social Welfare Court that, because of the agreement reached with the respondent, it was dropping its legal action calling for nullification of the appointments made by the Registrar. Lastly, the Government indicates that the STRGP decided to withdraw its complaints relating to the alleged dangers caused to the safety of its members, the notice of withdrawal was about to be submitted to the respective court and a copy would be forwarded once it had been submitted.

C. The Committee's conclusions

503. *The Committee observes that the present case refers to allegations of anti-union practices, violations of the collective agreement and dangers to the safety of the members of two trade unions at the Property Registry.*

504. *The Committee notes the Government's observations concerning the resolution of the issues under dispute between the management of the Property Registry and the STRGP and STARP trade unions through a forum for dialogue facilitated by the labour inspectorate. The Committee notes the protocol established by the labour inspectorate on 9 August 2012 and signed by the parties containing a list of concluded agreements and indicating that relations are now harmonious between the parties and that any other issues arising between the unions and the management will be resolved directly through dialogue between the parties. The Committee also observes that the STRGP dropped its legal action for nullification instituted in the Labour and Social Welfare Court.*

505. *The Committee notes the Government's statements to the effect that the STRGP also decided to withdraw its complaints relating to the alleged dangers caused to the safety of its members. In this regard, the Committee recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 44]. The Committee takes note with interest of the formal commitment made by the Government, through the Memorandum of Understanding signed on 26 March 2013 by the Government of Guatemala and the Workers' group of the ILO Governing Body, to guarantee the safety of workers, and through effective protection measures, that of trade union officials and leaders against violence and threats so that they can carry out their trade union activities. The Committee requests the Government and the complainant to keep it informed of any follow-up action taken with regard to the complaints initially filed by the STRGP concerning alleged dangers caused to the safety of its members.*

The Committee's recommendation

506. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:***

> ***The Committee requests the Government and the complainant to keep it informed of any follow-up action taken with regard to the complaints initially filed by the STRGP concerning alleged dangers caused to the safety of its members.***

CASE NO. 2978

INTERIM REPORT

Complaint against the Government of Guatemala presented by the Trade Union Confederation of Guatemala (CUSG)

Allegations: The complainant organization alleges the mass dismissal of workers, in violation of the provisions of a collective agreement in the municipality of Jalapa, as well as anti-union persecution, dismissals, death threats and an attempted murder against members of the Trade Union of Workers of the Municipality of Pajapita

507. The complaint is contained in two communications dated 1 August 2012 presented by the Trade Union Confederation of Guatemala (CUSG). The complainant organization sent additional information in a communication dated 22 May 2013.

508. The Government sent partial observations in a communication dated 6 February 2013.

509. Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

510. In an initial communication dated 1 August 2012, the complainant alleges that on 30 April 2012, 216 workers of the municipality of Jalapa were dismissed, violating the collective agreement on working conditions signed by the Trade Union of Workers of the Municipality of Jalapa and by that municipality, in particular article 49 of the agreement concerning "employment stability and immunity from dismissal". The trade union initiated legal proceedings as a result of which, on 24 May 2012, the Labour, Social Welfare and Family Court of First Instance of the municipality of Jalapa ordered the reinstatement of the dismissed workers to their posts. The complainant organization further alleges that, on 15 June 2012, members of the municipality abusively interrupted the mission of a committee of the Labour Court of First Instance in charge of directing the employee voting process regarding the strike action planned in protest against the abovementioned dismissals. It adds that the mayor publicly declared that he would not reinstate any of the workers, that the labour judge was not impartial and that he would file criminal proceedings against the trade union leaders and previous mayors for signing the collective agreement, which he declared illegal.

511. In its communication dated 22 May 2013, the complainant organization states that, in the presence of the General Labour Inspectorate, a consensual agreement between the Municipality of Jalapa and the Trade Union of Workers of the Municipality of Jalapa was signed on 3 December 2012, providing for the reinstatement of all dismissed employees and the payment of wages as of 1 December 2012. The complainant adds that while the dismissed workers have been reinstated, back wages have not been paid, in violation of the agreement signed on 3 December 2012 and, for this reason, the conflict is not yet resolved.

512. In a second communication, dated 1 August 2012, the CUSG alleges that Ms Tania Vanessa Castillo Rodríguez, Records and Agreements Secretary of the Trade Union of Workers of the Municipality of Pajapita, and Mr Walter Manfedo López Valdez, candidate to a union leadership position, were dismissed on 27 April and 10 July 2012, respectively, in violation of the agreement on working conditions in force between the abovementioned trade union and the municipality of Pajapita, especially with regard to its clauses on employment stability and trade union action.

513. The complainant adds that, from March 2012, Ms Guadalupe Floridalma de León and Ms Marili Blanca Stzep Ramírez, respectively Trade Union Secretary-General and Finance Secretary, received death threats via telephone, indicating that they would be killed if they did not give up their trade union activities. Both leaders resigned on 5 July 2012. On 13 June 2012, Ms Guadalupe Floridalma de León and Ms Marili Blanca Stzep Ramírez filed a complaint before the Regional Deputy to the Office of the Human Rights Advocate, placing on the record that they believed that the threats came from the mayor of the municipality, his son and one of his collaborators. However, both leaders withdrew their complaints on the following day. The CUSG referred the case to the Public Prosecution Service on 14 June. The organization further alleges that an attempt was made on the life of Mr Orlando Joaquin Vazquez Miranda, Union Labour and Disputes Secretary, on 5 June 2012, and that no complaint was filed for fear of future reprisals.

514. Lastly, the CUSG alleges that the Mayor of Pajapita is pressuring union members to sign pre-drafted letters of resignation, and is subjecting staff to various threats and blackmail to make them leave the union.

B. The Government's reply

515. In its reply dated 6 February 2013, the Government of Guatemala indicates that, as regards the situation of dismissed workers in the municipality of Jalapa, an out-of-court agreement by mutual consent was signed on 3 December 2012 between the municipality of Jalapa and the Trade Union of Workers of the Municipality of Jalapa in the presence of the General Labour Inspector, the Deputy Minister for Labour and delegates of the Office of the Prosecutor for Human Rights. Dated 1 December 2012, the agreement provides for the reinstatement of all dismissed employees, the payment by instalments of wage arrears, the withdrawal of the legal proceedings filed by the parties to the dispute, thereby ending the labour dispute between the municipality of Jalapa and the trade union.

C. The Committee's conclusions

516. *The Committee observes that this case concerns, firstly, allegations of the mass dismissal of municipal workers, in violation of the collective agreement in force in the municipality of Jalapa, and secondly, allegations of death threats, attempted murder, pressure on unionists to leave the union, and anti-union dismissals against members of the Trade Union of Workers of the Municipality of Pajapita.*

517. *The Committee takes note of the Government's observations regarding the dismissal of the municipal workers of Jalapa. The Committee observes with satisfaction that, under the auspices of the General Labour Inspector and the Deputy Minister for Labour, the municipality of Jalapa and the Trade Union of Workers of the Municipality of Jalapa signed an agreement by mutual consent ending the labour dispute between the parties and providing for the reinstatement of the dismissed workers as well as the payment by instalments of wage arrears. The Committee also observes that, according to the information provided by the complainant organization in its communication dated 22 May 2013, the consensual agreement, as concerns the payment of back wages, has not yet been implemented. The Committee therefore requests the Government to keep it informed promptly about the payment of back wages to the workers of the Municipality of Jalapa following their reinstatement.*

518. *The Committee observes with concern the very serious nature of the alleged anti-union acts, death threats and attempted murder against members of the Trade Union of Workers of the Municipality of Pajapita. The Committee deeply regrets that, despite the seriousness of these allegations and the time that has elapsed since the presentation of this case, the Government has not yet sent its observations in this regard.*

519. *The Committee recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 44]. In the light of this principle and taking note with interest of the formal commitment made by the Government in the Memorandum of Understanding, signed on 26 March 2013 between the Government of Guatemala and the Workers' group of the Governing Body of the ILO, to guarantee the safety of workers through effective measures to protect union members and leaders against violence and threats to enable them to carry out their trade union activities, the Committee urges the Government to hold an independent judicial inquiry without delay into the alleged events and to take the necessary measures to guarantee the safety of the persons threatened and to re-establish a climate of trust that enables the members of the Trade Union of Workers of the Municipality of Pajapita to engage freely in union activities. The Committee requests the Government to inform it without delay of the measures taken in this regard and of the outcome of the inquiry.*

The Committee's recommendations

520. ***In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee requests the Government to keep it informed promptly about the payment of back wages to the workers of the Municipality of Jalapa following their reinstatement.

(b) The Committee urges the Government to hold an independent judicial inquiry without delay into the alleged anti-union acts, death threats and attempted murder against members of the Trade Union of Workers of the Municipality of Pajapita, and to take the necessary measures to guarantee the safety of the persons threatened and to re-establish the climate of trust so as to enable the members of the abovementioned union to engage in union activities.

(c) The Committee requests the Government to inform it without delay of the measures taken in this regard and of the outcome of the inquiry.

(d) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of the matters dealt with in this case.

CASE NO. 2990

INTERIM REPORT

Complaint against the Government of Honduras presented by
– the Authentic Trade Union Federation of Honduras (FASH)
– the Workers' Union of the Casa Comercial Mattews Cemcol Comercial y Similares (SITRACCMACCOS) and
– the Workers' Union of Honduras Institute of Children and the Family (SITRAIHNFA)

Allegations: Violations of the collective agreement, impediments to collective bargaining, dismissals and anti-union practices in a company and in the Honduras Institute of Children and the Family

521. The complaint is contained in two communications from the Authentic Trade Union Federation of Honduras (FASH), dated 29 August 2012. The first communication was also signed by Workers' Union of the Casa Comercial Mattews Cemcol Comercial y Similares (SITRACCMACCOS), the second by the Workers' Union of Honduras Institute of Children and the Family (SITRAIHNFA).

522. The Government sent its observations in a communication on 11 December 2012.

523. Honduras has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

524. In a communication dated 29 August 2012, FASH and SITRACCMACCOS allege that in 2012, the company Casa Comercial Mattews Cemcol Comercial y Similares, claiming a full restructuring of the company – but in reality seeking to dissolve the trade union – succeeded in getting many of the trade unionists to leave its employ and later dismissed the many other trade union members precisely when the trade union changed its statutes with a view to change from a company union to an industry-level union. The complainant organizations point out that at the date of the complaint the seven board members were the only ones that had not been dismissed; the employment relationship of all the remaining trade unionists had been terminated. The complainants have requested that the collective agreement be honoured, including the terms relating to the payment of wages and to the social benefits of those who were dismissed.

525. In another communication dated 29 August 2012, FASH and SITRAIHNFA allege that the Honduras Institute of Children and the Family claims that the trade union should be dissolved so that the Institute can do business with non-governmental organizations (NGOs). The authorities are debating whether to dismantle the Institute and establish a Children's Ombudsman Office with new staff.

526. Further, the aforementioned organizations allege that the Institute failed to comply with various terms of the 2009 collective agreement (this agreement continues to be in force, since the complainants allege that the Institute's authorities have blocked the negotiation of the new agreement). They also allege that the Institute does not recognize the trade union as the representative of all the workers, whether affiliates or not. Other terms that the Institute has failed to comply with include, for example, those relating to overtime hours of work, staff transportation, provision of equipment, regulatory procedures and job stability. Therefore, according to the complainants, the Institute has dismissed employees orally and in writing. The trade unions have sent many attachments.

B. The Government's reply

527. In its communication of 11 December 2012, the Government states that it respects union rights and that the authorities recognize SITRAIHNFA, as evidenced by the six agreements concluded in the Institute. SITRAIHNFA terminated the last collective agreement and apparently negotiated in a series of meetings with the former executive director the provisions of the collective agreement without accepting those relating to wage increases and others having economic and financial implications. The Government explains that during this time the Institute has been engulfed by a budgetary and financial crisis, to the extent that on 21 September 2011, under Executive Order No. 066-2011, a state of emergency was declared at the Institute, and an intervening commission was set up. The commission was operational until January 2012, when the current executive director was named. Under the general provisions relating to the Council of Ministers contained in Executive Orders Nos PCM-063-2011 and PCM-027-2012, his powers in dealing with the budget and financial resources have been restricted, owing to the domestic and international financial crisis affecting the State, to the extent that all wage increases are prohibited by law, a point that the complainants seek to overlook. In other words, the Government reiterates that the signing of the seventh collective agreement has not been possible in view of the country's financial situation, in particular the Institute's available

budgetary resources, and the legal impediments duly shown by the executive orders that the Government attached to its communication.

528. The Government states that the allegation that dismissals at the Institute are made orally and in writing, and that the trade union is not recognized or its existence denied is not true. This allegation can easily be refuted by the many specific records and grievance records that are properly drawn up in the presence of the trade union in the Institute's Department of Human Resources. A union representative is thus present and signs the documents. The representative is granted the right to speak in defence of the workers' interests, in accordance with the rules of procedure and the collective agreement, which alone defeats this allegation.

529. The Government adds that when the bill for the establishment of the National Children's Ombudsman Office was brought before the Honduran National Congress, the members of the SITRAIHNFA Central Board of Directors were invited by the State to attend so that they too could present their initiatives and observations. The proposals of both parties are now awaiting debate in the legislative branch. In view of the preceding statement, the wording of the complaint stating that "the Government's intention is to do business with NGOs" not only lacks respect, but is totally inappropriate and does not merit any consideration whatsoever because such defamatory accusations should not be made capriciously and without substantiation to international bodies.

530. In addition, the Government considers inappropriate and capricious the statement that the executive branch intends to dissolve the Institute, and thus the trade union. The plan to set up the National Children's Ombudsman Office to replace the Institute is not the decision of the executive branch alone, since the relevant bill was drafted by a team composed of representatives of bodies engaged in international cooperation dealing with youth programmes, such as: the United States Agency for International Development (USAID) and the United Nations Children's Fund (UNICEF); civil society, representatives of the Inter-institutional Coordination of Private Organizations for Children and Children's Rights (COIPRODEN), an organization representing more than 30 organizations devoted to youth programmes; the Office of the Public Prosecutor for Victimized Children, an integral part of the Office of the Public Prosecutor of the State; and the executive branch, represented by the Justice and Human Rights Secretariat and the senior management of the Institute, based on the competencies granted by the Constitution and the legal provisions governing its institutional life. By creating a new institution, this bill aims to extend the scope of the Institute, which is oriented solely towards children at social risk or criminal law offenders. It also will also cover the human rights of the 3.8 million children of Honduras. Further, this bill falls within the frame of the Law on the Country Vision and National Plan, which in the case of the Institute, requires it to decentralize its functions through the municipalities, with the compulsory expansion of the present 36 municipalities in which it operates, to the 298 municipalities throughout the country.

531. With regard to the trade union's recognition, the Government states that apparently the complainants do not recall the contents of clause 4 of the collective agreement in force that states as follows: "If for whatever reason the Honduras Institute of Children and the Family should change its name or its representatives, the new authority shall continue being the "employer" in matters of employment. The relation will be governed by the rules of procedure in force, in addition to the provisions of the present collective agreement, and by the Labour Code, as a legal framework. In all cases the trade union will be recognized automatically as the legitimate representative of the professional and general interests of its respective members with whatever name is adopted by the new institution."

532. Concerning the alleged impediments to collective bargaining, the Government denies impediments by the Institute and refers to the records of grievance hearings granted on

behalf of the workers and to specific records referring to the conciliation produced by the mediation of the Secretariat of Labour aimed at bringing a halt to the countless illegal walkouts by the trade union that cause prejudice to the children and the Institute. In all these documents the union appears precisely as the workers' representative.

533. With respect to the alleged violation by the Institute's authorities of the employment agreement, the Government states that according to the trade union, the terms range from those relating to payment of overtime hours of work to the alleged violation of constitutional guarantees, the obligation to provide staff transportation under certain conditions, the provision of furniture and equipment, the application of regulatory procedures to staff, job stability and so forth. The Government points out that there is little substance in these allegations and if they were true, this would require intervention or the permanent closing of the Institute.

534. The Government also states that the complainant has not exhausted all administrative remedies concerning the allegations. Concerning the application of clause 98 of the collective agreement that was challenged by a series of temporary workers claiming such clause as the basis for recognition of their status as fixed-term workers, the Constitutional Chamber of the Supreme Court of Justice ruled in favour of the Institute, dismissing the case against the Institute.

535. With regard to the alleged non-compliance with the clause of the sixth collective agreement guaranteeing the administrative and managerial freedom of the Institute with respect to the necessary resources for achieving its ends, without further obligations or constraints than those set out in the Constitution of Honduras, in the laws, in the regulations and in the present collective agreement, the Government states that despite giving timely notification to some temporary workers of the termination of their contracts, the administration of the Institute lawfully and repeatedly advised the former workers to claim amounts to which they could be found legally entitled in terms of acquired rights. As ordered and instructed by the union leaders, the workers refused to do so, causing significant prejudice to their own interests, since articles 864 and 867 of the Labour Code exclude the possibility of making any legal claims to employment rights two months after their agreements have been terminated.

536. The Government states that the trade union eventually acknowledged that the Institute's senior management had on the one hand dismissed staff and, on the other hand, recruited others. However, what the signatories of the agreement do not indicate is that many people lacking the proper qualifications for their posts were under contract at the Institute. As a result, it was necessary to replace part of them with qualified staff, social workers, psychologists and physicians to carry out the difficult work of the Institute, that is to say, to provide care for children at social risk or for juvenile offenders of criminal law.

537. The Government stresses that SITRAIHNFA has been responsible for constant abuse, causing prejudice not only to the Institute and the children. The union carried out 17 illegal work stoppages (amounting to 120 working days), which in some cases lasted 15 or 17 days, bring the Institute's work to a halt.

C. The Committee's conclusions

538. *The Committee takes note of the allegations relating to the Institute and observes that they refer to the dissolution of the Institute and its replacement by a Children's Ombudsman Office with new staff. It also takes note of the allegation of the Institute's failure to comply with various clauses of the 2009 collective agreement, impediments by the authorities to the negotiation of a new collective agreement, oral and written dismissals and the failure to recognize the union as the representative of all the workers.*

539. *The Committee notes that the Government states the following: (1) the negotiation of the new agreement was faced with the impossibility of offering any wage increases in virtue of the executive orders issued by the Council of Ministers in view of the domestic and international financial crisis limiting budgetary resources; (2) a bill has been introduced to establish the National Children's Ombudsman Office, and SITRAIHNFA's Central Board of Directors has been given the opportunity to present its initiatives, observations and proposals, which are pending discussion in the legislative branch; therefore, the complainants' accusation of "doing business with NGOs" is defamatory. The replacement of the Institute by the National Children's Ombudsman Office is not a decision of the executive branch alone, since the bill was drafted by a group of representatives of organizations engaged in international cooperation, such as UNICEF, and numerous organizations dealing with children's issues, such as the Juvenile Prosecutor; (3) the purpose of replacing the Institute with the National Children's Ombudsman Office is to extend human rights coverage to 3.8 million children and to decentralize functions through the municipalities (currently the Institute is oriented solely towards children at social risk or criminal law offenders and only covers 36 of the 298 municipalities in Honduras); (4) the collective agreement expressly guarantees that the future employer will recognize the trade union as a legitimate representative of its members in the new institution; (5) the employment issues covered in the complaint have resulted in mediation between the parties by the Secretariat of Labour, and the trade union has made 17 work stoppages that have paralysed the work of the Institute for 120 working days; (6) in the issues contained in the complaint, the complainant has failed to exhaust all administrative remedies; (7) as regards the alleged violation of the collective agreement by staff dismissals, the judicial authority has in a certain number of cases ruled against the trade union; the trade union also claimed that temporary workers, who have received timely notification of the termination of their contracts, should be recognized as fixed-term staff; lastly, the Institute had to replace a certain number of people lacking the necessary qualifications for the posts concerned to fill them with skilled personnel (social workers, physicians, psychologists and so forth) in order to meet the aims of the Institute (provision of services for children at social risk and juvenile criminal law offenders); and (8) in the administrative procedures for dismissal, the trade union was granted a hearing by the Institute's Human Resources Department.*

540. *The Committee observes that the present case between the trade union and the Institute is related mainly to the likely replacement of the Institute by another institution (according to the complainants, with new staff) on the one hand, and to collective bargaining issues on the other (impossibility of pay raises because of the financial crisis, according to the Government, and failure to observe certain clauses of the collective agreement in force, according to the complainants; and dismissals of short- or fixed-term workers).*

541. *In view of the contradictory versions of the parties, the Committee considers that it is not in a position to determine whether or not the terms of the agreement in force have been breached. Taking into account the number of strikes carried out, the Committee requests the Government to take measures so that the Institute, in agreement with the complainant, set up an independent mechanism for the settlement of disputes on the application of the terms of the collective agreement. The Committee expresses the hope that this mechanism can be included in the next collective agreement. The Committee considers that this mechanism should be able to deal with issues of interpretation of the collective agreement, including in relation to the provisions on dismissal. Concerning the impossibility of negotiating wage increases because of the domestic and international financial crisis, as argued by the Government, the Committee wishes to highlight the principle whereby if, as part of its stabilization policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect*

workers' living standards [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 1024]. The Committee requests the Government to ensure respect for this principle and expresses the hope that collective bargaining on wage issues can be taken up again in the very near future.*

542. *With regard to the likely replacement of the Institute by the National Children's Ombudsman Office for the reasons and aims mentioned by the Government, the Committee observes that, according to the Government, the relevant bill was submitted for consultation with the trade unions concerned once it had been introduced to the legislature and that in this context, the trade unions have presented their observations and proposals. The Committee regrets nonetheless that in drafting the bill such trade unions were not consulted, despite the fact that the bill deals with an issue that has a direct impact on their members. The Committee expresses the hope that, as announced by the Government, the legislative branch will duly consider the trade unions' viewpoint and proposals and will give them a voice in the legislative process.*

543. *Lastly, the Committee regrets to observe that the Government has not responded to the allegations concerning the company Casa Comercial Mattews Cemcol Comercial y Similares and requests it to send its observations without delay.*

The Committee's recommendations

544. ***In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) With regard to the allegations concerning the Institute, the Committee requests the Government to take measures so that the Institute, in agreement with the complainant, set up an independent mechanism for the settlement of disputes on the application of the terms of the collective agreement and expresses the hope that this mechanism can be included in the next collective agreement. The Committee considers that this mechanism should also be able to deal with the interpretation of the collective agreement, including in relation to the provisions on dismissal.

(b) Concerning the impossibility of negotiating wage increases due to the financial crisis, the Committee draws the Government's attention to the principle contained in the conclusions on the economic stabilization measures in times of financial crisis and requests it to ensure respect for such principle; at the same time the Committee expresses the hope that collective bargaining on wage issues can be taken up in the very near future.

(c) The Committee expresses the hope that, as announced by the Government, the legislative branch will duly consider the point of view and proposals of the trade unions and will give them a voice in the process of drafting the bill on the National Children's Ombudsman Office.

(d) Lastly, the Committee regrets to observe that the Government has not responded to the allegations concerning the company Casa Comercial Mattews Cemcol Comercial y Similares and requests it to send its observations without delay.

CASE NO. 2991

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of India presented by the Garment and Allied Workers' Union (GAWU)

Allegations: The complainant organization alleges the inaction of the authorities with regard to the registration of the union

545. The complaint is contained in a communication from the Garment and Allied Workers' Union (GAWU) dated 11 October 2012.

546. The Government forwarded its response to the allegations in a communication dated 9 January 2013.

547. India has neither ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

548. In a communication dated 11 October 2012, the complainant organization GAWU alleges the inaction of the authorities with regard to the registration of the union.

549. The complainant states that GAWU is a trade union as per the definition of the term provided under section 2(h) of the Trade Union Act of 1926, and has, as members, workers from the garment and other allied industries in the Gurgaon district of Haryana State in India. The objective of GAWU is to improve the wages and working conditions of workers in the garment and other allied industries in Gurgaon, and this objective has been clearly outlined in the union's Constitution. According to the complainant organization, GAWU has elected representatives and a membership of over 300 workers from various companies engaged in the production of garment and other allied activities in Gurgaon, who pay a membership fee of 5 rupees (INR) per month to the union's fund. The complainant encloses for reference the Constitution of the union, details of GAWU membership, as well as the names and other details of elected GAWU representatives.

550. The complainant organization indicates that, as per section 4 of the Trade Union Act 1926, GAWU applied for its registration to the Registrar of Trade Unions in Chandigarh on 21 December 2011. As per section 5 of the Act, GAWU furnished all documents necessary for the registration, as well as all additional documents required by the Registrar.

551. According to information received by the complainant from the Registrar's office, the registration file was submitted to the Deputy Labour Commissioner (DLC) in Gurgaon on 2 January 2012. Not hearing from the DLC on the registration file, the Registrar of Trade Unions sent, on 24 January 2012, a letter to the DLC, copied to GAWU, directing her to transmit the fact-finding report immediately to the Registrar, so that the matter could be finalized as soon as possible. The complainant encloses the abovementioned letter for reference. Thereafter, GAWU sent a reminder to the Registrar on 31 January 2012 and also to the Labour Officer, who was supposed to carry out the inspection based on the registration file of GAWU. The Registrar of Trade Unions in Chandigarh sent three more

letters dated 9 April, 22 May and 12 June 2012 to the DLC, copying GAWU, urging her to submit the inspection report to the Registrar's office as soon as possible. The complainant again encloses these letters for reference. Records obtained by GAWU, through the 2005 Right to Information Act (RTI), dated 17 and 29 May 2012, showed that there was no record of the inspection based on which the DLC was required to submit her report. The complainant states that, on 9 July 2012, GAWU sent a representation to the Labour Secretary of Haryana State urging him to inform the union about the status of its registration; but that, so far, it has not heard anything from the Labour Secretary in this regard.

552. In the complainant organization's view, this inaction from the State of Haryana, with regard to the registration of GAWU, is a deliberate unlawful attempt to deny garment workers their right to organize, in violation of the Trade Union Act 1926. By denying GAWU the registration, the Government is infringing GAWU members' right to organize and bargain collectively for better pay and working conditions.

553. According to the complainant, India, as a founding member of the ILO, is violating the fundamental principle that "freedom of association and of expression is essential to sustained progress". Moreover, the registration of trade unions is the first step in the recognition of the principle of freedom of association that the Preamble of the ILO Constitution declares to be a means of improving conditions of labour and establishing peace. The complainant believes that the inaction from the State of Haryana is in violation of Article 8(2) of Convention No. 87, which stipulates that "the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees" provided by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Moreover, the Government of India is morally bound by the 1998 ILO Declaration on Fundamental Principles and Rights at Work, which, in paragraph 2, states that "… all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; ...".

554. The complainant stresses that the allegedly deliberate delay in registering GAWU by the State of Haryana facilitates the violation of ratified Conventions, such as the Hours of Work (Industry) Convention, 1919 (No. 1), ratified by India on 14 July 1921; the Weekly Rest (Industry) Convention, 1921 (No. 14), ratified by India on 11 May 1923; the Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18), ratified by India on 13 January 1964; and the Equal Remuneration Convention, 1951 (No. 100), ratified by India on 25 September 1958.

555. The complainant organization, therefore, urges the Committee on Freedom of Association to direct the Government of India, in particular the Ministry of Labour and Employment, to enquire into the matter of non-registration of GAWU by the Labour Department of the State of Haryana. It also expresses its willingness to furnish any additional documents and evidence as may be required.

B. The Government's reply

556. In a communication received on 9 January 2013, the Government indicates that, as per the information received from the State Government of Haryana, the request of GAWU for registration under the Trade Union Act, 1926, was considered but rejected due to the following reasons: (i) keeping in view the provisions contained in section 4(2) of the Trade Union Act, 1926, the request for registration of the union is not maintainable when half of

the total number of persons who made the application have ceased to be the members of the proposed union; and (ii) the strength of the total membership of the union does not even fulfil the membership requirement of at least 100 workers, as contained in section 4(1) of the Act.

557. The Government encloses a communication dated 1 January 2013, sent by the Registrar to the union with the subject "Application of Garment and Allied Workers Union, Gurgaon, for its registration under the Trade Union Act, 1926", making reference to the union's application for registration dated 23 December 2011. According to the communication, the matter has been considered and examined along with the report received from the field offices. It has been observed that the General Body of the union, via its resolution dated 30 October 2011, had authorized the following eight applicants to submit the application for registration of the union in question: Anannya Bhattacharjeee, President; Nagender Singh, General Secretary; Ashok Singh, Organizing Secretary; Ram Karan, Publicity Secretary; Mantun Giri, Joint Secretary; Parmod Kumar, Joint Secretary; Khushboo, Joint Secretary; and Ritu Singh, Treasurer. From a perusal of the application submitted by the union, it has been found that the application does not contain the signature of Ritu Singh, Treasurer. However, one Anwar Ansari, Executive Member, has signed the application, without authorization by the General Body. It has further been noted that the status of the remaining seven applicants who have signed the application is as follows: (i) the applicant appearing at Signature No. 1 is a social activist and not a workman; (ii) the services of Nagender Singh and Khushboo whose names are appearing at Signatures Nos 2 and 7 already stand dispensed with, on account of closure of the relevant industrial establishment with effect from 16 April 2012; and (iii) Ram Karan, whose name appears at Signature No. 4, has already resigned from service. According to the communication, it has, therefore, been concluded that the union's request for registration is not maintainable, keeping in view the provisions contained in section 4(2) of the Trade Union Act, 1926, which so provides when half of the total number of persons who made the application have ceased to be the members of the proposed union. In the present case, out of seven applicants, only three applicants remain. Moreover, during the inquiry, it has been found that some of the industrial establishments with whom some members were working already stand closed; that some workers are not interested in the formation of the union; that various workers are not in the rolls of the company; and, thus, that the strength of the total membership of the union does not even fulfil the condition of requirement of at least 100 workers, as contained in section 4(1) of the Trade Union Act, 1926. In view of the reasons given above, the Registrar of Trade Unions has, therefore, concluded that the application of the union is not maintainable and is hence rejected.

C. The Committee's conclusions

558. *The Committee notes that, in the present case, the complainant organization alleges the inaction of the authorities with regard to the union's registration.*

559. *The Committee notes that the complainant indicates that: (i) GAWU has elected its representatives and has a membership of over 300 workers from various companies engaged in the production of garments and other allied activities in the Gurgaon district of Haryana State in India, who pay a membership fee of INR5 per month to the union's fund; (ii) as per sections 4 and 5 of the Trade Union Act, 1926, GAWU applied for its registration to the Registrar of Trade Unions in Chandigarh on 21 December 2011 and furnished all necessary documents, as well as all additional documents required; (iii) the registration file was submitted to the DLC in Gurgaon on 2 January 2012; (iv) the Registrar sent, on 24 January 2012, a letter to the DLC urging her to transmit the inspection report as soon as possible; (v) GAWU, sent on 31 January 2012, a reminder to the Registrar and to the Labour Officer in charge of carrying out the inspection based on the GAWU registration file; (vi) the Registrar subsequently sent to the DLC three more*

reminders (9 April, 22 May and 12 June 2012); (vii) records of May 2012 obtained through the RTI Act showed that the inspection based on which the DLC was required to submit her report had not yet taken place; (viii) on 9 July 2012, GAWU sent a representation to the Labour Secretary of Haryana State urging him to inform the union about the status of its registration but has not received a reply so far; and (ix) in its view, the inaction of the State of Haryana with regard to the registration of GAWU is a deliberate unlawful attempt to deny garment workers their right to organize, in violation of the Trade Union Act, 1926. The Committee also notes the documents enclosed by the complainant including the Constitution of the union, details of the GAWU membership, the names and other details of elected GAWU representatives, as well as the letters sent to the DLC by the Registrar.

560. *The Committee notes that the Government indicates that the request of GAWU for registration under the Trade Union Act, 1926, was considered but rejected. It notes, from the Government's observations and the enclosed communication dated 1 January 2013 sent by the Registrar to the union, that the invoked reasons are as follows:*

(i) The General Body of the union, via its resolution dated 30 October 2011, had authorized the following eight applicants to submit the application for registration: Anannya Bhattacharjeee, President; Nagender Singh, General Secretary; Ashok Singh, Organizing Secretary; Ram Karan, Publicity Secretary; Mantun Giri, Joint Secretary; Parmod Kumar, Joint Secretary; Khushboo, Joint Secretary; and Ritu Singh, Treasurer. The application does not contain the signature of Ritu Singh, Treasurer, but rather of Anwar Ansari, Executive Member, a person who was not authorized by the General Body. As regards the status of the remaining seven applicants who have signed the application, the applicant No. 1 (Anannya Bhattacharjeee) is a social activist and not a worker; the services of applicants No. 2 (Nagender Singh) and No. 7 (Khushboo) stand dispensed with on account of closure of the industrial establishment, with effect from 16 April 2012; and applicant No. 4 (Ram Karan) has resigned from service. The union's request for registration is, therefore, not maintainable, keeping in view the provisions contained in section 4(2) of the Trade Union Act, 1926, which so provides when half of the total number of persons who made the application, have ceased to be the members of the proposed union; in the present case, only three out of seven applicants remain.

(ii) Furthermore, during the enquiry it was found that some of the relevant industrial establishments had been closed in the meantime, that some workers were no longer interested in the formation of the union, and that various workers were not in the rolls of the company. Thus, the strength of the total membership of GAWU did not fulfil the union membership requirement of at least 100 workers as contained in section 4(1) of the Trade Union Act, 1926, as amended in 2001.

561. *Firstly, the Committee observes that, while GAWU's application for registration under the Trade Union Act, 1926, was submitted on 23 December 2011, the official decision in this respect was transmitted to the union only one year later (by letter of 1 January 2013), despite several reminders sent by the union and by the Registrar to the relevant authorities in Gurgaon. The Committee cannot but regret these circumstances and considers that a one-year period for treating a union's application for registration is excessive and not conducive to harmonious industrial relations. It recalls that a long registration procedure constitutes a serious obstacle to the establishment of organizations and amounts to a denial of the right of workers to establish organizations without previous authorization, and that a period of one month envisaged by the legislation to register an organization is reasonable [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 307 and 308].*

562. *As regards the decision to reject the union's request for registration pursuant to section 4(2) of the Trade Union Act, 1926, because half of the total number of persons who made the application have ceased to be members of the proposed union, the Committee wishes to emphasize from the outset that, in view of the above, it generally considers that the registration procedure in the present case did not respect the principle of due process owing to its excessive length, and that, consequently, changes that have occurred within the one-year period with regard to the status of the applicant union members may indeed have had a detrimental impact on the application of the union.*

563. *As to the concretely invoked changes in the status of the applicants, the Committee, observing that the Government refers to the fact that two applicants had been dismissed and one applicant had resigned in the meantime, wishes to recall that, given that workers' organizations are entitled to elect their representatives in full freedom, the dismissal of a trade union leader, or simply the fact that a trade union leader leaves the work that he or she was carrying out in a given undertaking, should not affect his or her trade union status or functions unless stipulated otherwise by the Constitution of the trade union in question. In fact, in such cases, the laying off of a worker who is a trade union official can, as well as making him forfeit his position as a trade union official, affect the freedom of action of the organization and its right to elect its representatives in full freedom, and even encourage acts of interference by employers [see* ***Digest****, op. cit., paras 408 and 411]. With respect to the Government's statement that one applicant was rather a social activist than a worker, the Committee highlights that the requirement of membership of an occupation or establishment as a condition of eligibility for union office are not consistent with the right of workers to elect their representatives in full freedom. For the purpose of bringing legislation which restricts union office to persons actually employed in the occupation or establishment concerned into conformity with the principle of the free election of representatives, it is necessary to, at least, make these provisions more flexible by admitting as candidates persons who have previously been employed in the occupation concerned and by exempting from the occupational requirement a reasonable proportion of the officers of an organization [see* ***Digest****, op. cit., paras 407 and 409]. In this context, the Committee observes that section 22 of the Trade Union Act, 1926, as amended in 2001, provides for a certain proportion or number of office bearers to be exempt from the requirement of being actually employed in the industry concerned. The Committee, therefore, cannot ascertain why the changes in the status of the applicants, as invoked by the Government, triggered the loss of their status as union members or officials and gave rise to the denial of the union's registration.*

564. *As regards the decision to reject the union's request for registration because the strength of the total membership of GAWU did not fulfil the union membership requirement of at least 100 workers contained in section 4(1) of the Trade Union Act, 1926, as amended in 2001, the Committee takes due note of the divergent views of the parties concerning the size of the membership of the complainant organization. It further observes that, pursuant to the relevant legal provision, no trade union of workmen shall be registered unless at least 10 per cent or 100 workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected, are members of such a trade union on the date of the making of application for registration. The Committee recalls that it has always considered that a minimum requirement of 100 workers to establish unions by branch of activity, occupation or for various occupations must be reduced in consultation with the workers' and employers' organizations; and that the legal requirement for a minimum of 30 workers to establish a trade union at enterprise level should be reduced in order not to hinder the establishment of trade unions at enterprises, especially taking into account the very significant proportion of small enterprises in the country [see* ***Digest****, op. cit., paras 283 and 286]. The Committee, therefore, believes that section 4(1) of the Trade Union Act, 1926, as amended in 2001, imposes an excessively high minimum number of members for the formation of unions, at both enterprise level and industry level.*

Bearing in mind that the failure to meet the minimum membership requirement can only give rise to the refusal of a union's registration, if such a requirement is itself in conformity with the principles of freedom of association, the Committee considers that the refusal of GAWU's registration cannot be justified on the purported ground of the union membership having fallen below 100 workers (which is being disputed by the complainant).

565. *In view of its above considerations, the Committee requests the Government to register GAWU without delay. It also requests the Government to take the necessary measures to modify the minimum union membership requirement in section 4(1) of the Trade Union Act, 1926, as amended in 2001, so that the establishment of organizations is not unduly hindered. Lastly, recalling that a long registration procedure constitutes a serious obstacle to the establishment of organizations and amounts to a denial of the right of workers to establish organizations without previous authorization [see* ***Digest****, op. cit., para. 307], the Committee requests the Government to take steps to ensure that the period necessary for registration of workers' organizations is not excessively long.*

The Committee's recommendations

566. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee requests the Government to register GAWU without delay.

(b) The Committee requests the Government to take the necessary measures to modify the minimum union membership requirement in section 4(1) of the Trade Union Act, 1926, as amended in 2001, so that the establishment of organizations is not unduly hindered.

(c) The Committee requests the Government to take steps to ensure that the period necessary for registration of workers' organizations is not excessively long.

CASE NO. 2508

INTERIM REPORT

Complaint against the Government of the Islamic Republic of Iran presented by
– the International Trade Union Confederation (ITUC) and
– the International Transport Workers' Federation (ITF)

Allegations: The complainants allege that the authorities and the employer committed several and continued acts of repression against the local trade union at the bus company, including: harassment of trade unionists and activists; violent attacks on the union's founding meeting; the violent disbanding, on two occasions, of the union general assembly; arrest and detention of large numbers of trade union members and leaders under false pretences (disturbing public order, illegal trade union activities)

567. The Committee has already examined the substance of this case on six occasions, most recently at its June 2012 meeting, when it presented an interim report to the Governing Body [364th Report, paras 575–593, approved by the Governing Body at its 315th Session (June 2012)].

568. The International Trade Union Confederation (ITUC) submitted additional information in a communication dated 20 April 2012.

569. The Government sent its observations in a communication dated 30 May 2012.

570. The Islamic Republic of Iran has not ratified either the Freedom of Association and the Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

571. At its June 2012 meeting, the Committee made the following recommendations [see 364th Report, para. 593]:

(a) With respect to Mr Mansour Osanloo, President of the SVATH, the Committee welcomes the Government's indication that he was unconditionally released in June 2011 and that at present, he is completely free and no limitation, whatsoever, either legally or socially has been imposed on him. The Committee however deeply regrets that Mr Osanloo spent more than five years in prison, despite its regular call for his release.

(b) The Committee welcomes the information that Mr Madadi was released from prison on 19 April 2012. The Committee however deeply deplores the fact that he will have served much more than the two year prison term for which he was initially sentenced by the Revolutionary Court in October 2007, this in spite of the Committee's systematic recommendation for his release. The Committee expects that Mr Madadi will have his rights restored and that he will be compensated for the damage suffered. Furthermore, the Committee deeply regrets that the Government has once again failed to provide any indications concerning the allegations of ill-treatment to which Mr Madadi had been

subjected while in detention, and once again urges the Government to institute without delay an independent investigation into this serious matter and to keep it informed in this regard.

(c) Noting the Government's indication that, together with its social partners, it has collectively negotiated amendments of the Labour Law and that it strongly hopes that the newly drafted Labour Law that is expected to be approved by the Parliament also addresses the core concerns of the Committee on Freedom of Association, the Committee requests the Government to specify which social partners were consulted on the draft amendments and to provide a copy of the newly drafted Labour Bill. It once again urges the Government to indicate any progress made in adopting amendments to the Labour Law so as to allow for trade union pluralism and expects the Government to give this matter the highest priority and to ensure the de facto recognition of the SVATH without further delay pending the introduction of the legislative reforms.

(d) The Committee requests the Government to provide a copy of the Code of Practice on the Administration of Labour Demonstrations and Assemblies.

(e) While noting that the Government has once again failed to provide specific information with regard to the following recommendations, the Committee further recalls them, as summarized below, and urges the Government to provide full information on their implementation:

– The Committee requests the Government to transmit a detailed report of the findings of the SGIO and the Headquarters for the Protection of Human Rights into the allegations of workplace harassment during the period of the union's founding, from March to June 2005, as soon as they are produced. It once again requests the Government, in the light of the information revealed by these investigations, to take the necessary measures to ensure that all employees at the company are effectively protected against any form of discrimination related to their trade union membership or their trade union activities.

– The Committee once again requests the Government to immediately institute a full and independent judicial inquiry into the attacks on union meetings in May and June 2005, in order to clarify the facts, determine responsibilities, prosecute and punish those responsible and thus prevent the repetition of such acts. The Committee requests the Government to keep it informed of developments in this regard, as well as to provide a copy of the court's judgment in the action initiated by the union concerning these attacks once it is handed down.

(f) The Committee once again takes due note of the Government's indication of its requests for technical assistance and training and expects that the Government will not place any restrictions on missions aimed at improving respect for the fundamental principles of freedom of association and that they will be able to meet with all parties concerned in the cases against the Government of the Islamic Republic of Iran, including with those who continue to be detained contrary to the Committee's repeated recommendations.

(g) The Committee, noting the Government's indication that the protection of the rights of workers in their entirety including their right to organize and collective bargaining remains an uncompromising priority, but nevertheless observing that five years have elapsed since its first examination of this case, and noting furthermore the seriousness of the matters contained therein – in particular the yet unresolved grave violations of civil liberties against numerous trade unions leaders and members – once again calls the Governing Body's special attention to the extremely grave situation relating to the trade union climate in the Islamic Republic of Iran.

B. Additional information from the complainants

572. In its communication dated 20 April 2012, the ITUC indicates that, on 14 April 2012, Mr Reza Shahabi, Treasurer of the Syndicate of Workers of Tehran and Suburbs Bus Company, was sentenced to six years imprisonment for allegedly committing the crimes of "propaganda against the regime" and "conspiracy against the national security"; he has also been banned from engaging in trade union activity for five years and was assessed a

70 million Iranian rials (IRR) fine; he remains in prison pending the decision whether to appeal the sentence. The ITUC considers that this case is yet another example where the legal system has been perverted by the Government in order to harass and incarcerate independent trade unionists who have fought to defend human and trade union rights in the Islamic Republic of Iran. The ITUC also expresses its deep concern about Mr Shahabi's health, who allegedly sustained a harsh beating at the hands of the authorities following his arrest in June 2010. The ITUC indicates that he has been denied needed medical care.

C. The Government's reply

573. In its communication dated 30 May 2012, the Government confirms Mr Ebrahim Madadi's release from prison. The Government indicates that it would do whatever is possible to ensure that he would be compensated for the damages, if he is found legally and legitimately liable to collect them. The Government adds that Mr Madadi would also be entitled to seek a variety of existing legal and judicial means and channels to sue any allegations of ill-treatment supposedly inflicted upon him during interrogations and detentions, but that no such file has yet been registered with the public court of law.

574. As regards the situation of Mr Shahabi, the Government indicates that it genuinely continues its constructive attempts to seek his parole and pardon through legal channels. The Government recalls that, when meeting with the Director of the International Labour Standards Department of the ILO, on 17 April 2012, the Minister of Cooperatives, Labour and Social Welfare had reaffirmed the Government's inclination for the immediate freedom of Mr Shahabi; he had instructed his Deputy for International Affairs to closely follow this case. In relation to the accusation of maltreatment of Mr Shahabi, the Government states that any alleged mistreatment of suspects and arrested people, irrespective of the charges against them, shall be subject to appropriate legal prosecuting and that perpetrators thereof would be sued and duly punished if found guilty of the attributed maltreatments and neglects charges; in this respect, Mr Shahabi has the power to exercise his constitutional and legal rights toward reclamation of his rights, if he so decides.

575. In regard to the allegations of negligence and carelessness in addressing the immediate medical needs of Mr Reza Shahabi during his prison term, the Government indicates that the Department of Prisons, Correctional and Rehabilitation Services is responsible for the safety, security and health of prisoners, and that different articles of the Executive Standing Order of the said department legally requires it to constantly supervise the public and individual situation of the prison inmates and address their needs immediately. Paragraph 1 of Article 44 of the Standing Order requires the prison ombudsperson to closely monitor any infringement of the legitimate rights of the prisoners. The Government states that, realizing the importance of providing a detailed account of Mr Shahabi's medical treatment, it will undertake to provide the Committee with a detailed report on his medical treatment. The Government indicates that he has already been in hospital for bone spurs' treatment.

576. Finally, the Government recalls that the Minister had reiterated the determination and commitment of the Government for the promotion of the principles of the freedom of association and the multiplicity of the workers' and employers' organizations in light of the newly amended labour law bilaterally formulated by the social partners.

D. The Committee's conclusions

577. *The Committee recalls that this case, initially filed in July 2006, concerns acts of repression against the local trade union at the bus company, including: harassment of*

trade unionists and activists; violent attacks on the union's founding meeting; the violent disbanding, on two occasions, of the union general assembly; arrest and detention of large numbers of trade union members and leaders under false pretences (disturbing public order, illegal trade union activities).

578. *With respect to Mr Ebrahim Madadi, Vice-President of the SVATH, who served much more than the two-year prison term for which he was initially sentenced by the Revolutionary Court in October 2007, the Committee takes note of the information provided by the Government indicating that it would do whatever is possible to ensure that he would be compensated for the damages if he is found legally and legitimately liable to collect them. As regards the allegations of ill-treatment to which he has been subjected while in detention, while taking note of the information provided by the Government indicating that Mr Madadi would be entitled to seek a variety of existing legal and judicial means and channels to sue any such allegations, but that no such file has yet been registered with the public court of law, the Committee once again urges the Government to institute, without delay, an independent investigation into these serious allegations and, if they are found to be true, to compensate him accordingly.*

579. *With respect to Mr Reza Shahabi, Treasurer of the Syndicate of Workers of Tehran and Suburbs Bus Company, the Committee notes that, in its communication dated 20 April 2012, the ITUC indicates that, on 14 April 2012, he was sentenced to six years imprisonment for allegedly committing the crimes of "propaganda against the regime" and "conspiracy against the national security"; he has also been banned from engaging in trade union activity for five years and was assessed a IRR70 million fine. The ITUC expresses its deep concern about Mr Shahabi's health, who allegedly sustained a harsh beating at the hands of the authorities following his arrest in June 2010, and indicates that he has been denied needed medical care. The Committee notes that the Government indicates that it genuinely continues its constructive attempts to seek Mr Shahabi's parole and pardon through legal channels. The Committee further notes the Government's statement that Mr Shahabi has the power to exercise his constitutional and legal rights toward reclamation of his rights, if he so decides, in relation to the alleged mistreatment to which he has been subjected while in detention. In regard to the allegations of negligence and carelessness in addressing the immediate medical needs of Mr Reza Shahabi during his prison term, the Government indicates that it will undertake to provide the Committee with a detailed report on his medical treatment, while stating that he has already been in hospital for bone spurs' treatment. The Committee understands that Mr Shahabi, who was temporarily released from prison in January 2013 to receive medical treatment, is currently back in prison. The Committee calls on the Government to secure his parole, pardon and immediate release from prison and the dropping of any remaining charges. The Committee firmly expects that Mr Shahabi will have his rights restored and that he will be compensated for the damage suffered. It requests the Government to carry out the necessary independent investigation into the serious allegations of ill-treatment to which he has been subjected while in detention, and, if they are found to be true, to compensate Mr Shahabi accordingly. The Committee requests the Government to keep it informed in this regard.*

580. *With regard to the Committee's previous request related to the newly drafted Labour Bill, the Committee notes that the Government recalls that the Minister had reiterated the determination and commitment of the Government for the promotion of the principles of the freedom of association and the multiplicity of the workers' and employers' organizations in light of the newly amended labour law bilaterally formulated by the social partners. The Committee once again requests the Government to specify the social partners which took part in this process and to clarify the actual status of the labour law. It urges the Government to provide a copy of this text.*

581. *Noting that the Government does not provide any indication in relation to the de facto recognition of the SVATH, the Committee once again urges it to ensure such recognition, pending the implementation of the legislative reforms, and to transmit a detailed report of the findings of the SGIO and the Headquarters for the Protection of Human Rights into the allegations of workplace harassment during the period of the union's founding, from March to June 2005. It once again requests the Government, in the light of the information revealed by these investigations, to take the necessary measures to ensure that all employees at the company are effectively protected against any form of discrimination related to their trade union membership or their trade union activities. The Committee requests the Government to keep it informed in this regard, as well as to provide a copy of the court's judgment in the action initiated by the union concerning the attacks on union meetings in May and June 2005 once it is handed down.*

582. *The Committee also once again requests the Government to provide a copy of the Code of Practice on the Administration of Labour Demonstrations and Assemblies.*

The Committee's recommendations

583. ***In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) As regards the allegations of ill-treatment to which Mr Ebrahim Madadi, Vice-President of the SVATH, has been subjected while in detention, while taking note of the information provided by the Government indicating that Mr Madadi would be entitled to seek a variety of existing legal and judicial means and channels to sue any such allegations, but that no such file has yet been registered with the public court of law, the Committee once again urges the Government to institute without delay an independent investigation into these serious allegations and, if they are found to be true, to compensate him accordingly.

(b) With respect to Mr Reza Shahabi, Treasurer of the Syndicate of Workers of Tehran and Suburbs Bus Company, the Committee understands that he was temporarily released from prison in January 2013 to receive medical treatment, but he is currently back in prison. The Committee calls on the Government to secure his parole, pardon and immediate release from prison and the dropping of any remaining charges. The Committee firmly expects that Mr Shahabi will have his rights restored and that he will be compensated for the damage suffered. It requests the Government to carry out the necessary independent investigation into the serious allegations of ill-treatment to which he has been subjected while in detention, and, if they are found to be true, to compensate Mr Shahabi accordingly. The Committee requests the Government to keep it informed in this regard.

(c) With regard to the labour law reform, the Committee once again requests the Government to specify the social partners which took part in this process and to clarify the actual status of the labour law. It urges the Government to provide a copy of this text.

(d) Noting that the Government does not provide any indication in relation to the de facto recognition of the SVATH, the Committee once again urges it to ensure such recognition, pending the implementation of the legislative

reforms, and to transmit a detailed report of the findings of the SGIO and the Headquarters for the Protection of Human Rights into the allegations of workplace harassment during the period of the union's founding, from March to June 2005. It once again requests the Government, in light of the information revealed by these investigations, to take the necessary measures to ensure that all employees at the company are effectively protected against any form of discrimination related to their trade union membership or their trade union activities. The Committee requests the Government to keep it informed in this regard, as well as to provide a copy of the court's judgment on the action initiated by the union concerning the attacks on union meetings in May and June 2005, once it is handed down.

(e) The Committee also once again requests the Government to provide a copy of the Code of Practice on the Administration of Labour Demonstrations and Assemblies.

(f) The Committee calls the Governing Body's special attention to the extremely serious and urgent nature of this case.

CASE NO. 2740

DEFINITIVE REPORT

Complaint against the Government of Iraq presented by the Iraqi Federation of Industries

Allegations: The complainant organization alleges acts of interference by the Government, including the seizure of organizational funds, preventing the election of board members, appointing persons to manage the organization and the storming of the organization's headquarters in 2009

584. The Committee has already examined the substance of this case on two occasions, most recently at its March 2012 meeting, when it presented an interim report to the Governing Body [363rd Report, paras 695–705, approved by the Governing Body at its 313th Session (March 2012)].

585. Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of this case. At its March 2013 meeting [see 367th Report, para. 5], the Committee launched an urgent appeal and drew the attention of the Government to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of this case even if the observations or information from the Government have not been received in due time. To date, the Government has not sent any information.

586. The Iraqi Federation of Industries submitted additional information in a communication dated 8 January 2013.

587. Iraq has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), but not the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Background

A. Previous examination of the case

588. At its March 2012 meeting, the Committee made the following recommendations [see 363rd Report, para. 705]:

(a) The Committee urges the Government to annul the regulations concerning the appointment of members of preparatory committees of federations, trade unions, associations and occupational organizations and to ensure in the future that the Iraqi Federation of Industries can conduct elections of its leaders in accordance with its statutes, without intervention by the authorities.

(b) The Committee urges the Government to indicate the steps taken to annul Decree No. 8750 and strongly urges the Government to return without delay all funds to the Iraqi Federation of Industries as well as to the other organizations affected by the Decree.

(c) The Committee once again urges the Government to provide its observations on the allegations concerning the storming and occupation of the premises of the Iraqi Federation of Industries by members of the preparatory committee for the holding of the elections of the Federation under the protection of the local police.

(d) The Committee once again requests the Government and the complainant to provide information on any court decision following the complaint brought by the Iraqi Federation of Industries.

B. Additional information from the complainants

589. In a communication dated 8 January 2013, the President of the Iraqi Federation of Industries, Mr Hussein Ali Ahmed Zenka, indicates that the Federation's elections were held in December 2012 under the supervision of five judges nominated by the Supreme Judiciary Council. It adds that the Ministerial Committee, which supervises the elections under the presidency of the Minister of Labour and Social Affairs, validated the legitimacy of the elections and lifted the confiscation order on the funds and property of the Iraqi Federation of Industries (Decree No. 8750). It indicates that the decision on the legitimacy of the elections was circulated to all ministries, Government institutions, governorates and councils, as well as to the Office of the President of the Republic. It concludes that the Federation has resumed its independence.

C. The Committee's conclusions

590. *The Committee regrets that, despite the time that has elapsed since the last examination of the case and given the seriousness of the alleged acts (acts of interference by the Government, including the seizure of organizational funds, preventing the election of board members, appointing persons to manage the organization and the storming of the organization's headquarters in 2009), the Government has not provided the information requested, despite being invited to do so, including by means of an urgent appeal. The Committee urges the Government to be more cooperative in the future.*

591. *Under these circumstances and in accordance with the applicable rules of procedure [see 127th Report, para. 17, approved by the Governing Body], the Committee finds itself*

obliged to present a report on the substance of the case without the benefit of the information which it had hoped to receive from the Government.

592. *The Committee recalls that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments on their side will recognize the importance of formulating, for objective examination, detailed replies concerning allegations made against them.*

593. *The Committee notes that, in a communication dated 8 January 2013, the President of the Iraqi Federation of Industries, Mr Hussein Ali Ahmed Zenka, indicates that the Federation's elections were held in December 2012 under the supervision of five judges nominated by the Supreme Judiciary Council. It adds that the Ministerial Committee, which supervises the elections under the presidency of the Minister of Labour and Social Affairs, validated the legitimacy of the elections and lifted the confiscation order on the funds and property of the Iraqi Federation of Industries (Decree No. 8750). Noting that the Federation concludes that it has resumed its independence, the Committee considers that this case does not call for further examination.*

The Committee's recommendation

594. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to decide that this case does not call for further examination.***

CASE NO. 2945

INTERIM REPORT

Complaint against the Government of Lebanon presented by
– the General Confederation of Lebanese Workers (CGTL) and
– the Lebanese Industrialists' Association (ALI)

Allegations: The complainant organizations denounce non-compliance by the Government with its obligations regarding tripartite consultation and collective bargaining, as well as the obstruction of national tripartite institutions

595. The complaint is contained in communications from the General Confederation of Lebanese Workers (CGTL) and the Association of Lebanese Industrialists (ALI), dated 20 and 22 February 2012, respectively.

596. In the absence of a reply from the Government, the Committee was obliged to adjourn its examination of this case. At its meeting in March 2013 [see 367th Report, para. 5], the Committee made an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of the case at its next meeting,

even if the requested information or observations had not been received in time. To date, the Government has not sent any information.

597. Lebanon has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. The complainants' allegations

598. In communications dated 20 and 22 February 2012, respectively, the CGTL and the ALI allege that the Government, and in particular the Ministry of Labour, has violated the principles and standards related to tripartite consultation, social dialogue and collective bargaining, namely by failing to engage in tripartite consultations concerning matters related to labour, employment, unemployment and social security. In particular, the complainants indicate that, without having engaged in prior consultations with the social partners, the Minister of Labour submitted a bill to the Council of Ministers to amend the Act on social security, and that he made various declarations in the media to announce the drafting of a bill on the "regulation of the remuneration of the cost of labour". In addition, according to the complainant organizations, the Government refuses to recognize tripartite institutions such as the Economic and Social Council, the establishment of which has been pending for a number of years, and the National Employment Agency, a tripartite body under the Minister of Labour which is still without an executive board. They further allege that the Government has brought the industrial courts (tripartite labour courts) to a standstill by blocking the enactment of the decree required for their Constitution because the Minister of Labour wishes to appoint four persons of his choosing as workers' delegates, although they are not included on the list provided by their general confederation. As a result, thousands of actions brought before the labour courts have not been examined. They add that the Government is seriously failing to meet its obligations by refusing to pay the sums owed by the State to the National Social Security Fund (in total, more than 1,300 billion Lebanese pounds (LBP)) and that the latter's executive board was not received by the minister responsible (Minister of Labour), who shows no interest in the Fund. The complainants also refer to a report by the Ministry of Labour on the activities of the Price Index Committee, which was submitted to the Council of Ministers and which indicates that "the mechanism of bargaining is not provided for by law". According to the complainants, the abovementioned Committee is itself considered to be a tripartite body and its activities are one of the State's collective bargaining mechanisms.

599. More specifically, the complainants refer to the process for the review of wages and other benefits which was carried out from the end of 2011. They indicate that, under Lebanese legislation (Act No. 36/67), the Government may set the official minimum wage via decree issued by the Council of Ministers, based on the recommendations of the Price Index Committee (tripartite body created under Decree No. 4206 of 1981). Furthermore, a tripartite agreement in 1995 specified that employers should grant transport and education allowances to workers as an exceptional and provisional measure until public transport and education improved. The amount of these allowances is established by a decree issued by the Council of Ministers and renewed every year on the grounds of the exceptional and provisional nature of these measures.

600. According to the complainant organizations, following the non-renewal of the decree establishing these allowances, on 21 December 2011 representatives of the economic bodies and the General Confederation of Workers signed a landmark agreement on both wage adjustments and setting a minimum wage, and on education and transport allowance rates. They add that subsequently, and despite the outspoken opposition of the Minister of Labour, the Council of Ministers adopted this agreement at its meeting of 18 January 2012, requesting the Minister of Labour to draw up the draft decrees required to that end. The

Minister of Labour drew up the draft decree establishing the official minimum wage for employees and workers subject to the Labour Code and the cost of living index, along with the modalities for their implementation, which was promulgated on 26 January 2012 (Decree No. 7426). However, the Minister of Labour refused to draw up a draft decree providing for transport and education allowances. The complainants allege that the Minister considered that those allowances were illegal and had mentioned that a bill was being prepared to regulate the "remuneration of the cost of labour".

601. Lastly, the CGTL indicates that, due to the deliberately delayed adoption of Decree No. 7426, which came into force on 1 February 2012 non-retroactively, workers were deprived of a wage increase over the four months that followed the decision by the Council of Ministers to grant that increase on 12 October 2011.

B. The Committee's conclusions

602. *The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has not replied to the complainants' allegations, even though it has been requested several times, including through an urgent appeal, to present its comments and observations on this case. The Committee urges the Government to be more cooperative in the future.*

603. *Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session (1971)], the Committee is obliged to present a report on the substance of the case without being able to take account of the information which it had hoped to receive from the Government.*

604. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to ensure respect for employers' and workers' rights to freedom of association in law and in practice. The Committee is confident that, while this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them [see First Report of the Committee, para. 31].*

605. *The Committee notes that this case concerns allegations of non-compliance by the Government with its obligations on tripartite consultation and collective bargaining, as well as the obstruction of national tripartite institutions.*

606. *The Committee notes that, in communications dated 20 and 22 February 2012, respectively, the CGTL and the ALI allege that the Government, and in particular the Ministry of Labour, violated the principles and standards related to tripartite consultation, social dialogue and collective bargaining by failing to engage in tripartite consultation on issues related to labour, employment, unemployment and social security, and by refusing to recognize tripartite institutions such as the Economic and Social Council, the constitution of which has been pending for a number of years, or the National Employment Agency, a tripartite body under the Minister of Labour, which is still without an executive board. In this regard, the Committee recalls that tripartite consultation should take place before the Government submits a draft to the Legislative Assembly or establishes labour, social or economic policy [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 1070]. The Committee requests the Government to ensure respect for this principle. It also requests the Government to take the necessary measures to ensure the effective functioning of national tripartite institutions, especially the Economic and Social Council and the National Employment Agency, and to keep it informed in this respect.*

607. *The Committee also notes that the complainants allege that the Government has brought the industrial courts (tripartite labour courts) to a standstill by blocking the promulgation of the decree required for their creation because the Minister of Labour wishes to appoint four persons of his choosing as workers' delegates, although they are not included in the list provided by their general confederation. Noting with concern that, according to the allegations, thousands of actions brought before the labour courts have not been examined, the Committee requests the Government to take the necessary measures without delay to enable the industrial courts to operate, if that is not yet the case, and the examination of any actions filed. It requests the Government to keep it informed of the progress made in this regard.*

608. *The Committee notes that the complainants allege that the Government is seriously failing to meet its obligations by refusing to pay the sums owed by the State to the National Social Security Fund (in total, more than LBP1,300 billion) and that the latter's executive board was not received by the minister responsible (Minister of Labour), who shows no interest in the Fund. In so far as the functioning of the Fund is governed by a tripartite agreement, the Committee expects the Government to honour the obligations therein and requests the Government to keep it informed in this regard.*

609. *As regards the complainants' allegations concerning the process for the review of wages and other benefits, which was carried out from the end of 2011, the Committee notes that: (1) under Lebanese legislation (Act No. 36/67), the Government can establish the official minimum wage by a decree issued by the Council of Ministers, on the basis of the recommendations of the Price Index Committee (tripartite body created under Decree No. 4206 of 1981); (2) a tripartite agreement in 1995 specified that employers should grant transport and education allowances to workers as an exceptional and provisional measure until public transport and education improved; and (3) the rates of these allowances is set by a decree issued by the Council of Ministers and they are renewed every year by reason of the exceptional and provisional nature of these measures. The Committee also notes that, according to the complainants, following the non-renewal of the decree providing for these allowances, the representatives of the economic bodies and the General Confederation of Workers signed a bilateral agreement on 21 December 2011 on both the adjustment of wages and setting a minimum wage, and on education and transport allowance rates. The Committee takes note of the subsequent promulgation of two decrees ratifying these agreements: (1) Decree No. 7426, of 26 January 2012, establishing the official minimum wage of employees and workers subject to the Labour Code and the cost of living index, as well as the modalities for their implementation; in this respect, the CGTL indicates that, due to the deliberately delayed adoption of this decree, which came into force on 1 February 2012 non-retroactively, workers were deprived of a wage increase over the four months following the decision of the Council of Ministers to grant that increase on 12 October 2011; and (2) Decree No. 7573, of 23 February 2012, temporarily establishing the education and transport allowance rates [see Case No. 2952, 367th Report of the Committee, para. 878]. The Committee therefore understands that the decrees required for the implementation of the agreement of 21 December 2011 have finally been adopted. It requests the Government to examine with the social partners the possibility of the retroactive payment of the salary increase for the period October 2011 to February 2012.*

The Committee's recommendations

610. ***In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the Government has not replied to the

complainant's allegations, even though it has been requested several times, including through an urgent appeal, to present its comments and observations on this case. The Committee urges the Government to be more cooperative in the future.

(b) The Committee requests the Government to ensure respect of this principle whereby tripartite consultation should take place before the Government submits a draft to the Legislative Assembly or establishes a labour, social or economic policy. Moreover, it requests the Government to take the necessary measures to ensure the effective functioning of national tripartite institutions, especially the Economic and Social Council and the National Employment Agency, and to keep it informed in this regard.

(c) The Committee requests the Government to take the necessary measures without delay to enable industrial courts to operate, if this is not yet the case, and to enable the examination of any actions filed. It requests the Government to keep it informed of progress in this respect.

(d) In so far as the functioning of the National Social Security Fund is governed by a tripartite agreement, the Committee expects the Government to honour the obligations therein and requests the Government to keep it informed in this regard.

(e) The Committee requests the Government to examine with the social partners the possibility of the retroactive payment of the salary increase for the period October 2011 to February 2012.

CASE NO. 2919

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of Mexico presented by the Union of Telephone Operators of the Mexican Republic (STRM)

Allegations: anti-trade union practices and interference by Atento Servicios SA de CV, particularly in connection with two ballots to determine the most representative union

611. The complaint is contained in a communication from the Union of Telephone Operators of the Mexican Republic (STRM) dated 16 December 2011.

612. The Government sent its observations in a communication dated 1 March 2013.

613. Mexico has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

614. In its communication of 16 December 2011, the STRM explains that it is a national industrial union representing the telecommunications industry, which has a branch (branch 187) in Atento Servicios SA de CV (a company specializing in providing call centre services between companies and their customers through "contact centres", or multichannel platforms). It was formed in 2008 and filed a request for legal recognition with the public authorities in June 2009, with the signature of 24 workers, and obtained legal recognition in August 2009. According to the STRM, following this, the company dismissed workers who were members of the STRM (mention was made of the names of six workers in July 2009 and another six in October 2009) and reference was made to 50 unnamed dismissals in the Pachuca and Toluca centres which, according to the allegations, had begun to organize. The STRM also notes that significant restructuring took place during this period, with mass dismissals.

615. The STRM states that the trade union with bargaining rights under the collective agreement since 2001 is the Progressive Union of Communication and Transport Workers of the Mexican Republic – SPTCTRM); Atento Servicios SA de CV (the company) made workers sign a membership card upon recruitment and the workers were unaware of the existence of the trade union and of the collective agreement; in a ballot in May 2009, which this union conducted and won, it received seven votes. According to the STRM, company management gave as a reason for failing to reinstate the dismissed members that the SPTCTRM union decided to expel the workers because of their membership of the other trade union, applying the "exclusion clause" contained in the collective agreement.

616. Furthermore, the STRM alleges that on 15 December 2009 it submitted a request for bargaining rights under the company's collective agreement (through a ballot by the Federal District Local Conciliation and Arbitration Board (JLCADF)); a ballot that, after various barriers and obstacles, took place in an atmosphere of interference, uncertainty and intimidation by a group of 60 company workers and staff, with police support; various irregularities occurred such as altering the worker voting list, so that some persons voted even though they were not entitled to do so. At the end of the day, the SPTCTRM union received 1,230 votes and the complainant union (STRM) 375 votes because of the company's favouritism for the SPTCTRM, the irregularities committed and the authority's bias. In January 2011, the STRM appealed to the judicial authority against the decision, claiming victory for the STRM and calling for a revote, which was granted on 8 August 2011 and ordered to take place on 31 October 2011.

617. Days before the election, the company and the SPTCTRM took a series of steps to swing the vote in its favour through the following actions: the dismissal of workers who met the length-of-service requirement for entitlement to vote; the selection by trusted staff of the workers who would come forward to vote, mostly those who would vote for the SPTCTRM; vote buying, with three days' extra salary offered to workers who would vote for the SPTCTRM; and rumours and threats about the replacement of Atento Servicios SA de CV staff by STRM people.

618. On 31 October 2011, the company and the SPTCTRM carried out an extreme surveillance and transport operation at workplace entrances. The movement of the personnel close to the employer to the JLCADF began at 10 a.m. and of workers at 12 p.m. The transfer was in company buses and vans, the company having hired bouncers, who were placed at workplace entrances to prevent any STRM workers from approaching. The same day, at approximately 3 p.m., the JLCADF was surrounded by bouncers hired by the company and the SPTCTRM, who kept watch on the unionized workers and personnel of confidence to ensure they entered to vote for the protection union. When around 1,000 persons had congregated inside the JLCADF, company workers who supported the STRM were

prevented from entering. When the workers who supported the STRM tried to enter, the company and the SPTCTRM forcefully prevented the workers from entering by blocking the entrance. In the end, the JLCADF decided that there was no guarantee that the ballot could take place, and thus decided to suspend the process.

619. The STRM adds that, on 7 November 2011, the JLCADF notified the STRM of the rescheduling of the ballot suspended on 31 October 2011, informing it that the new date for the revote would be 9 November 2011, at 4 p.m. in the JLCADF. The notification set out the same criteria as in the previous notification, the only difference being that the right of the STRM lawyers to speak during the objections stage was removed. On 8 November 2011, the company and the SPTCTRM began to select staff to take to the JLCADF to vote in the JLCADF for the protection union. The lists that they drew up mostly contained personnel of confidence (trainers, supervisors and coordinators) who could not legally participate, excluding the workers who went to vote on 30 October 2011. Action taken by the company on 8 and 9 November 2011 was as follows:

– workers who met the length-of-service requirement for entitlement to vote were not informed about the vote on 9 November and in some workplaces they were informed that the vote was on a different day;

– voting lists were drawn up, mostly including only personnel of confidence;

– there was a ban on the selection of workers for the vote who supported the STRM;

– the order was given that workers could only vote on 9 November 2011 if they handed over copies of their voting credentials so that the SPTCTRM could validate their vote.

620. According to the STRM, on 9 November 2011, the company transported staff in private cars and vans to the JLCADF from 9 a.m. onwards. In the end, over 800 persons congregated inside the Federal District Local Conciliation and Arbitration Board, which was cordoned off by a large group of grenadiers to prevent any STRM members from approaching the Federal District Local Conciliation and Arbitration Board, stopping the workers from going in just to vote, arguing that they were not on the list that the company provided to the authority, meaning that many workers were unable to vote. The election result was: 526 votes for the SPTCTRM; 47 votes for the STRM; 1 vote for the Sindicato 21 de Enero; and 4 spoiled ballots, thus confirming the intervention of both Atento Servicios SA de CV and the SPTCTRM, which for the most part sent personnel of confidence to vote.

B. The Government's reply

621. In its communication of 1 March 2013, the Government states that on 16 December 2011 the STRM presented a complaint to the Committee on Freedom of Association, which was forwarded to the Government of Mexico on 9 February 2012. The complainant union alleges violations of the principles contained in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It accuses the Mexican State of acts of omission by allowing the direct interference of Atento Servicios SA de CV (the company) and of the SPTCTRM, through the application of the exclusion clause, mass dismissals, workplace bullying, violence and intimidation against workers who were members of branch 187 of the STRM. It also accuses it of obstructing the registration of STRM branch 187, denial of bargaining rights under the collective agreement and allowing the direct intervention of the company and the SPTCTRM in union ballots.

622. The Government states that, in order to have a more comprehensive and accurate view of the facts given by the complainant union, the Government held relevant consultations with the JLCADF, the SPTCTRM and the company, as the parties involved in this case.

623. With regard to the allegations concerning the constitution of Atento Servicios SA de CV workers in branch 187 of the STRM, the Government considers that the arguments put forward by the complainant union are subjective and lacking in evidential value, since it provides no evidence to verify that these actions have taken place since 2007. Moreover, it provides no names of the workers dismissed or subjected to anti-trade union violence, nor to show whether they took legal action before the relevant labour tribunals to report the infringement of their rights through lawsuits or complaints. In this connection, the national labour law framework grants the right to any worker to appear before the relevant authorities to seek to defend their rights. For this purpose, the Government has the Federal Labour Ombudsman (PROFEDET), whose role is to advise and represent all workers in court cases free of charge and to put forward solutions to reconcile the parties, both individually and collectively, to find a balance between the factors of production and respect for workers' rights. It was therefore vital for all workers to report any act that affects their labour rights, so that, once identified by the labour authority, any such conduct can be penalized under the Federal Labour Act.

624. With regard to the allegation of the complainant union also stating that, at the end of 2008, the company introduced its workers to the SPTCTRM, with which it had concluded a collective bargaining agreement in 2001, depositing it with the JLCADF, and that until that date the workers were unaware of its existence and contents; that it was reviewed every two years; that in each review wage increases were generated; and that they had never been informed of agreement negotiations, or of their union representatives. With regard to the allegation that, in 2009, the company began a process of mass forced membership of the SPTCTRM, which prevented workers from choosing their leaders and participating in collective bargaining, the Government states that, even though the complainant union failed to provide further evidence, it is important to note that the Government has provided transparency in the information on trade union organizations handled by the authorities to make freedom of association more open. This was ensured through the publication and updating of public documents such as union registers, collective bargaining agreements and internal labour regulations deposited with the relevant authorities and the working conditions regulated by them, making them available to workers so that they are fully aware of their rights and obligations, their representatives and the union to which they belong, which is information that has also been made available to the workers of Atento Servicios SA de CV.

625. In addition to the above, initiatives promoting transparency were reinforced on 30 November 2012 with the adoption of amendments to articles 364bis and 365bis of the Federal Labour Act, which are set out as follows:

> *Article 364 bis.* In union registration the principles of legality, transparency, certainty, freedom-of-charge, immediacy, impartiality, and respect for union freedom, autonomy, equity and democracy must be observed.
>
> *Article 365 bis.* The authorities referred to in the article above shall make public, for consultation by any person, duly updated information from union registers. They shall also issue copies of the documents held in the registration files if requested, in accordance with article 8 of the Constitution and the provisions of the Federal Act on Transparency and Access to Government Public Information and the laws regulating access to government and federal authority information, where appropriate.
>
> The full text of the public versions of union by-laws shall be available on the websites of the Ministry of Labour and Social Security and the Local Conciliation and Arbitration Boards, where appropriate.

Union registers shall contain at least the following information:

I. Address;

II. Registration number;

III. Union name;

IV. Names of Executive Committee members:

V. Validity period of the Executive Committee;

VI. Number of members; and

VII. Trade union federation to which they belong, where appropriate.

The indicators should be updated every three months.

626. With regard to the alleged obstruction by the Mexican State, the company and the SPTCTRM of free association by the workers of STRM branch 187, the Government notes that in its allegation the complainant union states that in February 2009 the company conducted a union ballot in JLCADF facilities to legitimize the SPTCTRM; that in that process the latter and the National Union of Workers and Employees in General Trade and Service Providers, Storage, Similar and Allied Services of the Mexican Republic) were present and that the results of the vote were in favour of the SPTCTRM. In this regard, the Government emphasizes that in its comments the complainant union produces no evidence to identify any kind of obstruction to freedom of association, since the ballot was carried out as a necessary procedure to determine bargaining rights under the collective agreement and union representation, guaranteeing neutrality and impartiality in the JLCADF facilities.

627. The Government notes that the complainant union also states that, in 2009, a workers' coalition decided to join the STRM, forming branch 187 to defend their interests, and states that, on 9 June of that year, the branch filed a request for legal recognition with the Ministry of Labour and Social Security, which was granted on 27 August 2009. In this regard, the Government emphasizes that the aforementioned shows that the complainant union sought and obtained recognition of branch 187, without any obstruction and within a period not exceeding that provided for under article 366 of the Federal Labour Act, through the Directorate General for Registration of Associations. It is therefore contradictory and in no circumstances can it be interpreted that the freedom of association of the workers of the aforementioned branch has been obstructed by the Mexican State, Atento Servicios SA de CV and the SPTCTRM.

628. With regard to the allegation that the company began a process of unjustified mass dismissal of workers who joined the STRM branch 187, the Government indicates that it considers that the facts put forward by the complainant union on this point are subjective and lacking in evidential value, since they fail to provide any proof. The trade union organization should therefore not only cite the facts, but also provide all evidence showing the legal action taken by the workers dismissed from their jobs, whether the dismissals were reported and make clear the unjustified reasons for the dismissals, so that the labour authority can take necessary action. It notes that national labour legislation makes provision for the defence of workers' labour rights.

629. With regard to the allegation that the company denied reinstatement to the workers who were members of STRM branch 187 by applying the exclusion clause, the Government notes that the argument put forward by the STRM provides no facts or evidence to confirm the allegation, which prevents the labour authority from taking any action to defend the workers who were members of branch 187, in accordance with labour legislation. The Government also states that it is unlikely that the workers were discriminated against through the application of the "exclusion clause", since this was rendered obsolete and

superseded by the jurisprudential opinion issued by the Supreme Court of Justice of the Nation in April 2001. Furthermore, it should be noted that, on 30 November 2012, amendments to the Federal Labour Act repealed the last paragraph of article 395 that allowed the inclusion of the so-called exclusion clause on expulsion in collective bargaining agreements.

630. With regard to the allegation that the JLCADF denied the STRM bargaining rights under the collective agreement of Atento Servicios SA de SV, the Government states that, while it is true that on 15 December 2009 the STRM submitted a request to the JLCDAF for bargaining rights under the company's collective agreement, it is incorrect to assert that the documents required for processing the request were attached. Indeed, it did not even indicate as a minimum requirement the company's activities to be covered under the collective bargaining agreement, nor attach the minutes of the meeting in which the workers authorized it to submit a request for bargaining rights under the collective agreement, nor produce a membership list of the workers it claims to represent. For this reason, on 18 January 2010 the JLCDAF requested it to produce the documentation.

631. Unions represent workers in defending their individual rights, as provided under article 375 of the Federal Labour Act, and this representation must be authorized by the workers themselves, particularly in regard to bargaining rights under a collective agreement or a strike, which directly affect job security and therefore the income of workers' families. Workers must therefore be informed of what the union is going to do and thus must authorize it through the minutes of the meeting held to decide on the action in question to be carried out. This is what the JLCADF asks for as a court of conscience that ensures and protects workers' rights.

632. In view of the foregoing, the fact that the JLCADF requested the STRM to provide the missing documents in no circumstances involved any violation of labour legislation, or of any international conventions to which Mexico is a party. On the contrary, it sought at all times to protect the right of workers to form a union, safeguard that right and provide legal security to the workers themselves.

633. Notwithstanding the omissions, and to avoid leaving the workers that the STRM claimed to represent without representation, the JLCADF suggested holding a conciliation, petition and exceptions, evidentiary and resolution hearing on 2 July 2010, which took place at the offices of the labour authority, as a neutral location to guarantee that the workers could cast their votes freely and in secret. The ballot was conducted on the allotted day and time and steps were taken, where necessary, to ensure that the 1,666 workers of Atento Servicios SA de CV could cast their votes in a businesslike, expeditious and peaceful manner and that voting took place in a transparent manner in the presence of the JLCADF authorities and the worker and employer representatives assigned to it. Of the 1,666 workers who voted, 372 voted for the STRM and 1,294 for the SPTCTRM. It should be stressed that the JLCADF is not responsible for granting or denying bargaining rights under a collective agreement. This is decided based on the wishes of the workers, who choose the union they would like to join, and the authority only endorses proceedings and must comply with their will.

634. With regard to the union ballot that took place on 2 July 2010, the authority makes it clear that the number given of 1,500 workers who came to vote is inaccurate, as the ballot record shows that there were 1,666; and if they arrived before the time allotted by the authority, the JLCADF was not at fault, since it is the responsibility of the unions in dispute to inform workers of the time of the ballot. It should be noted that it is absolutely legal for the complainant union, the respondent company and the co-respondent union to be present at ballots. The labour authority cannot therefore prohibit or prevent any of the three parties in

dispute (STRM, Atento Servicios SA de CV and SPTCTRM) from being involved in the ballot.

635. It is also untrue that the ballot result, 1,230 votes for the SPTCTRM and 375 votes for the STRM, was obtained by altering the list of workers entitled to vote, as both the STRM and the SPTCTRM had sight of the employee–employer contribution settlement certificates and made any objections they considered relevant; thus both submitted a list of workers with voting rights. However, the STRM and the SPTCTRM, only wishing workers who were members to vote, conducted the ballot with the voting list provided by the company, which was based on the settlement certificates of the Mexican Social Security Institute (IMSS). Neither the STRM, nor the SPTCTRM, therefore, were rendered defenceless.

636. Concerning the actions of the District Federal Local Conciliation and Arbitration Board in the union ballot, throughout the process the JLCADF adhered to the powers legally conferred on it. Evidence of this is that on 13 December 2010 it issued an award in the current dispute, based on the results of the ballot that took place on 2 July 2010. The ballot process provides the main evidence in the bargaining rights procedure because through it workers express their free will to choose the union they wish to join. In this specific case, the majority voted for the SPTCTRM, a fact that leaves no doubt that the latter merited union representation.

637. On 17 January 2011, the STRM lodged a direct appeal with the First Circuit Collegiate Labour Tribunal against the award issued by JLCADF Special Board No. 10, the latter being the authority in charge, seeking a revote. On 8 August 2011, the Fifteenth First Circuit Collegiate Labour Appeals Tribunal granted the appeal in favour of the STRM, thereby ordering the JLCADF to conduct a revote, as noted below:

> The award is declared void and proceedings shall be replaced to meet the essential requirements of the ballot process, duly respecting, should the workers invited to the ballot submit objections, the process provided for in section V of article 931 of the Federal Labour Act, namely to summon the parties to a hearing prior to the ballot; and, as previously, to continue with proceedings in accordance with the law.

638. In accordance with the decision handed down by the Fifteenth First Circuit Collegiate Labour Appeals Tribunal, the JLCADF set the new date for the ballot for 31 October 2011, at 5 p.m. in their facilities. Prior to the ballot, the JLCADF set aside 9 a.m. on 18 August 2011 for the hearing of incidental objections to the documents produced by the respondent. Having notified the parties in person of those provisions, the hearing took place.

639. In this context, the STRM states that the JLCADF established certain "criteria" for the presentation of evidence, which is untrue, as the decision handed down on 19 October 2011 by the JLCADF provides that the ballot will be conducted based on the IMSS employee–employer contribution assessment certificate for the month of November 2009 and that, in accordance with the provisions of section IV of article 931 of the Federal Labour Act, the only workers entitled to cast their vote were those who were working prior to the submission of the request for bargaining rights, which was 15 December 2009, precisely to prevent the company from dismissing the workers on its books at that time and getting those who came after that date to vote. It also notes the time and place for conducting the ballot proposed by the complainant unions and the co-respondent union as 31 October 2011 at 5 p.m., through a free and secret ballot. The decision to that effect is quoted as follows:

> *Auxiliary Secretariat for Collective Disputes. Union of Telephone Operators of the Mexican Republic* v. *Atento Servicios SA de CV and Progressive Union of Communication and Transport Workers of the Mexican Republic.* File No. 475/2009 and subsequent file Nos 476/2009 and 04/2010.

Mexico, Federal District on 19 October 2011. In addition to those documents, for the appropriate legal purposes, reference is made to letter No. 211.2.2.4178, dated 17 October of that year, sent by the Director for Registration and Updating, Directorate-General for the Registration of Associations of the Ministry of Labour and Social Welfare, to which is attached a certified copy of letter No. 211.2.2.4577, dated 10 November 2010, through which note is taken of the list of union members of the Progressive Union of Communication and Transport Workers of the Mexican Republic and from which it is clear that no worker of the company Atento Servicios SA de CV is recorded on the list. Consequently, to comply fully with ruling No. 203/11, handed down by the Fifteenth Federal District Collegiate Labour Tribunal, this Board states that the ballot was conducted based on the IMSS employee–employer contribution assessment certificate for the month of November 2009, which is appended to the documents for the purpose of continuing with the procedural consequential action, based on the provisions of article 931 of the Federal Labour Act and case law No. 15012008, issued by the Second Chamber of the Supreme Court of Justice of the Nation.

It is noted that the ballot proposed by the complainant unions, under file Nos 475/2009, 476/2009 and 4/2010, and by the co-respondent union will take place on 31 October of the current year at 5 p.m., through a free and secret ballot. Due to the number of workers who will attend the prescribed proceedings and to comply with the provisions of article 720 of the relevant law, an adjudicator has been commissioned to convene with the parties involved in this dispute, on the ground floor of the annex of the Federal District Local Conciliation and Arbitration Board, entrance via Dr. Andrade No. 45, Col. Doctores, Delegación Cuauhtemoc, of this city, and present the evidence under the terms and conditions accepted by the Board. To ensure that the aforementioned proceedings are carried out expeditiously and efficiently, the IMSS employee–employer contribution assessment certificate, which will serve as the basis for the ballot, will be divided into alphabetical order and the workers must present themselves to be identified at the table with the letter corresponding to the initial of their first surname. The adjudicator should identify the workers involved in the ballot proceedings only with the official document accepted by this Board such as voting credentials, passport, military service identity card and driving licence. Should a worker present a wage slip as proof of identity, this must cover the period from 30 November to 11 December 2009. Three representatives should be present in the aforementioned proceedings, with documentary proof of identity, for each of the parties involved in this dispute, one of whom will be appointed by the parties at the beginning of the proceedings in question, to observe the identification process and give out the ballot papers to the persons who are entitled to vote according to the specified voting list. Each representative will be at the entrance when proceedings begin, noting even cases where workers fail to come to ensure that presentation of the aforementioned evidence is complete, which will guarantee the ballot is impartial. The adjudicator should prepare a detailed written record of the ballot proceedings, indicating where appropriate any workers that had been dismissed after the date of submission of the request. In order for the parties to be certain that the workers are those entitled to vote, and to decide on any options that might need to be made, once identified, indelible liquid will be applied to their right thumb and they will be given a ballot paper on which they will cast their vote, in accordance with article 17 of the Federal Labour Act, article 24, section VIII, of the Rules of Procedure of the Local Conciliation and Arbitration Board and article 265(4)(b) of the Federal Code of Electoral Institutions and Procedures. After voting, their piece of identity will be handed back to them and their exit will be via Dr. Río de la Loza No. 68, Col. Doctores, Delegación Cuauhtemoc, of this city. Votes of trusted workers will not be counted and only the votes of unionized workers who come to the ballot will be taken into consideration. In accordance with article 717 of the Federal Labour Act, the requisite days and times will be made available to ensure that the adjudicator does not have to cancel the ballot that has been called. Should the complainant unions and the co-respondent union summoned fail to appear for the ballot and if the workers do not come on the date and at the time specified, the aforementioned evidence will be declared defective, in accordance with articles 899 and 780 of the Federal Labour Act. In accordance with article 688 of the Federal Labour Act, the Ministry of Public Health has been assigned to assist the work of this Board by providing the necessary security personnel to protect the safety of the workers involved in the aforementioned ballot. The parties will be notified in person. Set forth and signed by the Head of the Federal District Local Conciliation and Arbitration Board, Mr. Ramón Montaño Cuadra, together with the Representatives of Capital and Labour of Special Board No. 10,

Ms Luz María Morales Uribe and Ms Margarita Albarrán Servín, respectively, I hereby certify before the Secretary for Collective Bargaining Matters, Ms Guadalupe Esther Guerrero López.

640. The Government adds that on 31 October 2011, as stated, the ballot began in the JLCADF facilities, with its authorities and representatives of the Federal District Human Rights Commission (CDHDF) as observers to witness the proceedings.

641. While proceedings were under way, with the parties present, and those in charge preparing to receive the workers so that voting could take place, there were confrontations and provocations between the supporters of both unions, resulting in violence, which forced the President of the JLCADF to suspend the ballot due to a lack of guarantees in the process. For further reference, the JLCADF submitted as evidence two CDs with photographic evidence and a video recording of the events, provided by the CDHDF.

642. On 3 November 2011, the date was once again set for the ballot that had been suspended on 31 October 2011, which took place on 9 November 2011 at 4 p.m., with the intervention of the legal representatives of the STRM, Atento Servicios SA de CV and the SPTCTRM. To ensure continued due diligence in the ballot process, about which objections had already been made, only votes from workers were accepted.

643. It should be noted that the labour authority had no knowledge of how the company or the unions transported their workers, as it is a procedural requirement of the parties proposing the ballot.

644. In the aforementioned ballot, 579 workers came to cast their vote, of which only 47 voted for the STRM. Thus, the voting results, once again, went against it, making it clear that it did not represent the majority of the workers in Atento Servicios SA de CV, given that it was the workers themselves who decided that it did not represent them. This process was carried out in accordance with national labour legislation.

645. Lastly, it is untrue that the JLCADF has refused to resolve the question of bargaining rights under the collective agreement because on 6 December 2011 it issued the corresponding award. The award had not been decided in August, which was not the fault of the JLCADF, but due to the various challenges made by the STRM, as a legally protected right to defend its interests and refer to other courts to contest the award not issued in its favour.

646. The Government concludes by stating that: (a) national labour legislation sets out the penalties to be imposed on any employer or employers' organization that infringes the individual and/or collective rights of the workers with whom they have an employment relationship. However, it should be noted that, after analysing the complaint lodged by the STRM, it is clear that there is not sufficient information to determine whether there is any violation of and non-compliance with the legal framework, or that there has been any interference or omission by the Mexican State that might have affected any right of the workers in Atento Servicios SA de CV, as the complainant presents no evidence of allegations, actions, lawsuits and infringements to support such claim. Consequently, it reiterates that Mexican labour legislation ensures that all workers have the legal resources and means at their disposal to approach the authorities to defend their labour rights; that there are bodies such as PROFEDET, which provide guidance and free legal advice for the protection of workers' individual and collective rights; and that it is vital for workers to report any acts by employers that affect their labour rights to the appropriate authorities, so that the relevant authorities can punish them and act in their defence, as clearly provided in law; and (b) from the facts presented by the complainant union, it is clear that the actions of the JLCADF and the relevant authorities were at all times carried out in a timely and appropriate manner, within the legally established terms and conditions, in conformity with

legislation and in full compliance with the powers conferred upon them by its own regulations. A case in point is the request for the recognition of STRM branch 187, which was processed and granted, resulting in it being legally recognized. Another is the ballots that were conducted following the request for bargaining rights under the collective agreement of Atento Servicios SA de CV, in which JLCADF procedures adhered to legislative provisions, unfailingly safeguarding workers' rights and safety, complying with the legally required procedure and respecting the wishes of the workers in the free choice of the union that should manage the collective bargaining agreement, given that it is not the JLCADF that grants bargaining rights, but the workers through their vote. The authority only legitimizes the decision when issuing the award based on the results, with absolute transparency and the participation of all parties involved.

647. In no circumstances can it be considered that there has been any omission on the part of the Mexican State, either directly or through the conduct of the authorities involved, as its actions have unfailingly been in accordance with legislation and, in this regard, the principles contained in ILO Conventions Nos 87 and 98 have not been violated. On the contrary, the Government has taken clear actions to strengthen freedom of association, the right to organize and to collective bargaining, proof of which can be seen in the adoption of amendments to the Federal Labour Act, published in the Official Gazette of the Federation on 30 November 2012 in order to ensure compliance.

C. The Committee's conclusions

648. *The Committee observes that in the present case the complainant union (STRM) alleges: (1) anti-union dismissals following the establishment of its branch 187 in Atento Servicios SA de CV (six named members in July 2009 and another six in October 2009, and 50 unnamed members who worked in the company's Pachuca and Toluca centres); (2) union security clauses in favour of the SPTCTRM that allow the employer to dismiss workers who are not members of the STRM. The complainant also alleges automatic membership of this union upon recruitment; (3) various irregularities (which the complainant details in its complaint) by the company, the SPTCTRM union and the authorities in the second ballot process requested by the STRM on two occasions (December 2009 and following a decision of the relevant judicial authority (under an appeal) approving a new ballot requested by the STRM, which finally took place in November 2011). According to the complainant, the irregularities referred to resulted in the STRM not winning the ballot.*

649. *The Committee notes the Government's statements denying the violation of the ILO Conventions on freedom of association and according to which: (1) the STRM fails to provide the names of (all) the dismissed workers, or give the alleged unjustified reasons, or to state whether they took any legal, judicial or other actions; (2) STRM branch 187 obtained its recognition within the legal deadlines; (3) the STRM has not provided evidence to support its allegation of mass and enforced membership of the other union and, in any case, exclusion clauses (union security clause) were declared unconstitutional by the Supreme Court of Justice in 2001 and the same criteria were followed in the last reform of the Federal Labour Act of 30 November 2012, which also includes union transparency provisions; (4) in both ballots, the workers' vote results verified by the authority (the second of which was after the authority had cancelled the first at the request of the complainant union) went against the STRM; (5) legislation provides penalties for a violation of the individual or collective rights of workers and remedies to put them into effect. The Government states that the complaint is subjective and lacks evidence and the November 2011 ballot was conducted in accordance with the law. In general, the Committee observes that the allegations and the Government's reply differ on many points.*

650. *Firstly, the Committee wishes to note the difficulty in considering the complaint, partly because, according to the complainant union, union security clauses were used to benefit the other union, because of the lack of information from the STRM on the possible number of appeals filed by members dismissed or disadvantaged (the complainant union also recognizes that in some periods there was restructuring with lay-offs) and partly because some pieces of information raised questions. First, the ballot results which, although clearly in favour of the SPTCTRM, gave surprising results in terms of figures (according to the Government, in the first ballot 372 workers voted for the complainant union – STRM – and 1,294 for the SPTCTRM and in the second, out of a total of 579 workers only 47 voted for the STRM). Second, the fact that the authority (Federal District Local Conciliation and Arbitration Board), when ordering a second ballot, noted in its decision that the SPTCTRM union member voting list "clearly contains no record of any company worker". Third, the finding that the complainant union (STRM) fails to state whether or not it appealed to the authorities against the last ballot (in the previous ballot the STRM had obtained a decision from the authority to repeat the ballot). Furthermore, the Committee notes that, as the authority cancelled the first workers' ballot to determine the most representative union for bargaining rights under the collective agreement, it will only examine issues relating to the November 2011 ballot and the dismissals that the complainant union considers to be anti-union.*

651. *In these circumstances, the Committee emphasizes the importance that it attaches to the fact that workers and employers should in practice be able to establish and join organizations of their own choosing in full freedom and be able to freely choose which organization will represent them for purposes of collective bargaining. The Committee observes in this case certain aspects of concern in the voting process (the atmosphere of confrontation and confusion; the presence of the police; serious problem in the voting lists for the balloting and suspicions around the fact that many workers did not vote, suggesting that workers may not have had sufficient time since the convocation). The Committee requests the complainant union to provide information on any appeal filed by its members against dismissals or anti-union practices and their outcomes, and against the last ballot (November 2011) obtained from the authority to determine the union with bargaining rights.*

652. *While stressing that the appropriate procedure for the verification of facts and alleged irregularities in a ballot process for bargaining rights under the collective agreement between workers or members of rival organizations (the versions given by the union and the Government are conflicting in this case) is primarily the responsibility of the national bodies, the Committee wishes to emphasize the importance it attaches, if there is a new ballot, to the authorities providing the safeguards necessary to avoid all alleged irregularities, thus guaranteeing that the affected workers have a full and fair opportunity to participate, in an atmosphere of calm and security. The Committee requests the Government to send its observations on the finding of the JLCADF that the SPTCTRM union member voting list contained no record of any company worker.*

The Committee's recommendations

653. ***In light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee requests the complainant union to provide information on any appeal filed by its members against dismissals or anti-union practices and their outcomes, and against the second ballot obtained from the authority to determine the union with bargaining rights.

(b) The Committee requests the Government to provide its comments on the claim of the JLCADF that the SPTCTRM union member voting list contains no record of any company worker.

(c) The Committee wishes to emphasize the importance it attaches, if there is a new ballot, to the authorities providing the safeguards necessary to avoid all alleged irregularities, thus guaranteeing that the affected workers have a full and fair opportunity to participate, in an atmosphere of calm and security.

CASE NO. 2920

DEFINITIVE REPORT

Complaint against the Government of Mexico presented by
– the Federal District Higher Intermediate Education Institute Workers' Union
– the Federal District Housing Institute Workers' Association
– the National Union of Workers in Higher Intermediate Education and Decentralized Public Organizations and
– the Federal District Firefighters' Union

Allegations: Unilateral issue by the Federal District Local Conciliation and Arbitration Board of "criteria for the proper functioning of collective procedures", the content of which is claimed to violate national law, the Constitution and Convention No. 87

654. The complaint is contained in a joint communication dated 8 December 2011 from the following organizations: the Federal District Higher Intermediate Education Institute Workers' Union, the Federal District Housing Institute Workers' Association, the National Union of Workers in Higher Intermediate Education and Decentralized Public Organizations, and the Federal District Firefighters' Union.

655. The Government sent its observations in a communication dated 1 March 2013.

656. Mexico has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

657. In a communication dated 8 December 2011, the Federal District Higher Intermediate Education Institute Workers' Union, the Federal District Housing Institute Workers' Association, the National Union of Workers in Higher Intermediate Education and Decentralized Public Organizations, and the Federal District Firefighters' Union allege that on 25 October 2011 the Plenary of the Local Conciliation and Arbitration Board of the Federal District adopted "criteria for the proper functioning of collective procedures",

which were published in the Labour Bulletin of the Federal District Local Conciliation and Arbitration Board on 27 October 2011.

658. According to the allegations, the abovementioned criteria for the proper functioning of collective procedures do not form part of the current Federal Labour Act and violate the rights of freedom of association to the detriment of workers in the Federal District; these criteria were imposed unilaterally and were published in the Labour Bulletin on 27 October 2011. Moreover, the Federal District Local Conciliation and Arbitration Board, as a local entity, has no power to amend, extend or define conditions established by a federal law or, consequently, to apply subjective interpretations devoid of any legal basis which undermine and prevent the free exercise of freedom of association and collective bargaining designed to achieve a balance between the factors of production. The complainants reproduce in their complaint the criteria issued by the Local Board.

659. The complainants indicate that the contested criteria were issued by the Plenary of the Federal District Local Conciliation and Arbitration Board, which thereby overstepped the regulatory powers conferred on it by the Federal Labour Act solely for the purposes of its internal organization and not to enable it to impose extra-legal conditions or new obligations. Such criteria violate Convention No. 87 and encroach upon constitutional and legal powers that were conferred exclusively on the Congress of Mexico by virtue of article 73(X) of the Constitution. The complainant states that such criteria impose extra-legal requirements with regard to various collective procedures, such as trade union registration, recording of changes in union leadership or statutes, depositing and revision of collective agreements, strike notices and collective bargaining rights. The abovementioned criteria violate the principles of supremacy of the Constitution and the hierarchy of laws established in articles 1 and 133 of the Constitution.

B. The Government's reply

660. In its communication dated 1 March 2013, the Government states that in no way can it be considered that the State of Mexico, through the conduct of the authorities specifically referred to by the complainants, has violated the provisions of ILO Convention No. 87, since the complainant organizations are unable to substantiate the claim that the State acted in such a way as to prevent their establishment. Nor do they provide any evidence that the Mexican authorities prevented the workers from forming coalitions or freely joining the complainant organizations; or from drawing up their constitutions and rules, electing their representatives in full freedom, organizing their administration and activities or formulating their programmes.

661. With regard to the allegations that the criteria in question violate the collective right to organize to the detriment of the workers of the Federal District and lay down requirements beyond those provided for in the Federal Labour Act, the Government indicates that the complainants claim such violations but do not state which collective rights have been violated by the application of the criteria; nor do they specify which "extra-legal" requirements were thereby established. They simply object to the fact that the criteria have been issued and have not been revoked, without saying exactly how they are supposed to be detrimental. It should be noted that the document setting forth the criteria was issued solely to elaborate on the provisions of the Federal Labour Act relating to the authority and competence that the Act confers on the Local Conciliation and Arbitration Boards. Hence the document cannot be considered to overstep the aforementioned Act since its purpose is simply to spell out the competence that the Act confers.

662. The scope of competence of the Local Conciliation and Arbitration Boards in each federative entity is laid down in sections 621–624 of the Federal Labour Act, which only provides for their establishment, composition and general operation. Section 621 of the Act

provides that the Local Conciliation and Arbitration Boards shall operate in each of the federative entities and shall be responsible for hearing and settling labour disputes which do not come within the competence of the Federal Conciliation and Arbitration Board.

663. Consequently, the provisions of section 614(IV) of the abovementioned Act, set out below, are applicable to the Plenary of the Local Conciliation and Arbitration Boards:

> **Section 614.-** The Plenary of the Conciliation and Arbitration Board shall have the following powers and obligations:
>
> I.–III. …
>
> IV. To harmonize the Board's criteria for [dispute] settlement, whenever the Special Boards put forward conflicting arguments;
>
> V.–VII. …

664. In the light of the above, it is for the Plenary of the Local Conciliation and Arbitration Boards to harmonize the criteria for settlement. Accordingly, the issuing of the *criteria* by the Plenary of the Local Conciliation and Arbitration Board of the Federal District (JLCADF) does not infringe the Constitution or the Federal Labour Act since even the section cited above allows it to harmonize its settlement criteria and, hence, its mode of action.

665. Account must also be taken of the fact that the *criteria* are for internal application by the JLCADF and their purpose, as their name indicates, is to ensure the proper functioning of the collective procedures of the Board itself. Accordingly, the document in question cannot be considered as being potentially detrimental to the complainants or to any other organizations.

666. The Government adds that, notwithstanding the above, in order to ensure that the duties assigned to the JLCADF by article 123(A), second paragraph, clauses XVI, XVII, XVIII, XIX, XX and XXI of the Constitution of the United Mexican States and by sections 1, 2, 5, 6, 18, 685, 686 and other applicable sections of the Federal Labour Act, are coherent, kept up to date and duly fulfilled, the Plenary of the JLCADF, at its meeting of 5 October 2012, agreed as follows:

> **… SINGLE [PROVISION] -** To revoke the INTERNAL CRITERIA GOVERNING THE PROPER FUNCTIONING OF THE COLLECTIVE PROCEDURES OF THE LOCAL CONCILIATION AND ARBITRATION BOARD OF THE FEDERAL DISTRICT published in the Labour Bulletin on 27 October 2011 … (sic) (Appendix).

667. In conclusion, the Government states that the abovementioned notice shows that the grounds on which the complaint is based no longer exist and hence no report or action is necessary.

C. The Committee's conclusions

668. *The Committee observes that in the present case the complainant organizations allege that the "criteria for the proper functioning of collective procedures" of the Local Conciliation and Arbitration Board of the Federal District, approved by the Local Conciliation and Arbitration Board of the Federal District and published on 27 October 2011, violate Convention No. 87, the Federal Labour Act and the Constitution of the Republic (principles of supremacy of the Constitution and the hierarchy of laws). According to the complainants, the abovementioned criteria violate trade union rights, with the Local Board arrogating power to modify conditions laid down in the Federal Labour Act and establishing new extra-legal obligations, thereby overstepping its merely regulatory*

competence provided for in the legislation, under which its prime purpose is to adopt the administrative and organic measures needed to ensure its better functioning without giving novel treatment to matters falling exclusively within the competence of the law. The Committee observes that, according to the complainants, the said criteria restrict freedom of association, the right to organize and to strike, the right to collective bargaining and trade union autonomy, imposing procedures with regard to trade union registration, recording (recognition) of changes in union leadership or statutes, depositing and revision of collective agreements, strike notices and collective bargaining rights.

669. *The Committee notes the Government's statements that: (1) the complainants do not specify which supposedly "extra-legal" requirements were established by the abovementioned criteria; (2) the criteria were issued to spell out the authority and competence conferred by the Federal Labour Act on the Local Conciliation and Arbitration Boards and cannot be regarded as a document that oversteps the Act or infringes the Constitution; in fact the Act allows the Local Boards to harmonize the criteria for settlement and, hence, their mode of action; (3) the criteria are for internal application by the Board and their purpose is to ensure the proper functioning of its collective procedures.*

670. *Lastly, the Committee notes in particular the Government's statement that, in order to ensure that the duties assigned to the Local Boards by the Constitution and the Federal Labour Act are duly fulfilled and kept up to date, the Plenary of the Local Conciliation and Arbitration Board of the Federal District, at its meeting of 5 October 2012, agreed to revoke the internal criteria governing the proper functioning of the collective procedures of the Board. In the light of this information, the Committee considers that this case does not call for further examination.*

The Committee's recommendation

671. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to decide that this case does not call for further examination.***

CASE NO. 2981

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of Mexico presented by the World Federation of Trade Unions (WFTU)

Allegations: Detention of a representative of the complainant organization for seven-and-a-half hours and his subsequent criminal prosecution; deductions' from teachers' salaries for engaging in trade union activities in the state of Zacatecas

672. The complaint was presented in a communication from the World Federation of Trade Unions (WFTU) dated 23 August 2012. The WFTU sent additional information in a communication dated 8 October 2012.

673. The Government sent its observations in a communication dated 1 March 2013.

674. Mexico has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

675. In its communication dated 23 August 2012, the World Federation of Trade Unions (WFTU) alleges arbitrary and anti-union action and the unjust and illegal detention on 26 July 2012 by Zacatecas state police of Efraín Arteaga Domínguez (Secretary-General of Ex Braceros en Lucha, a WFTU affiliated organization; member of the executive coordination body of the Social Front for People's Sovereignty (FSSP) of Zacatecas; WFTU coordinator for the state of Zacatecas), on the criminal charge by the Attorney-General of "attacking channels of communication" by taking part in a roadblock of boulevard Adolfo López Mateos organized by the Independent Trade Union of Telesecundaria Workers in the State of Zacatecas (SITTEZ) on 29 June 2012. After spending some seven-and-a-half hours in a police cell, he was conditionally released pending the handing down of a court sentence. According to the WFTU, the judge at his second criminal court hearing, acting on orders from the executive, rejected the arguments, evidence and testimony of the defence out of hand and brazenly rubberstamped the so-called arguments put forward by the Prosecutor General. The crime he is accused of carries a prison sentence of three months to four years.

676. The WFTU summarizes the incident as follows:

– Between 21 June and 2 July 2012 SITTEZ organized a campaign to demand that its principal demands be met, namely: (a) a step-by-step increase in salary and a working week of 30 to 35 hours; (b) implementation of a housing programme for union members; and (c) introduction of labour standards guaranteeing security of employment at their places of work, etc. On 29 June 2012 the workers organized the blocking of boulevard Adolfo López Mateos, the main artery of the City of Zacatecas, from midday to approximately 5.30 p.m.

– In response to the roadblock the state government proceeded to: (i) the illegal retention of the salaries of hundreds of teachers; (ii) the initiation of dismissal proceedings against all of them; and (iii) public threatening to bring criminal charges against the leaders of the protest movement and order their imprisonment. Eventually, the state government agreed to the deductions from the teachers' salaries instead of dismissing them, with a warning that at the slightest sign of protest or public denunciation it would cancel the deductions from salary and resume the dismissal procedures.

– In these circumstances the FSSP and the WFTU issued a public statement denouncing the incident on 17 July 2012 and affirming their solidarity with the SITTEZ workers.

– The state government, through the State Prosecutor's Office, charged Efraín Arteaga Domínguez with the so-called crime of "attacking channels of communication" by means of the 29 June 2012 roadblock, on the fallacious testimony of a lawyer of the state's Ministry of Education and Culture. On 26 July 2012 Efraín Arteaga Domínguez was detained.

– According to the WFTU, the alleged incident constitutes a violation of Convention No. 87 and is intended to criminalize social struggle.

677. The complainant organization enclosed with its communication of 8 October 2012 a number of documents concerning SITTEZ's demands, including the list of demands that

the union presented for 2012, the meetings it convened on 20, 21 and 27 June 2012 showing that teachers were absent from their place of work because they were attending union meetings, and minutes of 6 and 11 July 2012 which the WFTU believes reflect the repressive attitude adopted by the authorities of the Ministry of Education and Culture by requiring the trade unionists to write to the governor implicitly admitting that they had broken the law and promising not to do so again, failing which the Ministry would proceed with the dismissal of hundreds of teachers. According to the WFTU the minutes of 11 July 2012 concern the agreement between the Ministry's legal department and three union representatives "agreeing" to the deductions from the salaries of 842 teachers, for a total of 2,192 days of salary. The union representatives say that they were given no option and that if they had not signed they would have been dismissed instead of having deductions from their salaries.

B. The Government's reply

678. In its communication dated 1 March 2013 the Government indicates that on 4 September 2012 the ILO transmitted a complaint that had been presented against it by the WFTU, alleging the violation of trade union rights in Mexico. It adds that in its complaint of 23 August 2012 the WFTU alleges that SITTEZ has been the victim of anti-union action and that Efraín Arteaga Domínguez, Secretary-General of the Ex Braceros en Lucha, Civilian Association, was detained for "attacking channels of communication" when he took part in the roadblock organized by SITTEZ. On 12 October 2012, the WFTU submitted a number of documents in support of its complaint to the ILO of 23 August 2012, including the union's lists of demands, the minutes of an agreement between the union and the authorities and letters from SITTEZ convening union meetings.

679. The Government notes that, by way of anti-union action against SITTEZ, the WFTU alleges illegal deductions from the salaries of hundreds of teachers, the initiation of procedures to have them all dismissed and threats of criminal charges and prison sentences for the leaders of the blocking of boulevard Adolfo López Mateos in Zacatecas. The Government considers that the WFTU's complaint to the ILO should not be deemed receivable by the Committee on Freedom of Association, for the following reasons:

– According to the *Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association,* complaints must be presented in writing, duly signed and supported by evidence of specific infringements of trade union rights. This requirement has not been met, since in its communication the WFTU formulates a series of general, subjective and non-specific arguments and omits any reference to actual violations of freedom of association supposedly committed against the members of SITTEZ. Moreover, the WFTU does not present any evidence of the veracity of its claims and SITTEZ has apparently not applied to the competent administrative or jurisdictional authority individually or collectively to defend rights that have supposedly been violated. That being so, the complaint presented by the WFTU does not meet the requirements of the Committee on Freedom of Association set out in the *Special procedures.*

– Regarding the detention of Efraín Arteaga Domínguez, Secretary-General of the Ex Braceros en Lucha, Civilian Association, on the criminal charge of "attacking channels of communication" when he took part in the roadblock organized by SITTEZ, the Government considers that, under the *Special procedures,* the WFTU may present a complaint in so far as it has consultative status with the ILO. However, Efraín Arteaga Domínguez's detention is not a matter for consideration by the Committee on Freedom of Association since, although Ex Braceros en Lucha, AC is affiliated to the WFTU, its juridical status is not that of a workers' organization but of a civil association governed by Mexico's Federal Civil Code. Consequently, Efraín

Arteaga Domínguez's detention as a representative of the association cannot be the subject of examination by the Committee, as he is not a trade union leader.

– Regarding the documents presented by the WFTU on 12 October 2012 in support of its complaint, the *Special procedures* stipulate that the Director-General, on receiving a complaint concerning specific cases of infringement of freedom of association, informs the complainant that any information he may wish to furnish in substantiation of the complaint should be communicated to him within a period of one month, as was clearly indicated by the ILO in its communication of 4 September 2012. The Government observes that this requirement has not been met by the WFTU, since the relevant information was presented after the deadline, i.e. 51 days after the trade union submitted its complaint to the ILO on 23 August 2012.

680. Furthermore, although the *Special procedures* specify that, "in the event that supporting information is sent to the ILO after the expiry of the one month period provided for in the procedures it will be for the Committee to determine whether this information constitutes new evidence which the complainant would not have been in a position to adduce within the appointed period", the Government notes that the information presented by the WFTU does not constitute new evidence concerning the alleged anti-union action taken against SITTEZ.

681. In conclusion, the Government states that it is apparent from its analysis of the complaint that it is irreceivable by the Committee on Freedom of Association on grounds both of form and of substance inasmuch as it does not meet the requirements established by the Committee. That being so, and in accordance with the provisions of the *Special procedures*, the Government requests that the Committee reject the complaint presented by the WFTU.

C. The Committee's conclusions

682. *The Committee observes that in the present complaint the WFTU alleges: (1) the arbitrary and unjust detention of its coordinator for the state of Zacatecas (Efraín Arteaga Domínguez) for seven-and-a-half hours, on the criminal charge of attacking channels of communication by taking part in the peaceful blocking of a boulevard organized by SITTEZ on 29 June 2012 in support of its principal labour demands; the WFTU indicates that, following his detention, its coordinator was released on conditional bail and is currently awaiting trial; and (2) the deductions from the salaries of 842 teachers (according to the WFTU, the leaders of the demonstration were initially threatened with prison sentences and criminal charges and dismissal procedures were initiated against them, although these were subsequently dropped).*

683. *The Committee observes that the Government argues that the documents sent by the complainant organization on 8 October 2012 are inadmissible as additional information because the complaint itself was submitted on 23 August 2012 when the Committee's procedural rules allow a period of only one month for their submission. On this point, the Committee observes that, after receiving the complaint, the Office invited the WFTU, on 4 September 2012, to submit additional information, and it therefore concludes that, allowing for their postal delays, the additional information and documents which were sent by the WFTU on 8 October 2012 and reached the Office on 12 October 2012 were within the one-month deadline provided for in the Special procedures.*

684. *Regarding the alleged detention of its coordinator for the state of Zacatecas (Efraín Arteaga Domínguez) for seven-and-a-half hours, for the so-called crime of attacking channels of communication by joining in the peaceful roadblock of a boulevard organized by SITTEZ on 29 June 2012 in support of its principal labour demands, and the criminal*

charges subsequently brought against him, the Committee notes that the Government considers that the allegation should not be examined because, although Ex Braceros en Lucha, AC (of which, according to the WFTU, Efraín Arteaga Domínguez is the Secretary-General) is affiliated to the WFTU, its juridical status is not that of a workers' organization but of a civil association governed in Mexico by the Federal Civil Code and because he is not a trade union leader. The Committee observes that the WFTU does not claim that Efraín Arteaga Domínguez is a member of SITTEZ or a teacher and that it has not sent a copy of the criminal charges brought against him. However, the Committee observes that the WFTU does describe Efraín Arteaga Domínguez as its coordinator for the state of Zacatecas. On this point, the Committee notes that the participation of representatives of international trade union organizations in union protest movements is common practice. The Committee considers that, in order to establish whether the WFTU's coordinator did or did not exceed his responsibilities by participating in what the criminal charges describe as illegal activities, it would be useful to have a copy of the ruling handed down. While taking note of the fact that Efraín Arteaga Domínguez has, according to the WFTU, been released on bail, the Committee therefore requests the Government to send it a copy of the ruling handed down in respect of the crime of which he is accused (attacking channels of communication).

685. *As to the allegation concerning the deductions from the salaries of hundreds of teachers, the Committee notes that the WFTU refers to an agreement between the Ministry of Education and Culture and three SITTEZ leaders (the WFTU points out that they signed the agreement to avoid being dismissed). The Committee notes that the Government argues that the allegation is inadmissible on grounds that it contains general, subjective and non-specific arguments and fails to provide any evidence that the incidents referred to are true (illegal retention of salaries for the blocking of a boulevard, initiation of dismissal procedures, threats of criminal charges) or that SITTEZ applied to the administrative or judicial authority in defence of rights that had supposedly been violated. The Committee observes that, in its complaint, the WFTU refers to a protest campaign from 21 June to 2 July 2012 (which included the five-and-a-half hours roadblock of a major boulevard on 29 June 2012). However, the Committee observes that the deductions from the salaries were part of an agreement signed by the authorities and by union representatives and, judging from the information provided, appears to have been linked to the hours not worked because of union protest action, and it will therefore not pursue its examination of these allegations any further, notably because the WFTU has not referred to the lodging of administrative or judicial appeals by SITTEZ.*

The Committee's recommendation

686. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:***

The Committee requests the Government to send it a copy of the sentence handed down on the WFTU's coordinator, Efraín Arteaga Domínguez, charged with a criminal attack on channels of communication.

CASE NO. 2916

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of Nicaragua presented by the Administrative Workers' and Teachers' Union of the Ministry of Education (SINTRADOC)

Allegations: Transfer and subsequent dismissal of three trade union officials by the Ministry of Education on the pretext of restructuring

687. The complaint is contained in a communication from the Administrative Workers' and Teachers' Union of the Ministry of Education (SINTRADOC) dated 5 December 2011.

688. The Government sent its observations in communications dated 13 April and 21 June 2012.

689. Nicaragua has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

690. In its communication dated 5 December 2011, SINTRADOC alleges the transfer and subsequent dismissal of Mr Orlando José Jiménez Hernández, General Secretary, Mr Randy Arturo Hernández López, Organization and Information Secretary, and Mr William José Morales Peralta, Labour and Disputes Secretary, which it ascribes to retaliation for their trade union activities in defence of workers' rights (the complainant organization sends documentation relating to their union activities and claims).

691. SINTRADOC alleges that, in August 2010, the authorities of the Ministry of Education arbitrarily and unilaterally informed seven workers, and the three abovementioned union officials who worked at the Directorate-General of Education, that as a result of reorganization, they would be transferred, leaving the posts of national supervisors of education at the Ministry headquarters to take up posts as classroom teachers, in other words, changing their general conditions of employment which SINTRADOC considers to violate the trade union immunity established in the legislation and in the collective agreement.

692. Further to the presentation in August 2010 of complaints by the three union officials against the transfer, the labour inspectorate issued decisions in their favour. Previously, the three officials had filed a lawsuit with the Appeals Court, which provisionally suspended the transfer decision and ruled that the matter should be referred to the Constitutional Chamber of the Supreme Court of Justice. The complainant indicates that, on 13 April 2011, the aforementioned Chamber rejected the officials' claims, whereupon the latter brought an action to overturn that ruling on the grounds that it was without any legal foundation. In September 2011, the Ministry submitted to the administrative authority of the Ministry of Labour, through oral administrative proceedings, the cancellation of the employment contracts of the three officials on the grounds of dereliction of duty. In the same proceedings, the cancellation of the employment contracts was authorized.

693. SINTRADOC adds that, in view of this situation, and further to the adverse outcome of their appeal for *amparo* (protection of constitutional rights), the three union officials decided to bring an action against illegal dismissal through the ordinary labour court, requesting reinstatement and the payment of outstanding salaries.

B. The Government's reply

694. In its communications dated 13 April and 21 June 2012, the Government categorically denies that there were any anti-union grounds in the decision to transfer the three officials of the complainant trade union. On the contrary, it indicates that it maintains harmonious and respectful relations with the many trade union organizations in the teaching sector, as borne out by the fact that the current collective agreement, which is renewed every two years, has been signed by 11 trade unions. The Government adds that the decision to transfer the three trade union officials was taken in the context of restructuring the public education system, which entailed the abolition of the unit in which the officials and other workers were employed. The Government emphasizes that, in view of the fact that the posts occupied by the three officials were due to disappear, the Ministry of Education could have dismissed them directly under the legislation in force, but opted to maintain their employment and their salaries, taking account of operational reasons such as the urgent need to fill teaching posts at schools in the city of Managua. Since the three officials refused the transfer decided upon in August 2010, after the Constitutional Chamber of the Supreme Court of Justice had declared on 13 April 2011 that there had been no violation of constitutional rights (as the transfers were conducted within the law) and that the obligation was on the interested parties to accept the transfer in response to the needs of the education system, the labour inspector, at the request of the Ministry of Education, authorized the cancellation of the contracts of the three officials, in August 2011, on grounds of gross misconduct (failure to perform their duties) and the fact that the Teaching Careers Act authorizes transfers further to an order from the Ministry of Education. The Government confirms that the officials, Mr William José Morales Peralta and Mr Randy Arturo Hernández López, submitted a claim for reinstatement to the ordinary labour court, and that the Civil Service Appeals Board rejected the appeal lodged by Mr Orlando José Jiménez Hernández against his dismissal. An appeal for *amparo* was submitted by Mr Orlando José Jiménez Hernández and Mr Randy Arturo Hernández López against the dismissal decision issued by the administrative authority further to the ruling (against the three officials) issued by the Constitutional Chamber of the Supreme Court, and is currently pending. Lastly, the Government emphasizes that, in the present case, the interested parties have had recourse to numerous administrative and judicial remedies provided for in the legislation with a view to defending their rights.

C. The Committee's conclusions

695. *The Committee observes that in the present case the complainant trade union alleges the illegal transfer of three trade union officials by decision of the Ministry of Education (a transfer not accepted by the officials concerned) in August 2010 and their subsequent dismissal, in September 2011, for dereliction of duty, further to an adverse ruling from the Constitutional Chamber of the Supreme Court of Justice, against which an appeal was then filed. The complainant emphasizes that the labour inspectorate initially decided in their favour. It believes that there are anti-union motives behind their transfer and dismissal – which it considers contrary to the legislation and the collective agreement – in relation to their activities in defence of workers' rights, and considers that there has been a failure to comply with the law.*

696. *The Committee notes that the Government categorically rejects the allegation of any anti-union motives for the transfers, and points out that they occurred in the context of the*

restructuring of the Ministry of Education, which entailed the abolition of the unit in which the three union officials and other workers were employed. In that context, the dismissal of the three officials was permitted under the legislation in force but the Government opted to maintain their employment and their salaries through the transfers, taking account of the urgent need of the service to fill teaching posts in schools in the same area. The Government also indicates that it has harmonious and respectful relations with the many trade union organizations in the teaching sector and that the collective agreement (signed by 11 trade unions) is renewed every two years. Lastly, the Government states that the interested parties have been able to take and are still taking legal and judicial action in defence of their rights.

697. *In the light of the Government's explanations, the Committee considers that it has insufficient information – at least for now – to be able to conclude that the transfer and subsequent dismissal of the three officials were on anti-union grounds. The Committee observes that the interested parties, after various appeals, have brought an action in the labour court, which, apart from being due to rule on the anti-union motivation, will probably have to decide whether the decision of the Ministry of Education to transfer them, according to the allegations, from posts as national supervisors at the Ministry headquarters to posts as classroom teachers constitutes an infringement of labour law. The Committee further observes that the following are pending: (1) according to the allegations, an appeal filed by the interested parties to overturn the adverse ruling issued by the Constitutional Chamber of the Supreme Court of Justice; and (2) according to the Government, an appeal for* amparo *against the dismissal decision issued by the administrative authority further to the abovementioned ruling.*

698. *In view of the above, the Committee requests the Government to keep it informed of any rulings handed down in relation to the events described in the allegations.*

The Committee's recommendation

699. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:***

> ***The Committee requests the Government to keep it informed of any rulings handed down with respect to the transfer and subsequent dismissal of trade union officials Mr William José Morales Peralta, Mr Randy Arturo Hernández López and Mr Orlando José Jiménez Hernández.***

CASE NO. 2943

DEFINITIVE REPORT

Complaint against the Government of Norway presented by the Confederation of Unions for Professionals (Unio) supported by
- the Federation of Norwegian Professional Association (Akademikerne)
- the Confederation of Vocational Unions (YS)
- the Nordic Police Union (NPF) and
- the European Confederation of Police (EUROCOP)

Allegations: The complainant organization alleges Government interference in collective bargaining

700. The complaint is contained in a communication from the Confederation of Unions for Professionals (Unio) dated 20 April 2012. The Nordic Police Union (NPF), the Federation of Norwegian Professional Association (Akademikerne), the Confederation of Vocational Unions (YS) and the European Confederation of Police (EUROCOP) supported the complaint in communications of 25 April and 3, 7 and 24 May 2012, respectively.

701. The Government forwarded its response to the allegations in a communication dated 14 November 2012.

702. Norway has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), as well as the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

703. In a communication dated 20 April 2012, the complainant organization Unio alleges that the Government violated ratified ILO Conventions when it unduly interfered in collective bargaining by imposing provisions to the Norwegian Working Environment Act with the intent to control the ongoing negotiations over working hours for the police service.

704. The complainant indicates that, under the protection of Norwegian law and within the framework stipulated by the ILO Conventions, the Norwegian police force has full freedom of association, collective bargaining rights and the right to strike.

705. According to the complainant organization, in the spring of 2009, as part of the ongoing renegotiations between Unio and the Ministry of Government Administration, Reform and Church Affairs (FAD) over a collective agreement on a set of working hours provisions for the police service, the Government passed the Regulation on Exemptions from the Working Hour Provisions of the Working Environment Act regarding Police Officers, etc., on 26 June 2009 (entry into force on 1 July 2009). The Regulation stipulates provisions on daily rest periods for certain groups of employees within the police service, including civilian staff. Such provisions were previously subject to collective bargaining and were

outlined in the current collective agreement entitled Working Hours Provisions for the Police and Lensmann Service (ATB).

706. The complainant organization further states that the regulation passed by the Government was mandatory, but could be altered through provisions in a collective agreement between the confederations and the Government. However, the Government's actions affected the ongoing negotiations because the regulation in reality represented a more or less non-negotiable demand in so far as the provisions of the regulation would apply if the parties failed to reach an agreement. Therefore, the negotiations partly became illusory and partly led the parties towards a predetermined outcome that favoured the employer's position. The opportunity the trade union had to protect their members' interest was thus weakened, partly because the negotiations were conducted under an obligation of industrial peace. Faced with this situation, the trade unions had no other option but to accept the main content of the Regulation. This was incorporated into a new and comprehensive working hours agreement that was reached by the confederations and the FAD (see minutes dated 9 July 2009).

707. In the complainant's view, the Government's decision was in clear breach of the ILO Conventions. This is evident from the fact that the Government used its authority as a lawmaker to unduly intervene in the ongoing negotiations over working hours for the police service by regulating the provisions for rest periods – provisions that were already defined by the existing collective agreement. Even more crucially, the Government exercised this authority even though it was the employer of the police and thus party to the negotiations. This intervention transpired without the support of the Parliament and in the absence of any crisis in Norway that might have required such governmental action. By passing this Regulation, the Government thus interfered in the unions' right to free negotiations and neglected its obligation to encourage free negotiations. Unless the Government abstains from such interventions, future negotiations will continue to be steered in the direction that the Government wants.

708. The complainant indicates that Unio was founded in December 2001 as a politically independent confederation and is the second largest trade union confederation in Norway. It has highly qualified members, including teachers, nurses, researchers, police officers, clergy, physiotherapists, occupational therapists, consultants and deacons.

709. The complainant organization further enumerates its ten affiliated unions with a total of 300,000 members: the Union of Education Norway (148,909 members, including teachers/pedagogues in kindergartens, primary schools, secondary schools, universities and colleges); the Norwegian Nurses Organisation (NNO) (89,992 members including registered nurses, midwives, specialist nurses, public health nurses and nursing students); the Norwegian Association of Researchers (NAR) (17,430 members including employees in academic, administrative and library-related positions at universities, colleges, research institutions, museums and in the public administration); the Norwegian Police Federation (12,534 members including employees from the police force, police force leadership and civilian staff); the Norwegian Physiotherapist Association (NPA) (9,238 members); the Norwegian Association of Occupational Therapists (NETF) (3,422 members); the Union of University and College Graduates (2,937 members including administrative personnel with a minimum of three years education from university or college); the Norwegian Association of Clergy (2,593 members including clergy and theologians); the Norwegian Association of Tax Auditors and Accountants (504 members); and the Norwegian Association of Deacons (485 members including deacons permanently employed in the Church of Norway and deacons engaged in the health and social work undertaken by the State and the Church).

The Norwegian negotiating system

710. The complainant states that the principles of freedom of association, collective bargaining rights and the right to strike are acknowledged in Norwegian law. For employees in the state sector these principles are laid down in a general law concerning public sector negotiations, namely the Act relating to public service disputes of 18 July 1958. No distinction is made in this Act between various state sector employees. Thus, police service employees in Norway have unrestricted freedom of association and collective bargaining rights and the right to strike. The Police Act previously contained a clause forbidding strike action, but this clause was repealed by Royal Decree No. 8 of 3 February 1995.

711. According to the complainant organization, police service unions and their members thus enjoy the same rights as all other public servants. They have been exercising their freedom of association and collective bargaining rights for more than 50 years and have had the right to strike since 1995. The collective bargaining rights of the employees in the police service, which are the subject of this complaint, have thus not been restricted, and the Government's right to limit collective bargaining rights for the police under Article 5 of Convention No. 98 has never been used. The relevant ILO Conventions therefore apply in full.

712. The complainant further indicates that, for Norwegian public servants, the national general collective agreement sets out basic provisions for pay and working conditions. There is a right to strike associated with the negotiations over the national collective agreements. However, the Act relating to public service disputes allows separate agreements to be reached on issues not covered by the national collective agreement. As a general rule, there is no right to strike associated with the negotiation of these separate agreements. Since the 1970s at least, provisions for working hours for the police have been laid down in separate collective agreements for various groups of public servants. Where the collective agreements do not regulate working hours, the provisions of the Norwegian Working Environment Act shall apply. This also means that when a collective agreement on working hours expires, the provisions of the Working Environment Act applies.

Background information on negotiations over police working hours

713. The complainant underlines that, since the 1990s, a joint working hours agreement, namely the ATB, has been in place for all employee groups within the police service. The first joint ATB was entered into on 3 September 1999, and took effect on 1 November 1999. Since then, the agreement has been renegotiated at various intervals. The negotiations have been conducted under an obligation of industrial peace, which means that the laws and regulations do not permit industrial action to be taken in support of the demands made by the parties of the negotiation. The negotiating model and the specific negotiations have worked well and created scope for drawing up working hours provisions under free negotiations and with balanced considerations of the interests of both parties.

714. According to the complainant organization, over time, the ATB has stipulated rules on employees' professional rights concerning daily and weekly working hours, vacation, time off, rest periods, etc. as well as rules on how work should be organized. Since 1 June 2007, the ATB has included significant deviations from the provisions on rest periods that are stipulated by the Working Environment Act. The Norwegian Working Environment Act states that employees are, as a general rule, entitled to 11 hours of rest between two main shifts; however, by agreement with employee representatives in workplaces that are bound by a collective agreement, the amount of rest time may be reduced to eight hours. These general entitlements have been changed in the ATB and now allow rest periods to be shorter than both 11 and eight hours.

715. The complainant also states that, in the state sector, only the confederations, and not the unions, may approve such significant deviations from the entitlements stated in the working hours chapter of the Working Environment Act (see section 10-12, paragraph 4; cf. section 25, No. 2, of the Act relating to public service disputes). Therefore, the ATB has been entered into by the public sector confederations.

Negotiations over police working hours 2008–09

716. The complainant reiterates that a separate agreement concerning working hours provisions for the police was entered into in 2007. The agreement ran from 1 June 2007 until 31 December 2007, and was then to be extended for one year at a time unless it was terminated by the parties to the agreement. Section 5(5) of that agreement set out the main rule of 11 hours of rest between two work assignments. This corresponded to the main rule of the Working Environment Act, which is identical to the main rule stipulated by the Working Time Directive. However, in order to reduce the rest period to fewer than both 11 and eight hours, there were also rules on exemptions from the main rule. As previously mentioned, these exemptions represented significant deviations from the entitlements embedded in the Working Environment Act and were subsequently accepted by the confederations.

717. The complainant organization also indicates that, after some negotiations, the agreement was extended several times. It was extended for the first time from 1 January 2008 to 30 June 2008. However, the agreement was renegotiated in the spring of 2008, since the unions found that the exemptions concerning short rest periods were being used rather frequently. During the negotiations they unsuccessfully attempted to reach an agreement on a more sensible and appropriate use of the exemptions. However, the parties managed to agree that the arrangement, with the exemptions, would be evaluated and reviewed. Thus, an evaluation of the exemptions was to be carried out before l January 2009. The ATB was then extended for the period 1 July 2008–31 December 2009, but in such a way that the exemptions concerning rest periods (i.e. section 5(5) of the agreement), would remain in force until 30 June 2009 (half a year before the ATB itself was due to expire).

718. According to the complainant, the evaluation was carried out by a panel appointed by the parties in order to obtain a better basis for negotiating the exemptions. The evaluation revealed a number of breaches of the Working Environment Act and of ATB provisions in the service, in particular breaches of the rules on risk assessment, disproportionately long shifts, lack of compensating rest periods, especially short rest periods between two shifts, etc. The evaluation also found that, during the first half of 2008, there were nearly 24,000 exemptions from the main rule on 11 hours of rest over a 24-hour period. As this number shows, these exemptions were used extensively and implied a deterioration in working conditions as well as an increase in health, environmental, and safety risks for many employees in the service.

719. Furthermore, the complainant organization states that the 2008 report "The police towards the year 2020" concluded that two police officers were required for every 1,000 citizens; but that police coverage at that time was just 1.8 per 1,000; that a significant number of additional police officers was thus required in order to fill those positions; and that police coverage would further deteriorate in the period 2012–13.

720. According to the complainant, during the autumn of 2008 and the spring of 2009, there was widespread unrest and frustration in the police service because of the staffing situation and the working hours provisions, including the rest periods. Many people felt that the use of the working hours provisions had become irresponsible because low staffing levels led to the extensive use of overtime, long shifts and shorter rest periods between shifts. It became increasingly clear that there was no interest among the employees in continuing

the exemptions from the Working Environment Act unless the exemptions could be organized to better safeguard the health and welfare of police officers. Indeed, a number of police officers declined to work overtime and asked to be exempted from certain duties. During the spring of 2009, both the confederations and the unions became involved in preventing any illegal action. The correspondence shows that no illegal action took place, nor has the Government accused the police employees of engaging in any illegal action.

721. The complainant indicates that, on that basis, the Government signalled, on 26 January 2009, its intentions to pass a regulation equivalent to the existing agreed exemptions in the ATB, despite the problems that the exemptions had caused. The announcement came on the same day that the Government allocated additional funds to new, civilian positions in the police service, but without meeting the needs identified in the 2008 report. Norwegian confederations responded in unison to the announcement, considering that this was an intervention representing a breach of a long-standing negotiating tradition and an actual curtailment of the right to freely negotiate on working hours provisions. Every negotiating party on the employee side saw this action as a manoeuvre by which the Government, by exercising its authority, attempted to regulate traditional negotiating matters and influence the negotiations on these matters to the detriment of the unions and their members. With this regulation on their side, the employers were no longer compelled to engage in tough negotiations over regulations for rest period. This, of course, gave the Government full control over this particular aspect of the separate agreement, which was a central part of the negotiation. On 29 January 2009, a lawful political strike lasting one-and-a-half hours took place against the Government's announcement of the Regulation.

722. In the complainant's view, the enactment of the Regulation was motivated by the particularities of the negotiating situation and by the Government's desire to achieve a specific outcome. Additional evidence for this motivation can be seen in a hearing document dated 20 March 2009 from the Ministry of Labour, which states: "With background in the situation in the police service, the Government has made a decision to draw up a regulation concerning exemptions from certain provisions laid down in the working hours chapter of the Working Environment Act and that special rules be introduced in these areas.''

723. The Regulation primarily regulates exemptions from the Working Environment Act's main rule on rest periods, so that sections 2 and 3 allow for daily off periods shorter than 11 and eight hours, respectively. Section 4 describes the right to compensating rest periods or other appropriate safeguards. It also contains rules on the number of off periods and standby duties.

724. The complainant states that the Regulation was drawn up and passed simultaneously with the negotiations over a new ATB. It was passed on 26 June 2009 and came into force on 1 July 2009. The Regulation was quickly replaced by a new working hours agreement entered into by the confederations and the FAD (see minutes of 9 July 2009), with the rest period provisions largely corresponding with those contained in the Regulation. The ATB is valid from 1 October 2009 to 31 December 2012. With the acceptance of the ATB, the negotiations came to an end. However, the Regulation was never formally repealed, even though it became redundant when the ATB began regulating working hours in the police force.

725. In the complainant's view, the unions' acceptance of the new ATB was primarily based on their inability to escape the material content of the Regulation during the negotiations. Because of the issuance by the Government of the Regulation, the power and influence over a key area of the negotiations were taken away from the trade unions. Their opportunity to protect the health and welfare of their members was weakened in an area that is of significant importance to health, environment and safety. In this respect, it is

instructive to refer to the Norwegian Labour Inspection Authority that, in its hearing statement of 7 May 2009, declared: "In our opinion, the proposal described in section 2 goes too far in allowing for off periods shorter than 11 hours. Furthermore, the curtailed off period should be no longer than one night at a time. This is primarily because of the risk of accumulated tiredness occurring as early as in shift 2. Moreover, the Regulation should not allow for off periods shorter than eight hours in any 24-hour period, since, in our view, this would profoundly affect the employee's opportunity to take safety precautions during the next shift because of lack of sleep."

726. The complainant concludes that, due to the Government's actions, a shift was made away from standard practice in Norway, whereby the law stipulates general rules on working hours through the Working Environment Act but there is room for deviation from these rules including through collective agreements based on need and preferences from both sides. If no agreement was reached during negotiations, the general rules on working hours as stipulated by the Working Environment Act would be applied. For police service unions, the Government-imposed Regulation undermined this well-established practice. In the complainant's view, the Government buttressed its position by being able to fall back on the Regulation for imposing highly stressful arrangements for working hours if no agreement was reached during the negotiations. The Regulation was passed by the Government as a way to improve its bargaining position so that it could dictate certain employment terms in relation to working hours. One effect of this was the absence of any time limitation in the term of validity of the Regulation. Moreover, the fact that the regulation was passed by the Government means that it was not heard by Parliament. In other words, it was passed without the approval of the very same democratic authority that had granted all Norwegian trade unions the freedom of association and collective bargaining rights.

727. The complainant believes that, because of the Government's intervention in collective bargaining rights, Norway is failing to meet its obligations under Conventions Nos 98 and 154, both of which have been ratified by Norway. As, according to the Government, the Working Time Directive does not generally apply to the activities of the police, the ILO Conventions relating to collective bargaining are the main instruments offering protection for the professional rights of employees and unions in the police service. When ratifying Convention No. 98, Norway has not adopted any exceptions. The unequivocal main rule under Article 2 of the Vienna Convention on the Law of Treaties (1969) is that any reservations against parts of the Convention must be formally stated in connection with the ratification of the Convention. The Government has made no such reservations and is thus, in the complainant's view, according to international law and human rights method, bound by the current content of Convention No. 98 with the following core provision: "Measures appropriate to national conditions shall be taken where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers' organizations and workers' organizations, with a view to the regulations of terms and conditions of employment by means of collective agreements" (Article 4).

728. According to the complainant, this provision implies that the Government shall ensure that nobody, including the Government itself, imposes a solution on employees without negotiation or sets up a framework for negotiations imposing fixed specific outcomes. On the contrary, the Government shall ensure that negotiations take place based on the freedom of choice and the autonomy of trade unions. Therefore, the Government's obligations have both a positive and a negative aspect: it should encourage negotiations and abstain from interfering in them. Article 4 of Convention No. 98 covers negotiations over "terms and conditions of employment". Hence, collective negotiations over working hours, including daily and weekly rest periods, are clearly protected by the Convention.

729. The complainant acknowledges, however, that, under international law, Norway is able to restrict the negotiating rights in the police service. This follows from Article 5(1) of Convention No. 98, and Article 1(2) of Convention No. 154, which provide: "The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations." The wording implies, however, that unless such restrictions are actually imposed, the Convention's provisions on the freedom of association and collective bargaining rights shall apply in full, even to the police. A faithful interpretation of the ILO Conventions and the Norwegian legality principle requires any restriction of the collective bargaining rights of the police to be clearly and unequivocally defined by law. Yet, such a limitation to the collective bargaining rights does not exist in Norwegian legislation. The complainant further underlines that the Regulation in question applies not only to police officers but also to civilian staff, i.e. "civilian employees holding the position of custody officers or chief custody officers". Under Convention No. 98, these employees have unrestricted bargaining rights.

730. The complainant organization also indicates that sections 1-2(3) and 10 through 12(9) of the Working Environment Act allow the Government to pass regulations concerning working hours arrangements, and some police overtime provisions have for a long time been regulated by regulations (see section 1-2(4) of the Working Environment Act and the Regulation Relating to Exemptions from the Working Environment Act for Certain Types of Work and Groups of Employees of 16 December 2005, No. 1567). The right to stipulate public regulations on working hours does, however, not represent a right to limit the scope and content of the negotiations. If it did, it would have been explicit or implicit in the wording or in the preliminary documents, which is not the case. Moreover, the provisions of that regulation are general and apply also to groups other than the police, i.e. groups of employees whose collective bargaining rights may not be restricted by the Government under any circumstance.

731. The complainant therefore believes that provisions of such regulations may not in any circumstance be applied in such a way that they directly intervene in negotiations, when the relevant collective bargaining rights have not been expressly curtailed in national legislation and when the negotiations have traditionally been free. If Convention No. 98, Article 5(1), and Convention No. 154, Article 1(2), are interpreted in such a way as to allow groups that are not exempt from the scope of the Convention to be exempted through the Government's exercise of authority during the negotiations, then the Conventions are not at all suited to offer real protection to the professions mentioned in Article 5. This would clearly contradict the wording and purpose of the Conventions.

732. According to Convention No. 98, Article 4, and Convention No. 154, Article 1, Norway has an obligation to ensure free negotiations and to ban interventions in the negotiations that may limit the collective bargaining rights. It also has a duty to promote collective bargaining and to make provisions that allow free negotiations to take place. Based on the protection offered by these Conventions, the fear of the authorities and their dissatisfaction with the outcome do not constitute legally valid reasons for halting negotiations and exercising governmental authority to manage the outcome. If the Norwegian authorities believe there has been a breach of industrial peace or that other unlawful acts have been earned out by the employee organizations, it should respond to this with ordinary legal sanctions, not by limiting the collective bargaining rights.

733. In conclusion, the complainant requests that the regulation be repealed so as to avoid the same situation from arising once again when the current collective agreement expires.

B. The Government's reply

734. In a communication dated 14 November 2012, the Government recalls that ILO Convention No. 98 concerning the application of the principles of the right to organize and to bargain collectively, was ratified by Norway in 1955 and entered into force in 1956. Pursuant to its Article 5(1), the extent to which the guarantees provided for in the Convention shall apply to the armed forces and the police, shall be determined by national laws or regulations.

735. The Government further recalls that ILO Convention No. 154 concerning the promotion of collective bargaining was ratified by Norway in 1982. The scope of this Convention is determined in its Article 1(2), which provides that the extent to which the guarantees provided for in the convention apply to the armed forces and the police, may be determined by national law, regulations or national practice.

736. The Government states that there are long-standing traditions in Norway regarding collective bargaining and collective agreements, across the labour market. The right to organize and collective bargaining are fundamental parts of Norwegian justice, and are supported by legislation with procedural rules and institutions for resolving disputes. The right to industrial action is part of the right to free collective bargaining in Norway. No prohibition against strike or lockout exists, except for the military forces and senior civil servants/officials. These groups nevertheless enjoy the right to organize and the right to collective bargaining. Collective bargaining and collective agreements are considered by the authorities to be a fundamental prerequisite for the well-functioning of the Norwegian model of tripartite cooperation.

Provisions of the Working Environment Act related to working-time arrangements

737. The Government indicates that the Working Environment Act (Chapter 10) constitutes the main framework for working-time arrangements, from which enterprises (both public and private) may deviate under certain conditions by collective agreements or by exemptions granted by the supervisory authority (cf. section 10-12). This paves the way for solutions adapted to conditions in the individual enterprise, business sector or trade.

738. Agreements on the most wide-ranging working-time arrangements must be entered into by a union of considerable size (stipulated by the law), and in the state sector this will usually be confederations of unions, cf. section 10-12(4). The purpose of this condition is to ensure that workers' health, welfare and more long-term interests are taken into account.

739. Section 10-12(9) of Chapter 10 of the Act additionally provides the Ministry of Labour with the legal basis for exempting special types of work from the provisions of the chapter and for adopting special regulations regarding framework provisions of working time. There is also a provision in the Act, which gives a legal basis for a general (partial or complete) exemption from the Act for parts of the public administration (section 1-2(4)).

"Working Hours Provisions for the Police and Lensmann Service" agreement

740. The Government states that there is a long-standing tradition of entering into special collective agreements regarding wages and working conditions of the police service. A joint special agreement for all police officers, the "Working Hours Provisions for the Police and Lensmann Service" (ATB), was entered into in 1999. The ATB covered all civil servants with police authority, except senior officers under a special pay structure, and

custody officers, and had its legal basis in section 10-12(4) of the Working Environment Act. The agreement made several exemptions from the provisions regarding normal working time and rest periods, and was in general valid until 31 December 2009 and further for a year at a time, if not given notice by one of the parties. However, the provisions regarding rest periods had a clause that said that these provisions would be repealed by 1 July 2009.

741. According to the Government, when disputes in negotiations regarding such special agreements occur, industrial actions cannot take place. In the state sector, usually the State Wage Committee or a separate committee may handle the disputes. However, disputes regarding working-time provisions cannot be resolved by these mechanisms. If the parties do not agree, the general framework of the Act will apply.

742. The Government adds that the new ATB, that entered into force on 1 October 2009, has a broader scope than the previous one, as it covers in addition border inspectors, civil servants within the prosecuting authority, special investigators, transport escorts and certain undercover agents. It is a quite extensive agreement that consists of 17 sections concerning a wide range of conditions related to working hours and overtime work. The provisions regarding rest periods are contained in section 5(5), with the formal basis section 10-12(4) of the Act.

Regulation on Exemptions from the Working Hour Provisions of the Working Environment Act regarding Police Officers, etc.

743. The Government indicates that, on 20 March 2009, the Ministry of Labour sent out a draft Regulation concerning rest periods for police officers for public hearing. The deadline for the hearing was 8 May 2009. The expiry date of the working hour provisions in the ATB was end of June 2009, and the Ministry aimed at an entry into force of the Regulation on 1 July 2009. By choosing this date, the aim was to avoid the Regulation to intervene with the valid and running ATB. The title of the Regulation was "Regulation on Exemptions from the Working Hour Provisions of the Working Environment Act regarding Police Officers, etc." It was adopted on 26 June and came into force on 1 July 2009.

744. The Regulation gives, under certain conditions, permission for shorter rest periods than 11 hours, and in certain limited cases for rest periods shorter than eight hours, in connection with overtime work. In addition, there are provisions regarding compensating rest periods or other appropriate protection, the number of shortened rest periods that are permitted in a row, etc.

745. The Government asserts that Norway has not violated Conventions Nos 98 and 154 by adopting the Regulation in question and sets out the following arguments:

– *The relevant Conventions are applicable to the police service.* The Government agrees that there are no general legal exceptions for the police in the national law regarding collective bargaining. However, this does not imply that the freedom of collective bargaining can be interpreted as absolute. The organizations must conduct their freedom within the prevailing frames of national legislation. This principle is explicitly expressed in Article 8(1) of Convention No. 87.

– *The freedom to enter into collective agreements still exists.* The Working Environment Act constitutes a framework that stipulates how extensive a working-time arrangements can possibly be, and determines the options for possible deviations from this framework through collective agreements or exceptions granted by the authorities. Regulations concerning working time would normally replace the

provisions of the law. The Act, or regulations authorized by this Act, do not govern the individual duty to work, which arises from individual or collective agreements. According to section 1-9 of the Act, the law will not constitute a hindrance for agreements offering to employees better working conditions than those stipulated in the law. Although the Regulation may affect the bargaining position of the employee side, the freedom to negotiate and enter into collective agreements regarding working-time arrangements still exists according to the law. This is clearly illustrated by the fact that the parties carried out negotiations in the summer 2009 and entered into a new collective agreement regarding, inter alia, rest periods. This agreement is still valid, and consequently, the Regulation has not been used so far. In addition, the part of the ATB comprising provisions regarding rest periods constitutes only a minor part of the agreement (one out of 17 sections).

– *The right to use valid authority in law to adopt new regulations.* Furthermore, it is the opinion of the Government that there has to be a clear and strong legal basis, indeed, to claim that the Government has forever renounced its right to use a valid authority in law to adopt new regulations, when entering into collective agreements on a given matter. There is no such basis in this case. On the contrary, the Regulation regarding rest periods must be assessed on the background of the particular role of the police in a society.

Legal basis of the Regulation

746. The 2009 Regulation regarding rest periods in the police service has its legal basis in two provisions of the Working Environment Act. According to section 1-2(4), the King may, by regulation, provide that parts of the public administration shall wholly or partly be excepted from the Act when the activity is of such a special nature that it is difficult to adapt it to the provisions of the Act. This provision gives the legal basis for adopting exceptions from all of the provisions in the Act. Section 10-12(9) provides that, if the work is of such a special nature that it would be difficult to adapt it to the provisions of this chapter, the Ministry may, by regulation, issue special rules providing exceptions from these provisions. This second provision allows for the adoption of exceptions and special rules other than those of Chapter 10 of the Act.

747. The Government emphasizes that the gist of both sections is that the work has to be of such a special nature that it is difficult to adapt the work to the provisions of Chapter 10. Already in 1977, a regulation was adopted regarding adjustments for parts of public administration, including police officers which, inter alia, concerned the right as regards the police to deviate from the provisions setting frames for overtime work. This provision still exists in a new regulation adopted on 16 December 2005 (No. 1567). Hence, the police services have, for a long time, been regarded to be of such special nature that it qualifies for exceptions regarding the provisions of working time.

748. Moreover, the Government considers that section 10-12(9) ("difficult to adapt") may be interpreted somewhat wider than the corresponding provision in the previous 1977 Act, which provided that it had to be impossible to adapt the work to the provisions of working time.

749. According to the Government, the role and duty of the Norwegian police appear from the Police Act and the Police Order *(Politiinstruksen)*. Accordingly, the main tasks of the police are to maintain public order and security and to prevent crime and other violence. The police is entitled to and is obliged to intervene, if necessary by force, to maintain public law and order, pursue legal offences or to bring legal decisions into effect or to be respected. No other agency or public officers have comparable tasks and authority as the

police in times of peace. This underlines the exceptional position of the police in society to ensure life, health and property.

750. The Government also states that the tasks of the police are to a large extent directed by the incidents that occur. When large incidents and accidents occur or in the initial phase of large criminal cases, it will not always be possible to plan for sufficient personnel so that the requirement for at least 11 hours (and in certain limited cases eight hours) rest period can be complied with.

751. Looking at the tasks and the special character of the police, the Government concludes that it is not possible to carry out parts of the duties solely based on the provisions regarding rest periods in the Act. The need for exceptions relates both to the provisions regarding overtime work and to the provisions regarding rest periods (section 10-8 of the Act). As mentioned above, the exceptions from overtime provisions have been granted for many years by a special regulation which is still in force. The need for this regulation has not been challenged by the employee's organizations. It is the firm opinion of the Government, that the regulation regarding rest periods of the police service is sufficiently reasoned, considering the legal basis in the Act.

Situation in June 2009

752. In June 2009, the Government was facing a very difficult situation. The negotiations between the complainant and the FAD had come to a point where a realistic result was that negotiations regarding a new ATB could fail. It was very clear that the police would not be able to fulfil all their tasks according to the Police Act, if the Chapter 10 of the WEA solely would constitute the legal framework for the rest periods of the working-time arrangements in the police service. Due to the risk of the situation that the police service stood ahead of a possible violation of the Police Act, the Regulation was adopted on 26 June. However, it was not put into force until the prevailing ATB agreement expired at the end of June. Further, the Regulation to a very large extent continued the provisions of the ATB regarding rest periods, i.e. an arrangement that for years had been accepted among the affected employees. It is the opinion of the Government that this did not represent an infringement of Conventions Nos 98 or 154.

753. The fact that the parties reached an agreement on a revised ATB in 2009 does not change this. The Government holds that the need of society for predictability and the need for the police for continuity require a regulation in force, should the negotiations fail in the future. If paramount and evident reasons call for another framework for the working-time arrangements within the police than those pursuant to Chapter 10 of the Act, such framework regarding the critical needs must be settled by a regulation rather than be left to negotiations and agreements between the employers' and workers' organizations, and the relative strength between these parties.

754. In conclusion, the Government states that, in its opinion, the adoption of the Regulation on Exemptions from the Working Hour Provisions of the Working Environment Act regarding Police Officers, etc. cannot be considered as a breach of Conventions Nos 98 or 154.

C. The Committee's conclusions

755. *The Committee notes that in the present case the complainant organization alleges Government interference in collective bargaining in the police service.*

756. *The Committee notes that the complainant indicates that:*

(i) *As no distinction is made in the Act relating to public service disputes of 18 July 1958 between police service employees and other public servants, the Norwegian police force enjoys full freedom of association and collective bargaining rights, and enjoys the right to strike since 1995 under the Police Act as amended by Royal Decree No. 8 of 3 February 1995.*

(ii) *As regards working hours for the police, since the 1970s, provisions on this matter have been laid down in separate collective agreements for various groups of public servants, bearing in mind that where the collective agreement expires or does not regulate working hours, the provisions of the Working Environment Act shall apply (see section 10-8: at least 11 hours of rest per 24 hours; exceptionally the amount of rest time may be reduced to eight hours by collective agreement).*

(iii) *Since 1999, a joint working hours agreement, namely the ATB, has been in place for all employee groups within the police service and has been renegotiated at various intervals.*

(iv) *Since 1 June 2007, the ATB included significant deviations from the provisions on rest periods stipulated by the Act (rest periods shorter than eight hours per 24-hour period) and was extended for the first time from 1 January 2008 to 30 June 2008.*

(v) *When the agreement was renegotiated, the unions criticized that the exemptions concerning short rest periods (i.e. section 5(5) of the agreement) were being used rather frequently, and the parties agreed to evaluate and review the exemptions before l January 2009, and to extend the ATB for the period 1 July 2008–31 December 2009 on the understanding that the exemptions would only remain in force until 30 June 2009.*

(vi) *The evaluation revealed a number of breaches of the Act and the ATB and found that the exemptions were used extensively and implied a deterioration in working conditions.*

(vii) *During autumn 2008 and spring 2009, there was widespread unrest and frustration in the police service because of insufficient staffing and irresponsible use of the working time exemptions provisions, but the unions succeeded in preventing illegal action.*

(viii) *The Government signalled, on 26 January 2009, its intentions to pass a regulation equivalent to the existing agreed exemptions in the ATB.*

(ix) *On 29 January 2009, a lawful political strike lasting one-and-a-half hours took place against the announced regulation.*

(x) *During the ongoing renegotiations between the complainant and the FAD of a collective agreement on working hours for the police service, the Government passed the Regulation on Exemptions from the Working Hour Provisions of the Working Environment Act regarding Police Officers, etc. on 26 June 2009 (entry into force on 1 July 2009).*

(xi) *The Regulation stipulates provisions on rest periods for employees in the police service (including civilian staff) allowing for exemptions shorter than eight hours, which were previously subject to collective bargaining and already outlined in the existing collective agreement entitled ATB.*

(xii) *The Regulation could, in theory, be altered through provisions in a collective agreement but in practice affected the ongoing negotiations because it represented a more or less non-negotiable demand that would apply if the parties failed to reach an agreement.*

(xiii) *Thus, due to the weakened position of the trade union and the obligation of industrial peace in the framework of negotiation of separate agreements concerning issues not covered by the national collective agreement, the negotiations became illusory and led the parties towards a predetermined outcome that favoured the employer's position.*

(xiv) *Faced with this situation, the trade unions had to accept the main content of the Regulation, which was incorporated into a new and comprehensive working hours agreement that was reached by the confederations and the FAD and is valid from 1 October 2009 to 31 December 2012.*

(xv) *According to the complainant, the Government, and at the same time employer of the police and party to the negotiations, unduly interfered in collective bargaining by using its authority as a lawmaker to issue a regulation under the Working Environment Act with the intent to control the ongoing negotiations over working hours for the police service, thus violating Conventions Nos 98 and 154.*

(xvi) *In its view, these Conventions fully apply to police since when ratifying these instruments Norway has not adopted any exceptions in respect of collective bargaining rights of police, and there is no restriction of the collective bargaining rights of the police clearly and unequivocally determined by law.*

(xvii) *Also, the issued Regulation applies not only to police officers but also to civilian staff.*

(xviii) *If the Norwegian authorities believe there has been a breach of industrial peace, it should respond by imposing sanctions, not by limiting collective bargaining rights.*

(xix) *Lastly, the complainant requests the repeal of the Regulation so as to avoid the same situation from arising once again when the current collective agreement expires.*

757. *The Committee notes that the Government states that:*

(i) *The right to organize and collective bargaining are fundamental parts of Norwegian justice, and are supported by legislation with procedures for resolving disputes.*

(ii) *The Working Environment Act (Chapter 10) constitutes the main framework for working-time arrangements, from which enterprises (public and private) may deviate under certain conditions by collective agreements or exemptions granted by the supervisory authority.*

(iii) *There is a long-standing tradition of entering into special collective agreements regarding wages and working conditions of the police service; but when disputes occur in negotiations of such agreements, industrial action cannot take place.*

(iv) *The relevant ATB made several exemptions from the provisions regarding normal working time and rest periods, and was in general valid until 31 December 2009 and further, if not given notice by one of the parties; however, the provisions regarding rest periods contained a clause stating that they would be repealed by 1 July 2009.*

(v) On 20 March 2009, the Ministry of Labour sent out a draft Regulation concerning rest periods for police officers for public hearing. The Government was facing the situation that the negotiations regarding a new ATB between the parties had come to a point where a failure was probable. Due to the risk that the police would not be able to fulfil their tasks in the legal framework provided by the Act, the Regulation was adopted on 26 June and came into force on 1 July 2009 following the expiry of these provisions in the ATB.

(vi) The Regulation allows, under certain conditions, for shorter rest periods than 11 hours, and in certain limited cases for rest periods shorter than eight hours, in connection with overtime work. It continued to a very large extent the ATB provisions regarding rest periods, i.e. an arrangement that had been accepted for years among the employees.

(vii) Norway has not violated Conventions Nos 98 and 154. The relevant Conventions are applicable to the police service, but, while there are no general legal exceptions for the police in the national law regarding collective bargaining, this does not imply that the freedom of collective bargaining can be interpreted as absolute. The organizations must conduct their freedom within the prevailing frames of national legislation. This principle is explicitly expressed in Article 8(1) of Convention No. 87.

(viii) It cannot be claimed that the Government has forever renounced its right to use a valid legal basis in law to adopt new regulations, when entering into collective agreements on a given matter. The Regulation has its legal basis in two provisions of the Working Environment Act. According to section 1-2(4), the King may, by regulation, provide that parts of the public administration shall wholly or partly be excepted from the Act when the activity is of such a special nature that it is difficult to adapt it to the provisions of the Act. Section 10-12(9) provides that, if the work is of such a special nature that it would be difficult to adapt it to the provisions of Chapter 10, the Ministry may, by regulation, issue special rules providing exceptions from these provisions.

(ix) The Government emphasizes that the gist of both sections is that the work has to be of such a special nature that it is difficult to adapt the work to the relevant provisions. In view of the exceptional position of the police in society to ensure life, health and property and the fact that its tasks are to a large extent directed by the incidents that occur, it is not always possible to comply with the rest period requirements of at least 11 hours (and in certain limited cases eight hours). The need for exceptions relates both to the provisions regarding overtime work and to the provisions regarding rest periods. The exceptions from overtime provisions have been granted by special regulation since 1977.

(x) The Working Environment Act constitutes a framework that stipulates working-time arrangements and provides options for possible deviations through collective agreements or exceptions granted by the authorities. Regulations issued under the Act normally replace the provisions of the Act. Although the 2009 Regulation may affect the bargaining position of the employee side, the freedom to negotiate and enter into collective agreements regarding working-time arrangements still exists.

(xi) This is clearly illustrated by the fact that the parties carried out negotiations in the summer 2009 and entered into a new ATB that entered into force on 1 October 2009. The part of the ATB comprising provisions regarding rest periods constitutes only a minor part of the agreement (one out of 17 sections).

(xii) The ATB is still valid, and consequently, the Regulation has not been used so far. However, the need of society for predictability and the need for the police for continuity require a regulation in force, should the negotiations fail in the future. If paramount and evident reasons call for another framework for the working-time arrangements within the police than those pursuant to Chapter 10 of the Act, such framework regarding the critical needs must be settled by a regulation.

758. *Bearing in mind that the case concerns alleged interference in collective bargaining negotiations in the police service, the Committee notes that Norway has ratified Conventions Nos 98, 151 and 154. With respect to the application of these instruments to the police force, Conventions Nos 98 and 151 contain a provision which reads as follows: "The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations" (Article 5(1) of Convention No. 98; Article 1(3) of Convention No. 151). Convention No. 154 contains a similar provision stipulating that: "The extent to which the guarantees provided for in this Convention apply to the armed forces and the police may be determined by national laws or regulations or national practice" (Article 1(2) of Convention No. 154). The Committee has previously considered that it is clear that the International Labour Conference intended to leave it to each State to decide on the extent to which it was desirable to grant members of the armed forces and of the police the rights covered by Convention No. 87. The Committee holds that the same considerations apply to Conventions Nos 98, 151 and 154.*

759. *Nevertheless, the Committee notes with interest that several member States have recognized the right to organize and bargain collectively of the police and the armed forces in accordance with freedom of association principles. In particular, the Committee notes that in Norway, the police has enjoyed freedom of association and collective bargaining rights for more than 50 years and has had the right to strike for more than 15 years. It also observes that both the complainant and the Government agree: (i) that the relevant Conventions are applicable to the police service and there are no general legal exceptions for the police in the national law regarding collective bargaining; and (ii) that there is a long-standing tradition of entering into special collective agreements regarding working conditions of the police service including working time.*

760. *In light of the above, and to the extent determined by national law, regulations and practice in Norway (Article 5(1) of Convention No. 98; Article 1(3) of Convention No. 151; and Article 1(2) of Convention No. 154), the Committee concurs with the Government's view that the fundamental principles underpinning those Conventions should be respected for all categories of workers covered by the Regulation. The Committee observes that the complainants' allegations would appear to particularly point to the problem that arises when the separation between the Government's role as legislator and as employer is not sufficiently clear. The Committee invites the Government, within the framework of the existing national legislation, to conduct good-faith collective bargaining negotiations in the police service with a view to reaching agreement regarding working conditions, including working time.*

The Committee's recommendation

761. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:***

The Committee invites the Government, within the framework of the existing national legislation, to conduct good-faith collective bargaining negotiations

in the police service with a view to reaching agreement regarding working conditions, including working time.

CASE NO. 2855

DEFINITIVE REPORT

Complaint against the Government of Pakistan presented by the Pakistan Workers' Federation (PWF)

Allegations: The complainant organization alleges that the management of the National Bank of Pakistan has illegally dismissed the General Secretary of the National Bank of Pakistan Trade Union Federation, Mr Syed Jahangir

762. The Committee last examined this case at its May–June 2012 meeting, when it presented an interim report to the Governing Body [see 364th Report, paras 760–771, approved by the Governing Body at its 315th Session (June 2012)].

763. The Government sent its observations in a communication dated 27 May 2013.

764. Pakistan has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

765. At its May–June 2012 meeting, the Committee made the following recommendations [see 364th Report, para. 771]:

> Noting that according to the Government, two cases concerning Mr Syed Jahangir are pending adjudication before the Court, the Committee trusts that any information relating to the alleged anti-union nature of the dismissal will be considered by the courts bearing in mind these principles and expects that these decisions will be handed down in the very near future. The Committee requests the Government to take steps, in consultation with the parties concerned, aimed at ensuring the reinstatement of Mr Jahangir pending the final decisions to be rendered by the courts. It requests the Government and the complainant to provide the court judgments as soon as they are handed down, as well as any further information relating to the anti-union nature of this dismissal.

B. The Government's reply

766. By its communication dated 27 May 2013, the Government indicates that all cases pending against Mr Syed Jahangir have been disposed of and submits in this regard a letter from the National Industrial Relations Commission of Pakistan (NIRC), which confirms that Mr Jahangir has been reinstated in service.

C. The Committee's conclusions

767. *The Committee recalls that the complainant in this case alleged the illegal dismissal of Mr Syed Jahangir, the General Secretary of the National Bank of Pakistan Trade Union Federation, by the management of the National Bank on 20 October 2010. It further recalls that following the suspension of the dismissal order by the National Industrial Relations Commission (NIRC) the management of the bank refused to reinstate him and pay his lawful dues; instead, it approached the Sindh High Court, Karachi seeking a stay of execution on the basis that the NIRC was not competent to suspend the order of dismissal. The High Court ordered, on 28 October 2010, that until the next audition, the status quo shall be maintained.*

768. *The Committee notes with interest the information provided by the Government on the reinstatement of Mr Jahangir. In these circumstances, it considers that the present case does not call for further examination.*

The Committee's recommendation

769. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to decide that the present case does not call for further examination.***

CASE NO. 2964

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of Pakistan presented by the Pakistan Wapda Hydro Central Labour Union

Allegations: The complainant organization alleges that the Registrar of Trade Unions and the National Industrial Relations Commission (NIRC) have declared the complainant trade union non-existent and issued a collective bargaining agent certificate to a rival union which had previously been defeated in the nationwide referendums held under the aegis of the NIRC

770. The complaint is set out in communications by the Pakistan Wapda Hydro Central Labour Union, dated 7 June and 6 July 2012.

771. The Government sent its observations in a communication dated 12 December 2012.

772. Pakistan has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

773. In its communication dated 7 June 2012, the Pakistan Wapda Hydro Central Labour Union explains that it is one of the eldest trade unions registered after the independence of Pakistan and is the largest national industry-wide trade union representing more than 140,000 workers employed in the largest national public utility of electricity, namely the Pakistan Water and Power Development Authority (WAPDA) and electricity companies, all over the country. The union was registered with the Registrar of Trade Unions (registration certificate No. 46 of 1973 dated 15 May 1973) under the provisions of the Industrial Relations Ordinance (IRO), 1969. The union has won nationwide referendums four times by defeating the rival union, the WAPDA Paigham Union in 1999, 2001, 2004 and 2007 (with 65 per cent of votes cast in the secret ballot at the last referendum). Its status has never been challenged by the rival union. The complainant states that it has been carrying out concerted campaigns against the proposed privatization of the national public utility of electricity and has been urging the Government to make the utility self-reliant through production of cheaper electricity through hydel and coal fired and coastal wind power houses instead of independent private power houses and rental power houses. The union has been holding large protest rallies all over the country for acceptance of these demands, and in 2012 it held three protest rallies in front of the National Parliament in Islamabad. The protest held by the union from 8 to 11 May 2012, culminated in the workers' demands of being accepted.

774. The complainant alleges that the Registrar of Trade Unions of the National Industrial Relations Commission (NIRC) passed an order dated 29 May 2012 declaring the complainant trade union as non-existent and issuing a collective bargaining agent (CBA) certificate to the rival union which has been defeated four times in the nationwide referendums held under the aegis of the NIRC. According to the complainant, the said order is contradictory since the Registrar, on one hand, has stated in the concluding paragraph of the order that the registration of the union is still to be cancelled and has asked the NIRC to undertake proceedings for cancellation of the registration of the union, and on the other hand, has stated that the union has become non-existent and certified the rival trade union as being the only union and the CBA in the utility.

775. The complainant further submits that pursuant to section 11 of the Industrial Relations Act (IRA), 2012, only the NIRC is authorized to cancel the registration of a union. According to this provision:

> 11. Cancellation of registration. (1) Subject to other provisions of this section, the registration of a trade Union may be cancelled by the Registrar if the trade union has – …
>
> (2) Where the Registrar is of opinion that the registration of a trade union should be cancelled, he shall submit an application to the Commission praying for permission to cancel such registration.
>
> (3) The Registrar shall cancel the registration of a trade union within seven days from the date of receipt of permission from the Commission.

776. The complainant considers that the plea taken by the Registrar in the impugned order is completely unfounded on the ground that the period between the expiry of the IRA 2008 on 30 April 2010, and the promulgations of the IRO 2011, was confusing since no federal industrial relations legislation on the subject or the NIRC existed and the union had to take protection under the provincial industrial relations laws to continue to exercise its right to collective bargaining. The status of the union as a national industry-wide trade union has been revived upon the promulgation at national level of the IRO 2011, and thereafter, the IRA 2012. The registration of the union remained protected during this period. The registration certificate issued to the union was never withdrawn by the NIRC and,

according to the complainant, is a conclusive proof of its legal status under section 10 of the IRA 2012, which reads as follows:

> 10. Certificate of registration. The Registrar, on registering a trade union under section 9, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the trade union has been duly registered under this Act.

777. Furthermore, according to the complainant, the Registrar has not only himself acknowledged in the order that the legal status of the union still existed, but also stated that this union has produced the certificate of the Provincial Registrars in Punjab, Khyber Pakhtoon Khawa (KPK) and Sindh to the effect that this union has not been registered with them. The relevant portion of the orders reproduced as under:

> 2. The application was resisted by the opposite union i.e. the Pakistan Wapda Hydro Electric Central Labour Union. Inter alia it was contended that the Pakistan Wapda Hydro Electric Central Labour Union was registered as industry-wise trade union vide registration certification No. 46 of 1973 dated 15 May 1973 issued on prescribed Form-C. The said certificate is still intact and same is exclusive evidence that the union has been duly registered under the IRO, 1969. The certificate of the union has not been cancelled. It was further alleged that the Pakistan Wapda Hydro Electric Central Labour Union has not been registered at provincial level so far. No provincial Registrar has issued any certificate of registration to the Hydro Union on the prescribed form by giving Sr. No. of registration to it, which is a condition precedent for certificate of registration.
>
> 10. The learned counsel for the Hydro Union during the course of arguments produced copies of letters dated 13 April 2012, 2 May 2012 and 4 May 2012 issued by the Registrars of Provinces of Punjab, Sindh and KPK, respectively, whereby the applicants were informed as to why the Pakistan Wapda Hydro Electric Central Labour Union has not issued certificates of Registration at Provincial level.

778. The complainant indicates that it has also approached the Full Bench of the NIRC to have the impugned order of the Registrar annulled. According to the complainant, the impugned order has caused great unrest and frustration among workers over the denial of fundamental trade union and collective bargaining rights and declaring the lawfully elected through nationwide referendum CBA trade union as non-existent. The complainant considers that the assertion made by the Registrar that the protected period of the CBA has already expired is not correct because section 19(11) of the IRA 2012 on the subject only provides that the referendum cannot be challenged during the period of three years. The Registrar has also ignored the fact that the union has been recognized as the CBA by the employer pursuant to section 21 of the IRA 2012. This case is still pending with the NIRC.

779. The complainant further submits that the union has not only been regularly carrying out negotiation through collective bargaining with the employer, but has also been regularly holding its national executive and national general bodies meetings in accordance with its constitution. It has been submitting its reports of activities and results of election of the office bearers held by the union. The union has also been complying with section 16 of the IRA 2012, and sent its annual audited report regularly, including for the years 2010–11 as nationwide trade union. The Registrar has never raised any objection upon the legal validity of these returns sent to him regularly.

780. In a communication dated 6 July 2012, the complainant informs that the union has filed a writ petition before the Islamabad High Court, to challenge the jurisdiction of the Registrar of Trade Unions of the NIRC to pass the impugned order dated 29 May 2012. The Justice of the Court has suspended the order of the Registrar and the cancellation of the registration of the Pakistan Wapda Hydro Central Labour Union. The complainant indicates that the union has also observed protest days on 30 May and 6 June 2012.

B. The Government's reply

781. In its communication dated 12 December 2012, the Government indicates that following an inquiry into the above complaint, it transpired that after the promulgation of the 18th Constitutional Amendment, the General Secretary of the Pakistan Wapda Hydro Central Labour Union moved an application on 10 June 2011 before the Registrar Trade Union in the Province of Punjab requesting to register the union in the companies of WAPDA situated in Punjab in the name of the Wapda Hydro Electric Central Labour Union Punjab Province under the Punjab Industrial Relations Act (PIRA), 2010. The Registrar, by his letter dated 21 June 2011, opined that the Pakistan Wapda Hydro Electric Labour Union Punjab Province shall deem to be a registered trade union under section 79 of PIRA, 2012 and receive a CBA status. Similarly, office bearers of Pakistan Wapda Hydro Electric Central Labour Union registered their trade unions in the Provinces of KPK, Balochistan and Sindh.

782. Pakistan Wapda Employees Paigham Union, another union on the establishment, submitted an application dated 18 July 2011 before the Registrar of Trade Unions NIRC requesting for issuance of a CBA certificate in its favour, being the only union in the WAPDA establishment and having membership of more than one third of the total number of workers employed in the establishment. The Registrar, after hearing both parties, declared that the Pakistan Wapda Hydro Electric Central Labour Union had ceased to exist as an industry-wide trade union by operation of law. He also certified the applicant union as a CBA for WAPDA. The order of the Registrar, dated 29 May 2012, was challenged by the Pakistan Wapda Electric Central Labour Union before the Islamabad High Court and Balochistan High Court in Quetta. The Government indicates that as the matter is currently pending adjudication before the High Court, it cannot intervene at this stage.

C. The Committee's conclusions

783. *The Committee notes that the complainant in this case, the Pakistan Wapda Hydro Electric Central Labour Union, alleges that the Registrar of Trade Unions of the NIRC has declared the complainant trade union non-existent and issued a CBA certificate to a rival union which had previously been defeated in nationwide referendums held under the aegis of the NIRC. The Committee notes the contested decision of the NIRC Bench dated 29 May 2012, which, as reproduced below, provides a good summary of the case.*

> *1. Pakistan Wapda Employees Paigham Union brought the instant application dated 18-07-2011 ... praying for issuance of CBA certificate in its favour on the ground that it is the only union in the establishment of WAPDA and having membership of more than 1/3rd of total number of workmen employed in the establishment. ... The perusal of report shows that according to the applicant union the Pakistan Wapda Hydro Electric Central Labour Union has lost its existence on the ground that four different unions at provincial level emerged out of Hydro Union and all members left it. As result of provincial unions the Pakistan Wapda Hydro Electric Central Labour Union has ceased to exist. The applicant union submitted a list of membership along with the application which shows that it has more than 1/3rd membership which is pre-requisite for the issuance of CBA certificate under Section 19(1) of IRO, 2011. He opined that applicant union may be certified as CBA being single union in the establishment of WAPDA.*
>
> *2. The application was resisted by the opposite union i.e. Pakistan Wapda Hydro Electric Central Labour Union. Inter alia it was contended that Pakistan Wapda Hydro Electric Central Labour Union was registered as industry-wise trade union vide registration certificate No. 46 of 1973 dated 15-05-1973 issued on prescribed Form-C. The said certificate is still intact and same is exclusive evidence that the union has been duly registered under the IRO, 1969. The certificate of the union has not been cancelled. It was further alleged that Pakistan Wapda Hydro Electric Central Labour Union has not been registered at provincial level so far. No provincial Registrar has issued any certificate of registration to the Hydro*

Union on the prescribed form by giving Sr. Number of registration to it, which is a condition precedent for certificate of registration.

...

5. The perusal of record shows that Pakistan Wapda Hydro Electric Central Labour Union was registered with this Commission as industry-wise trade union in the year 1973. The last internal election was held on 16-04-2009 for a period of two years and 65 office bearers were elected. ... It is pointed out that Mr Khurshid Ahmad the General Secretary of Pakistan Wapda Hydro Electric Central Labour Union submitted an application on 10-06-2011 before the Directorate of Labour Welfare Punjab requesting therein registration of the union in the Companies of WAPDA situated in Punjab in the name and style of 'Wapda Hydro Electric Central Labour Union Punjab Province' under the Punjab Industrial Relations Act, 2010. The General Secretary also submitted general body resolution dated 10-06-11 passed by the workers urging the Director of Labour Welfare Punjab for registration of the union under the law. The perusal of minutes of said general body meeting reveals that members of Hydro Union conducted the said proceedings in view of IRA, 2008 which breathed its last [sic] w.ef. 30-04-2010, the decision of Honourable Supreme Court dated 02-06-2011 and 18th Amendment in the Constitution of Islamic Republic of Pakistan whereby the Commission has become defunct. In the said general body proceedings the union claimed 70,000 members in the province of Punjab. The general body elected 25 office bearers. The general body also passed constitution of the union. In response to this application the RTU Punjab vide his letter dated 21-06-2011 opined that union namely "Pakistan Wapda Hydro Electric Central Labour Union Punjab Province" shall deemed [sic] to be registered trade union under Section 79 of PIRA 2010 including its status as CBA.

6. Similarly ... an active member of Hydro Union approached the Labour Department of KPK Province with similar grounds that the NIRC is defunct body after 18th Amendment in the Constitution which has devolved the matters of unions as provincial subject and also relied upon decision of Honourable Supreme Court dated 02-06-2011. The documents of registration which were approved in the general body meeting held on 10-06-2011 at Ata Labour Hall Peshawar were also placed before the Labour Department Peshawar, asserting that members of the Hydro Union which was registered with the NIRC has now decided to register itself with the province of KPK. The members approved the constitution of the Hydro Union KPK and also elected office bearers. The membership of 20,000 was claimed in this resolution. In reply to this application the RTU KPK vide letter dated 27-06-2011 opined that Pakistan Wapda Hydro Electric Central Labour Union KPK shall deem to be registered under Section 83 of KPK IRA, 2010 including its status as CBA.

7. ... Joint Secretary of Pakistan Wapda Hydro Electric Central Labour Union also forwarded documents along with application dated 04-06-2011 to the Labour Department Baluchistan at Quetta with the request that 5600 members of Pakistan Wapda Hydro Electric Central Labour Union has passed resolution on 08-05-2011 to register the trade union at provincial level under Section 86(a) of Baluchistan IRA, 2010. In this regard Hydro Union also approached the learned Labour Court Quetta. The learned Labour Court directed the RTU of Baluchistan vide order dated 15-07-2011 to register the union. The RTU in compliance to the order of learned Labour Court registered the Pakistan Wapda Hydro Electric Central Labour Union at provincial level.

8. ... President of Pakistan Wapda Hydro Electric Central Labour Union approached the Sindh Labour Department with the application dated 15-06-2011 along with minutes of meeting of the general body as well as constitution of the union seeking registration of Pakistan Wapda Hydro Electric Central Labour Union at provincial level on the same grounds which were taken by aforementioned applicants in their respective applications. The union claimed its membership throughout the province of Sindh. In response Registrar of Sindh vide letter dated 24-06-2011 informed that union shall deem to be registered under Section 87 of Sindh IRA, 2010 including its status as CBA.

9. All the resolutions were passed in the meetings of general bodies for registration of the Hydro Union into four unions at provincial level. Under sub-Regulation 3 of Regulation 12 of NIRC (P&F) Regulations, 1973 in case of general body approximate number of the members has to be mentioned in the proceedings in case of executive body names and signatures of office bearers who attended the meeting are required.

10. In view of the situation the Pakistan Wapda Hydro Electric Central Labour Union ceased to exist as industry-wise trade union by operation of law. In all the Labour Laws starting from 1969 to IRA, 2012 "trade union" and "registered trade unions" are differently defined and for the formation of a trade union, the important prerequisite is that list of the members and names of the office bearers should be supplied. Therefore, if the members office bearers leave the union and join another union such union is left without members /office bearers. In such circumstances it looses its status as trade union on the principle that loosing the qualification prerequisite for status, the status is also lost. All members/office bearers of Pakistan Wapda Hydro Electric Central Labour Union as industry-wise trade union joined the newly formed four provincial level trade unions and thus cease to be members/office bearers of Pakistan Wapda Hydro Electric Central Labour Union as industry-wise trade union. Section 3(a) Second proviso of IRA, 2012 read as under:-

> *"Provided further that no worker shall be entitled to be a member of more than one trade union at any one time and on joining another union the earlier membership shall automatically stands cancelled"*

The learned counsel for the Hydro Union much stressed on the point that Hydro Union has not been registered at provincial level so far. No provincial Registrar has issued any certificate of registration to the Hydro Union on the prescribed performa by giving serial numbers of the registration to it which is a condition precedent for certificate of registration. The argument of learned counsel for Hydro Union is devoid of force because in the above referred provision of law the word "trade union" is mentioned and not "registered trade union". Therefore, it is immaterial that the unions at provincial level have not been issued certificates of registration at yet. It will not be out of place of mention here that the learned counsel for the Hydro Union frankly admitted that Pakistan Wapda Hydro Electric Central Labour Union has been registered with the Registrar of Baluchistan on the orders of learned Labour Court. The learned counsel for the Hydro Union during the course of arguments produced copies of letters dated 13-04-12, 02-05-12 and 04-05-2012 issued by Registrars of Provinces of Punjab, Sindh and KPK respectively whereby the applicants were informed as to why Pakistan Wapda Hydro Electric Central Labour Union has not been issued certificates of Registration at Provincial level. But indirectly it establishes and confirms that members / office bearers of Hydro Union did apply for registration of the unions at provincial level. It has not been mentioned that the applications for registration of the Hydro Union at provincial level were dismissed. Under the circumstances the previous letters which have been referred above issued by the Registrars of the Provinces show that the Hydro Union at provincial level shall deem to be registered under the relevant provisions of their respective Industrial Relations Acts, have great importance and can be relied upon.

11. It was argued by the learned counsel for the Hydro Union that under IRA, 2008 as well as IRO, 2011 the Pakistan Wapda Hydro Electric Central Labour Union has been protected under the saving clauses of above referred labour laws. In reply to the said arguments learned counsel for the applicant union contended that saving clauses of above referred labour laws will provide protection only to those unions which were in existence at the time of promulgation of these laws. The Pakistan Wapda Hydro Electric Central Labour Union was not in existence at the time of promulgation of IRO, 2011 i.e. 18-07-2011, therefore, protection provided under Section 88 of IRO, 2011 is not available to the said Union. It was further argued that at the time of promulgation of IRO, 2011 the applicant union was the only union in existence, registered as industry-wise trade union having its membership in all the provinces, therefore, it was the only union which was protected by the Saving clause and thus it was entitled to the status of CBA under Section 19(i) of IRA, 2012 and Article 17 of the Constitution of Pakistan as well.

12. Section 11 of repealed IRO, 2011 and IRA, 2012 deals with cancellation of registration of trade unions. Under Sub-Clause – of sub section (1) of Section 11 the registration of a trade union may be cancelled by the Registrar if the trade union applied for cancellation or ceased to exist. In view of aforementioned circumstances the above referred provisions of law will be attracted as the Pakistan Wapda Hydro Electric Central Labour Union ceased to be industry-wise trade union due to its own conduct.

...

15. In view of what has been stated above, the application merits acceptance, same is therefore, accepted and applicant union i.e. Pakistan Wapda Employees Paigham Union is

certified as CBA. The certificate be issued accordingly. The Honourable Commission be moved seeking permission for the cancellation of the registration of Pakistan Wapda Hydro Electric Central Labour Union.

784. *The Committee notes that the Registrar's decision is in part based on the interpretation he gave to section 3(a) of the IRA, which prohibits dual trade union membership. The Committee notes that following the Registrar's reasoning, pursuant to section 3(a) of the IRA, members of a provincial trade union cannot be members of a national trade union. The Committee considers such an interpretation is incompatible with Article 5 of Convention No. 87, in as far as it would preclude trade unions at the provincial level to establish a national industry-wide trade union. The Committee recalls that the Committee of Experts on the Application of Conventions and Recommendations has also considered that section 3(a) of the IRA, obliging workers to only join one trade union, could unduly prejudice their right to establish and join organizations of their own choosing and requested the Government to take the necessary measures to amend this provision so as to ensure that workers can belong to trade unions at both sectoral/provincial and national levels. The Committee requests the Government to keep it informed of all measures taken in this regard.*

785. *The Committee observes that the order of the Registrar had the result of leaving the Pakistan Wapda Hydro Central Labour Union, without registration, both at the provincial and national level despite its historic existence in the sector, as can be noted from earlier cases brought to the Committee [see Cases Nos 1175, 1383 and 2006]. In addition, the Committee observes that the absence of a national industrial relations legislation for a certain period had created a legislative void leading to confusion as to the status of national level trade unions. In this respect, the Committee had expressed, in March 2011, its concern "over evident obstacles in the current situation for national industry-wide trade unions to exercise their rights and observes that the lack of clarity in relation to the national legislative framework for industrial relations and trade union rights could restrict the freedom of association rights of the national workers' organization". It further considered "that provisions should be made to ensure that national trade unions and employers' organizations are able to exercise their activities at the national level in a legal and effective manner" [see Case No. 2799, 359th Report, paras 986 and 988].*

786. *The Committee notes that the complainant has filed an appeal to the Islamabad High Court against the decision of the Registrar to cancel its registration and that pending the hearing, on 14 June 2012, the court suspended the order of the Registrar. The Committee considers that the fact that the union has been without registration for one year represents a serious violation and interference. The Committee expects that pending hearing before the High Court, the rights of the Pakistan Wapda Hydro Central Labour Union have been restored. The Committee also expects that the obligation of Pakistan to respect, in national legislation and practice, freedom of association principles and the Conventions which it has freely ratified will be taken into account by the High Court and that the complainant organization will be ensured the right to represent its members both at provincial and at national level as appropriate. The Committee requests the Government to keep it informed of the outcome of the decision handed down by the Islamabad High Court.*

The Committee's recommendations

787. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee requests the Government to take the necessary measures to amend section 3(a) of the IRA 2012, so as to ensure that workers can belong

to trade unions at both sectoral/provincial and national levels. It requests the Government to keep it informed of all measures taken in this regard.

(b) The Committee expects that pending the hearing before the High Court, the rights of the Pakistan Wapda Hydro Central Labour Union are restored. The Committee also expects that the obligation of Pakistan to respect in national legislation and practice freedom of association principles and the Conventions which it had freely ratified will be taken into account by the High Court and that the complainant organization will be ensured the right to represent its members both at provincial and at national level as appropriate. The Committee requests the Government to keep it informed of the outcome of the decision handed down by the Islamabad High Court.

CASE NO. 2921

DEFINITIVE REPORT

Complaint against the Government of Panama presented by
– the National Association of Officials of the Social Insurance Fund (ANFACSS)
– the Association of Employees of the Social Insurance Fund (AECSS)
– the Association of Dental Practitioners, Medical Professionals and Allied Workers of the Social Insurance Fund (AMOACSS) and
– the National Confederation of United Independent Unions (CONUSI)

Allegations: The complainant organizations allege a number of violations of trade union rights at the Social Insurance Fund

788. The complaint is contained in a communication from the National Association of Officials of the Social Insurance Fund (ANFACSS), the Association of Employees of the Social Insurance Fund (AECSS), the Association of Dental Practitioners, Medical Professionals and Allied Workers of the Social Insurance Fund (AMOACSS) and the National Confederation of United Independent Unions (CONUSI), dated 30 January 2012.

789. The Government sent its observations in communications dated 16 May 2012 and 8 February 2013.

790. Panama has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

791. In their communication of 30 January 2012, the ANFACSS, AECSS, AMOACSS and the CONUSI allege that since the new administration of the Social Insurance Fund came into office there has been a policy of human rights and freedom of association violations that has been prejudicial to the administrative and health-sector unions. This has allegedly resulted in trade union officials being vilified in the media, bans on exercising the rights to freedom of expression and freedom of assembly, bans on trade union leave, workers being encouraged to resign their trade union membership, transfers of trade union officials

without consultation and, lastly, the dismissal of two trade union officials, Mr Juan Samaniego and Ms Elineth Menchaca. Finally, the complainant organizations state that the alleged violations of trade union rights prompted a large number of unions to establish the National Coordinating Body of United Unions of the Social Insurance Fund, through which proceedings have been initiated before the General Directorate.

B. The Government's reply

792. In its communication of 16 May 2012, the Government states that as a result of an ILO technical assistance mission that visited Panama in January 2012 the Tripartite Agreement for Panama was signed, establishing a committee for the implementation of the agreement and a committee for the rapid handling of complaints regarding freedom of association and collective bargaining. The Government indicates that the present case was examined under the auspices of the latter committee, and with the input of a moderator appointed by the ILO. An agreement was signed, which contained a proposal for the Social Insurance Fund to take steps to resolve five of the allegations presented in the complaint and it was agreed that the joint meetings would continue in order to resolve all the issues raised in the case before the Committee.

793. In its communication of 8 February 2013, the Government states that on 5 December 2012, the Social Insurance Fund signed an agreement on trade union freedoms with the complainant organizations, which was endorsed by the Catholic Church and the Office of the Ombudsperson, in which the Fund undertook to guarantee and promote the principle of trade union freedom, as well as freedom of association and other fundamental rights and guarantees enshrined in the Political Constitution. In addition, the Government indicates that it was also established that: (1) the Social Insurance Fund repeals and renders void the memorandum of 30 June 2010, encouraging workers to resign their trade union membership; (2) all officials will respect the right to affiliate and resign from affiliation with any trade union, free from interference of any sort; (3) the Social Insurance Fund declares its firm respect of the right to freedom of expression and freedom of information, both recognized under the Political Constitution, subject to the limitations established by law, and, consequently, respects and guarantees the right of trade unions to exercise them freely; and (4) modalities were established to facilitate the exercise of the right of assembly and the granting of trade union leave through the distribution of publications, the submission of lists of claims and the granting of trade union leave to trade union officials to enable them to initiate or participate in organizational and training activities.

C. The Committee's conclusions

794. *The Committee notes that, in the present case, the complainant organizations allege a number of violations of trade union rights (bans on exercising freedom of assembly and freedom of expression, bans on trade union leave, workers being encouraged to resign their trade union membership, transfers and the dismissal of two trade union officials) at the Social Insurance Fund.*

795. *The Committee recalls that in June 2012 it noted that "at the request of the Government and in the framework of the Special Committee for the Rapid Handling of Complaints concerning Freedom of Association and Collective Bargaining, a technical assistance/mediation mission was conducted in relation to the issues raised in the complaint alleging violations of trade union rights at the Social Insurance Fund and that in the context of the mission the parties signed an agreement which contains concrete commitments, including joint meetings. In this respect, the Committee expects that all issues raised in the complaint will be dealt with in accordance with the abovementioned agreement and requests the Government and the complainant organizations to keep it*

informed of developments relating to the implementation of this agreement" [see 364th Report, para. 12].

796. *The Committee notes that in a recent communication the Government states that on 5 December 2012, the Social Insurance Fund signed an agreement on trade union freedoms with the complainant organizations, which was endorsed by the Catholic Church and the Office of the Ombudsperson, in which the Fund undertook to guarantee and promote the principle of trade union freedom as well as freedom of association and other fundamental rights and guarantees enshrined in the Political Constitution. In addition, the Government indicates that it was also established that: (1) the Social Insurance Fund repeals and renders void the memorandum of 30 June 2010 encouraging workers to resign their trade union membership; (2) all officials will respect the right to affiliate and resign from affiliation with any trade union free from interference of any sort; (3) the Social Insurance Fund declares its firm respect of the right to freedom of expression and freedom of information, both recognized under the Political Constitution subject to the limitations established by law, and consequently respects and guarantees the right of trade unions to exercise them freely; and (4) modalities were established to facilitate the exercise of the right of assembly and the granting of trade union leave through the distribution of publications, the submission of lists of claims and the granting of trade union leave to trade union officials to enable them to initiate or participate in organizational and training activities.*

797. *The Committee notes this information with interest and expects that the agreement signed by the parties has taken into account the allegations relating to the dismissal of two trade union leaders. Under these circumstances, the Committee will not pursue the examination of the allegations.*

The Committee's recommendation

798. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to consider that this case does not call for further examination.***

CASE NO. 2883

DEFINITIVE REPORT

Complaint against the Government of Peru presented by the Federation of Civil Construction Workers of Peru (FTCCP)

Allegations: The complainant organization alleges that the Government: (1) has promoted the creation of trade union organizations in the construction sector made up of persons engaged in criminal activities; and (2) proposed changes to the membership of the Directorate of the National Board for the Construction of Housing and Recreational Centres for Civil Construction Workers (CONAFOVICER) – an institution established as a result of collective bargaining

799. The complaint is contained in a communication from the Federation of Civil Construction Workers of Peru (FTCCP) dated 30 June 2011.

800. The Government sent its observations in communications dated 2 March, 19 July and 29 August 2012.

801. Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

802. In its communication of 30 June 2011, the FTCCP indicates that, since the new Government has come into office, the State has responded to social protests by taking reprisals against trade union organizations. The FTCCP adds that the administration has proceeded to intervene in the functioning and administration of trade union activities and promoted the creation of organizations under its control with the clear intention of interfering in the functioning of the Federation. The complainant alleges that the Government, with the intervention of the Minister for Labour and Promotion of Employment, backed the creation of the following organizations affiliated to the Confederation of Workers of Peru (CTP), which clearly support the American Popular Revolutionary Alliance (the current governing party): the Single Federation of Workers in Civil Construction and Similar Activities of Peru, the National Federation of Civil Construction Workers of Peru, the National Federation of Former, Independent and Operative Civil Construction Workers of Peru and the National Federation of Workers in Civil Construction. According to the complainant, most of the members of those organizations are engaged in criminal activities, subjecting employers in the construction sector to acts of vandalism to exert pressure on them, to kidnapping, blackmail and general violence against individuals.

803. The complainant alleges that, in this context, the Government has proposed changes to the membership of the directorate of the National Board of the Fund for the Construction of Housing and Recreational Centres for Civil Construction Workers (CONAFOVICER). This is an institution that was established as a result of collective bargaining with the FTCCP and is, therefore, of the exclusive remit of the complainant, excluding the interference of any public authority in its functioning and administration as a private institution that is only governed by its statutes. According to the complainant organization, the Government proposed the abovementioned changes with a view to enabling the organizations supported by the CTP to intervene in the administration of that institution in violation of freedom of association.

B. The Government's reply

804. In its communication of 2 March 2012, the Government reports that the Department of Homicide Investigation of the Directorate of Criminal Investigation (DIRINCRI) of the Peruvian National Police has carried out a number of police interventions in Lima and the provinces to identify, locate and capture individuals who, under the protection of trade union rights, have been forming informal groups for the perpetration of crimes. Furthermore, the Government adds that information and intelligence collection activities have been carried out with the support of the FTCCP, providing greater precision on the modus operandi and criminal records of the individuals that form these illegal groups to intimidate workers with threats against their lives and physical integrity and financial blackmail. The Government adds that these elements have been brought to the attention of the Public Prosecution Service and of the judiciary.

805. In its communication of 19 July 2012, the Government indicates that the State promotes freedom of association, taking care not to interfere in the creation, administration or maintenance of trade union organizations. The complainants' allegations seem to lack logic, claiming that the State promotes the creation of trade unions for the perpetration of crimes, when the State itself works to prevent actions that restrict freedom of association. As regards the allegation that the State intends to make changes to the CONAFOVICER directorate, the Government states that there is no current initiative to make any changes to the directorate, thus undermining the credibility of the complainant's allegations. The Government indicates that, as the Secretary General of the Ministry of Housing, Construction and Sanitation reported, the CTP and the Federation of Workers in Civil Construction and Similar Activities of Peru requested an amendment to article 7(d) of the Statutes of CONAFOVICER. However, no follow-up was given to that request.

806. In its communication of 29 August 2012, the Government reports that, in order to crack down on violence in the civil construction sector, it has created a special police department known as the Civil Construction Protection Police Department of the Peruvian National Police, which is conducting a number of police activities to secure civil construction sites. Special security units have also been created in a number of cities where there has been a rise in violence in the civil construction sector. Lastly, the Government strictly refutes any involvement of administrative authorities in the promotion of organizations accepting individuals engaged in criminal activities.

C. The Committee's conclusions

807. *The Committee observes that in this case the FTCCP alleges that the Government: (1) has promoted the creation of trade union organizations in the construction sector containing persons engaged in criminal activities, who have subjected employers in the construction sector to acts of vandalism to exert pressure on them, to kidnapping, blackmail, and general violence against individuals; and (2) that a proposal has been put forward to make changes to the membership of the directorate of CONAFOVICER – an institution established as a result of collective bargaining with the FTCCP – with a view to enabling the organizations supported by the CTP to intervene in the administration.*

808. *As regards the allegations concerning the promotion by the Government of trade unions allegedly containing persons engaged in criminal activities, who have subjected employers in the construction sector to acts of vandalism to exert pressure on them, to kidnapping, blackmail and general violence against individuals, the Committee notes that the Government indicates that: (1) the State promotes freedom of association, taking care not to interfere in the creation, administration or maintenance of trade union organizations; (2) there seems to be a lack of logic to the complainants' claim that the State promotes the creation of trade unions engaged in criminal activities, when it is the State that works to prevent actions that restrict freedom of association; (3) through the Department of Homicide Investigation of the DIRINCRI of the Peruvian National Police in Lima and the provinces, a number of police interventions have been carried out to identify, locate and capture individuals who, under the protection of trade union rights, have been forming informal groups for the perpetration of crimes; (4) in order to crack down on violence in the civil construction sector, it has created a special police department known as the Civil Construction Protection Police Department of the Peruvian National Police, which is conducting a number of police activities to secure civil construction sites; (5) special security units have also been created in a number of cities where there has been a rise in violence in the civil construction sector, and information and intelligence collection activities have been carried out with the support of the FTCCP, providing greater precision on the modus operandi and the criminal records of the individuals that form these illegal groups to intimidate workers through threats against their lives and physical integrity and financial blackmail; and (6) these elements have been brought to the*

attention of the Public Prosecution Service and of the judiciary. The Committee welcomes the Government's statements that it has adopted initiatives to guarantee security in the construction sector and invites the Government to provide follow-up to these initiatives within the framework of the national tripartite dialogue body.

809. *As regards the allegation that the Government proposed to make changes to the membership of the directorate of CONAFOVICER – an institution established as a result of collective bargaining with the FTCCP – with a view to enabling the organizations supported by the Confederation of Workers of Peru (CTP) to intervene in the administration, the Committee notes that the Government states that the Secretary General of the Ministry of Housing, Construction and Sanitation reported that the CTP and the Federation of Workers in Civil Construction and Similar Activities of Peru requested the amendment of article 7(d) of the Statutes of CONAFOVICER but that no follow-up was given to that request, and that there is currently no initiative to make changes to the directorate of that body. Bearing this information in mind, the Committee will not pursue the examination of these allegations.*

The Committee's recommendation

810. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:***

The Committee invites the Government to provide follow up to the initiatives to combat violence in the construction sector within the framework of the national tripartite dialogue body.

CASE NO. 2972

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of Poland presented by
– the National Commission of NSZZ "Solidarnosc" and
– the All-Polish Alliance of Trade Unions (OPZZ)

Allegations: The complainant organizations denounce a civil court decision made in closed session without the presence of the parties, which declared illegal the strike action conducted at LOT Aircraft Maintenance Services (LOT AMS) and led to the dismissal of ten trade union activists

811. The complaint is contained in a communication from the National Commission of NSZZ "Solidarnosc" and the All-Polish Alliance of Trade Unions (OPZZ), dated 10 July 2012.

812. The Government sent its observations in a communication dated 29 October 2012.

813. Poland has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

814. In their communication dated 10 July 2012, the complainants allege that, on 23 March 2012, the District Court in Warsaw, in closed session without the presence of the parties, declared the strike action conducted at LOT Aircraft Maintenance Services (LOT AMS) illegal, that this decision was made in violation of Convention No. 87 and led to the dismissal of ten trade union activists who organized the strike (Marcina Choluj, Miroslaw Jankowski, Michal Kniazewski, Jacek Mikulski from NSZZ "Solidarnosc", and Robert Skalski, Grzegorz Grzybowski, Andrzej Tomczak, Andrzej Michel, Krzysztof Kaczorek, Pawel Sznajder from Aircraft Land Personnel Trade Union). The complainants indicate that, on 20 March 2012, the employer LOT AMS had applied to the civil court for determination that the announced and organized strike was illegal in the light of the common law, especially with the Act of 23 May 1991, on the settlement of collective labour disputes and for prohibiting the unions from organizing and conducting the strike.

815. According to the complainants, the actions taken by the trade unions were legal in the light of the national laws: (i) on 6 October 2011, the unions announced the demand for an increase of remuneration by 2,000 Polish Zloty (PLN) and the employer refused to fulfil the demand in a letter dated 12 October 2011; (ii) on 26 October 2011, the National Labour Inspection registered the collective dispute; (iii) the parties followed the obligatory procedure of negotiations and mediation; (iv) on 21 February 2012, the parties signed the records of divergences as no agreement was reached; (v) on 27 January 2012, the unions organized a two-hour warning strike; and (vi) the strike was announced on 18 March 2012 at midnight, having the legally demanded support vote of at least 50 per cent of the workers (488 out of 836 workers took part in the ballot, 415 voted for the protest action, 62 against and 11 votes were invalid).

B. The Government's reply

816. In its communication dated 29 October 2012, the Government indicates that, on 28 November 2011, the Ministry of Labour and Social Policy received a request to indicate a mediator for conducting mediation proceedings in relation to the collective dispute between the Trade Union of Airport Ground Staff (Zwiazek Zawodowy Naziemnego Personelu Lotniczego – ZZNPL), the Mazovia Region Inter-Enterprise Committee of NSZZ "Solidarnosc" at PLL LOT SA (Komisja Miçdz.yzakladowa NSZZ "Solidarnosc" Region Mazowsze at PLL LOT SA) and the Management Board of LOT AMS Sp.z o.o. According to the records of divergences prepared pursuant to article 9 of the Act of 23 May 1991 on the settlement of collective labour disputes, the matter in dispute was the demand to raise the basic salary of all employees by the net amount of PLN2,000 as of 6 October 2011. The Government further indicates that a mediator from the list kept by the Minister of Labour and Social Policy was indicated to conduct mediation proceedings pursuant to article 11(2) of the aforementioned Act. No agreement being reached in the course of the mediation proceedings, the parties – pursuant to article 14 of the Act – prepared records of divergences in the presence of the mediator and with the indication of respective standpoints of the parties which constitutes an authorization to undertake a strike action.

817. A strike organized by ZZNPL and NSZZ "Solidarnosc" began on 18 March 2012. On 20 March 2012, an attorney of LOT AMS filed a request at the District Court in Warsaw to secure the claims by prohibiting the ZZNPL and NSZZ "Solidarnosc" trade unions from

organizing and conducting a strike at LOT AMS. In its decision of 23 March 2012, the District Court in Warsaw granted security to LOT AMS in the form of a prohibition against organizing and conducting the strike that began on 18 March 2012 and defined a 14-day time limit for filing a petition to determine that the strike was organized in breach of the provisions of the Act on the settlement of collective labour disputes. Within the time limit set out by the District Court in Warsaw, the attorney of LOT AMS filed a petition to determine whether the abovementioned strike was announced and organized in breach of the provisions of the Act on the settlement of collective labour disputes. The Government indicates that the date of the hearing in that case has not yet been set.

818. The Government further indicates that the ZZNPL and the Inter-Enterprise Committee No. 205 of NSZZ, "Solidarnosc" filed complaints to the Court of Appeal against the decision of the District Court in Warsaw of 23 March 2012 to grant security in the form of a prohibition against organizing and conducting the strike. By way of its decision of 11 July 2012, the Court of Appeal in Warsaw revoked the challenged decision in relation to the Inter-Enterprise Committee No. 205 of NSZZ "Solidarnosc" due to the lack of that entity's capacity to act as a party in civil cases and it rejected the petition of LOT AMS in relation to that entity; it also dismissed the petition of LOT AMS to grant security in relation to the ZZNPL in Warsaw.

819. NSZZ "Solidarnosc" charged the challenged decision with violating the provisions of the procedural law (the Civil Proceedings Code), which consisted in, inter alia, assuming that the absence of security might hinder LOT AMS from attaining the objective of the proceedings to determine unlawfulness of the strike and in assuming that the petition that the entitled party intends to file, that is the petition to determine the illegality of the strike, is a civil case, as well as with violating the provisions of the substantive law by not applying article 59(3) of the Constitution of the Republic of Poland, which consisted in prohibiting the organization and conducting of the strike, despite the absence of the prerequisite infringement of the public good. On the other hand, the ZZNPL charged the challenged decision with violating the norms of the procedural law by way of, inter alia, unjustified assumption that the applicant had substantiated its entitlement to make claims despite the fact that neither legal theory nor jurisprudence have as yet worked out a view according to which the employer should be entitled to request the court to determine whether a strike organized at the employer's establishment complies with the provisions of the Act on the settlement of collective labour disputes, and by unjustified assumption that the applicant had demonstrated the existence of its legal interest in the granting of security, which consisted in the fact that the absence of security would prevent, or seriously hinder, the performance of the ruling issued in the case or that it would prevent or seriously hinder the attainment of the objective of the proceedings.

820. When revoking the challenged decision, the Court of Appeal pointed out that the Civil Proceedings Code stipulates two conditions for granting security, that is substantiation of the existence of a claim subject to security and substantiation of a legal interest in obtaining security. The Court of Appeal recognized that the collected evidence did not substantiate the legal interest in the establishing of a claim of LOT AMS – that is in determining whether the strike that began on 18 March 2012 violated the provisions of the common law and, particularly, the provisions of the Act on the settlement of collective labour disputes. The Court of Appeal decided that LOT AMS had an economic interest in claiming the security and not a legal one. Moreover, the Court of Appeal also found that the requested manner of securing the claim was also subject to reservations. The purpose of security in this case would be to normalize the rights and obligations of the parties to the proceedings for the period of their duration. As a manner of security, LOT AMS indicated the prohibiting of the obligated parties from organizing and conducting the strike at the establishment of the entitled party. However, article 59(3) of the Constitution grants trade unions the right to organize strikes within statutory limits. On the other hand, an act of law

may establish a prohibition of strike actions on account of the public good in relation to specific categories of employees or in specific fields. The Court of Appeal observed that at the given stage of proceedings it was not possible to find, in an unambiguous manner, whether the reasons indicated by the employer the disproportion of the employee demands in relation to the potential losses of the entitled party caused by the strike, and the defective way of conducting the strike referendum – were factually accurate. First and foremost, the applicant failed to substantiate that the strike action could lead to the non-performance of the employer's obligations and did not supply the number of employees who eventually took part in the strike that had begun. For that reason, at the current stage of the proceedings, and in the light of the reasons furnished by the employer, it was not possible to find in an unambiguous manner that the strike was illegal, even for the purposes of the proceedings to secure claims where the legislator does not require that a claim is demonstrated but only made plausible (substantiated).

821. According to the Government, considering the current state of affairs, there is neither legal nor factual basis for a claim that Poland has violated ILO Convention No. 87. The State ensures the right to a fair trial from which it arises that rulings issued by independent courts can be subject to a review by courts of higher instance which makes it possible for quashing those court rulings which give grounds for their withdrawal from legal circulation. The Government further states that it is not possible to accept a complaint that is based on a ruling which, in effect of its verification in the course of appeal proceedings, has lost its legal validity. On the basis of a single situation in which the complainant exercised its right to a review by a court of higher instance – in effect of which the original ruling lost its legal validity – it is not possible to accuse the Judiciary Branch of infringing the freedom of association and their right to organize.

C. The Committee's conclusions

822. *The Committee recalls that this case concerns allegations that a civil court (the District Court of Warsaw), in closed session, without the presence of the parties, declared the strike action conducted at LOT AMS illegal, and that this decision was made in violation of Convention No. 87 and led to the dismissal of ten trade union activists who organized the strike.*

823. *The Committee notes that, according to the Government, after the filing of the complaint before the Committee, the complainants filed complaints to the Court of Appeal against the decision of the District Court in Warsaw of 23 March 2012. By way of its decision of 11 July 2012, the Court of Appeal in Warsaw revoked the challenged decision in relation to the Inter-Enterprise Committee No. 205 of NSZZ "Solidarnosc" due to the lack of that entity's capacity to act as a party in civil cases and it rejected the petition of the company in relation to that entity; it also dismissed the petition of the company to grant security in relation to the ZZNPL. The Court of Appeal indicated that, at the current stage of the proceedings, and in the light of the reasons provided by the employer, it was not possible to find in an unambiguous manner, that the strike was illegal, even for the purposes of the proceedings to secure claims where the legislator does not require that a claim is demonstrated, but only made plausible (substantiated). Therefore, the Committee duly notes that the decision which gave rise to the complaint in this case has been overturned by the Court of Appeal of Warsaw.*

824. *However, the Committee notes that, according to the complainants, following the decision of the District Court of Warsaw, the company dismissed ten trade union activists who organized the strike (Marcina Choluj, Miroslaw Jankowski, Michal Kniazewski, Jacek Mikulski from NSZZ "Solidarnosc" and Robert Skalski, Grzegorz Grzybowski, Andrzej Tomczak, Andrzej Michel, Krzysztof Kaczorek, Pawel Sznajder from Aircraft Land Personnel Trade Union). The Committee deeply regrets that the Government has not*

replied to this allegation, nor has it provided any information concerning the situation of the ten trade unionists dismissed. The Committee recalls that no one should be penalized for carrying out, or attempting to carry out, a legitimate strike. When trade unionists or union leaders are dismissed for having exercised the right to strike, it can only conclude that they have been punished for their trade union activities and have been discriminated against [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 660 and 662].*

825. *The Committee observes from the Government's reply that in its decision of 23 March 2012, the District Court of Warsaw had defined a 14-day time limit for filing a petition to determine that the strike was organized in breach of the provisions of the Act on the settlement of collective labour disputes and that the attorney of the company filed a petition within this time limit, but no date had yet been set for the hearing. The Committee requests the Government to keep it informed of the status of these proceedings and to provide a copy of the judgment once it is handed down. In the meantime, the Committee observes that ten trade union activists have been dismissed allegedly for organizing industrial action which was initially prohibited due to the employer's request to secure its claims, but that this decision was subsequently overturned on appeal and, since then, there has yet to be a judgment on the legality of the strike. In these circumstances, and given the apparent delay in the court proceedings challenging the lawful nature of the industrial action (no hearing had been sent at the time of the Government's reply of 29 October 2012), the Committee urges the Government to review immediately the situation of the dismissed workers and should it be found that their dismissal was indeed due to their organization of the industrial action, to take the appropriate measures for their reinstatement in their posts without delay pending the final determination by the courts. The Committee requests the Government to keep it informed of the steps taken in this regard.*

The Committee's recommendation

826. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:***

> ***The Committee requests the Government to keep it informed of the status of the judicial proceedings and to provide a copy of the judgment once it is handed down. The Committee urges the Government to review immediately the situation of Marcina Choluj, Miroslaw Jankowski, Michal Kniazewski, Jacek Mikulski from NSZZ "Solidarnosc" and Robert Skalski, Grzegorz Grzybowski, Andrzej Tomczak, Andrzej Michel, Krzysztof Kaczorek, Pawel Sznajder from Aircraft Land Personnel Trade Union and should it be found that their dismissal was indeed due to their organization of the industrial action, to take the appropriate measures for their reinstatement in their posts without delay pending the final determination by the courts. The Committee requests the Government to keep it informed of the steps taken in this regard.***

CASE NO. 2976

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of Turkey presented by the IndustriALL Global Union

Allegations: The complainant alleges that since the beginning of 2012 no union has obtained a certificate of competence, which resulted in the de facto suspension of collective bargaining rights in the country and a situation where unions cannot appoint their representatives, benefit from check-off facilities, and protect their members from acts of discrimination and intimidation

827. IndustriALL Global Union submitted its complaint in a communication dated 15 August 2012.

828. The Government sent its observations in a communication dated 28 January 2013.

829. Turkey has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

830. In its communication dated 15 August 2012 IndustriALL Global Union, which represents more than 50 million workers throughout manufacturing, mining and energy sectors in some 140 countries, including 19 Turkish trade unions (Tes-İş, Belediye-İş, Petrol-İş, Turkiye Maden-İş, Birlesik Metal-İş, Lastik-İş, Seluloz-İş, Kristal-İş, Genel Maden-İş, Cimse-İş, Tumka-İş, Teksif, Oz Iplik-İş, Celik-İş, Tekstil, Deri-İş, Dok Gemi-İş, Turk Enerji-sen, Turk Tarim Orman-Sen) alleges the de facto suspension of collective bargaining rights in Turkey. The complainant explains that according to the Turkish legislation, the collective bargaining process begins with a certificate of competence issued by the Ministry of Labour and Social Security. However, since the beginning of 2012, the Ministry has not issued any certificate of competence for any trade union, including affiliates of IndustriALL Global Union, which makes it de facto impossible for workers to exercise their collective bargaining rights. The union considers that this situation is contrary to Convention No. 98, Turkey's Constitution, as well as the Collective Labour Agreement, Strike and Lock-out Act (Act No. 2822). The complainant alleges that the number of workplaces for which a certificate of competence was not issued has reached some 950 covering 350,000 workers.

831. The complainant refers to article 53 of the Turkish Constitution, which stipulates that:

> Workers and employers have the right to conclude collective bargaining agreements in order to regulate reciprocally their economic and social position and conditions of work. The procedure to be followed in concluding collective bargaining agreements shall be regulated by law.

It further refers to the following relevant sections of Act No. 2822:

> Section 12. A workers' trade union representing at least ten per cent of the workers engaged in a given branch of activity (excluding the branch of activity covering agriculture, forestry, hunting and fishing) and more than half of the workers employed in the establishment or each of the establishments to be covered by the collective labour agreement shall have power to conclude a collective labour agreement covering the establishment or the establishments in question. In the case of enterprise collective labour agreements, the establishments shall be considered as one whole unit in the calculation of more than half majority. ... The statistics published by the Ministry of Labour and Social Security in January and July of each year shall be the instrument used in calculating ten per cent of the workers engaged in a given branch of activity. The total number of workers engaged in a branch of activity and the membership figures of each of the trade unions in that branch as indicated in the statistics shall be valid for the purposes of collective agreements and other formalities until the next statistics are published. The competence of a workers' trade union that applied for or obtained a certificate of competence shall not be affected by statistics subsequently published.
>
> Section 13. A workers' trade union that considers itself competent to conclude a collective labour agreement shall make application in writing to the Ministry of Labour and Social Security, requesting the ministry to determine that its membership within the branch of activity (excluding the branch of activity covering agriculture, forestry, hunting and fishing) in which the union is constituted represents at least ten per cent of the workers engaged in that branch, and to determine the number of workers employed and the number of members in the establishment or establishments to be covered by the agreement as of the date of such application. The workers' trade union shall give the membership forms in its keeping to the employer within three working days as of the date of its application to the Ministry of Labour and Social Security for the determining of competence. Where the trade union has the required majority according to the records of the Ministry of Labour and Social Security, the Ministry shall communicate the application, together with the number of workers employed and the number of union members in each establishment concerned, to other workers' unions constituted in the same branch of activity and to employers' unions and employers not belonging to such unions who shall be a party to the agreement, within six working days of receiving the application, as indicated in the records of the ministry at the date of the application. Where the Ministry determines that the trade union does not have the required majority, this information shall be communicated only to the applicant union within the same time limit.
>
> Section 16. The Ministry of Labour and Social Security shall issue a certificate of competence to the union concerned within six working days after the expiry of the time limit allowed for an appeal if no appeal has been lodged, or within six working days of receiving notice of the decision if the court rejects the appeal.

The complainant explains that despite these mandatory legislative provisions, the Ministry of Labour and Social Security of Turkey has not published labour statistics since 2009. This was legally possible until the end of 2011, as the Turkish Parliament had amended Act No. 2822 by adding a new, provisional, section, according to which, the previous labour statistics would be valid for collective bargaining certifications. However, because the validity of the said temporary section expired, the Ministry, which should have published labour statistics, failed to do so.

832. Consequently, the complainant considers that the right to bargain collectively is de facto suspended in Turkey because of an arbitrary and illegal administrative decision of the Ministry of Labour and Social Security. Hundreds of thousands of workers and their unions cannot exercise their right of collective bargaining and negotiate their wages, social benefits and other conditions of work, which makes trade unions vulnerable in defending and enhancing their rights and interests. The complainant refers, among others, to the case of its affiliate, Oil, Chemical and Rubber Workers' Trade Union of Turkey (Petrol-İş), which has applied to the Ministry to get a certificate of competence for the following workplaces:

1. Erze Ambalaj ve Plastik Sanayi ve Ticaret A.S. (application date: 13 January 2012);

2. Gripin ilag A.S. (application date: 17 February 2012);

3. Saba Endustriyel Urunler imalat ve Ticaret A.S. (application date: 24 February 2012);

4. Elba Bant Sanayi ve Ticaret A.S. (application date: 2 March 2012);

5. Arili Plastik Sanayii A.S. (application date: 4 May 2012);

6. Reckitt Benckiser Temizlik Malzemeleri San. Ve Tic. A.S. (application date: 4 May 2012);

7. Urosan Kimya San. Ve Tic A.S. (application date: 4 May 2012);

8. Akin Plastik San. Ve Tic. A.S. (application date: 4 May 2012);

9. Sandoz ilag San. Ve Tic. A.S. (application date: 4 May 2012);

10. Plastimak Plastik Profil Enjeksiyon San. Ve Ticaret Ltd.Sti. (application date: 15 May 2012);

11. PIastiform Plastik Sanayi ve Ticaret A.S. (application date: 22 May 2012);

12. Plaskar Plastik Enjeksiyon Otomotiv Yedek Parga Nakliye Ambalaj Kalip Sanayi ithalat Ihracat Ticaret ve Sanayi A.S. (application date: 22 May 2012);

13. Mehmetşik Vakfi Turizm, Petrol, insaat Saglik Gida ve Ticaret Ltd.Sti. (application date: 20 June 2012).

833. The complainant also alleges that trade unions that cannot get a certificate of competence are unable to collect union dues. In this respect, it refers to section 61 of the Trade Unions Act (Act No. 2821), according to which:

> At the written request of the workers' trade union which is a party to the collective labour agreement in force in the undertaking or of the workers' trade union which has obtained the certificate of competence to bargain, if the collective labour agreement is terminated or not concluded, and upon receipt of the list of union member workers whose contributions are to be deducted, the employer shall be bound to deduct the members' contribution fixed by the statute of the union and the solidarity contribution to be paid to the trade union under the Act respecting collective labour agreements, strikes and lock-outs from their wages, and to submit to the trade union a list of the workers whose contributions have been so deducted, indicating the type of the contribution and to transfer the amount of deductions to the trade union.

Since the deduction of trade union dues is dependent on the existence of a collective agreement or certificate of competence, according to the complainant, this situation endangers the viability of trade unions from a financial point of view.

834. Furthermore, trade unions that cannot get a certificate of competence are unable to appoint trade union representatives. In this respect, the complainant refers to section 34 of Act No. 2821, according to which:

> A trade union, whose competence to conclude the collective labour agreement is certified, shall appoint trade union representatives from among its members at the establishment in the following manner, and shall provide the names of such union representatives to the employer within 15 days.

The appointment of trade union representatives is therefore dependent on the existence of a collective agreement or certificate of competence; thus, according to the complainant, this situation endangers the viability of trade unions from an organizational point of view.

835. Finally, according to IndustriALL Global Union, because the current de facto suspension of collective bargaining rights in Turkey, workers cannot exercise their freedom of association rights. Since trade unions cannot deliver any service and protection to their members in newly organized workplaces, workers are very reluctant to join trade unions since they become subject to dismissals and intimidation. The complainant alleges that there is a number of cases of this kind and refers, in particular, to the following two cases involving its affiliates:

- The Leather and Shoe Workers' Union of Turkey (Deri-İş) recruited the majority of workers at Togo Ayakkabi Sanayi ve Ticaret A.S., located in Ankara, and applied for certification at the beginning of April. As soon as the management heard about the union organizing activity, 35 union members were dismissed at the beginning of May 2012. The dismissed workers are still picketing under massive and regular attacks, pressure and intimidation by security forces. Since the Ministry of Labour and Social Security has not issued a certificate of competence, Deri-İş cannot defend and protect the rights of its members at the enterprise.

- The United Metal Workers' Union (Birlesik Metal-İş) recruited the majority of workers at Ceha Buro Mobilyalari Ltd.Sti., located in Kayseri, and applied for certification in the beginning of 2012. As soon as the management learned about the union organizing activity, 20 members were dismissed. Since the Ministry of Labour and Social Security has not issued a certificate of competence to the union, it cannot defend and protect the rights of its members at the enterprise.

IndustriALL Global Union wrote a letter to the Minister of Labour and Social Security in respect of both of these cases, but received no answer.

B. The Government's reply

836. In its communication dated 28 January 2013, the Government indicates that the complainant's allegations refer to the situation which existed before Act No. 6356 on Trade Unions and Collective Labour Agreements was enacted on 18 September 2012 and came into force on 7 November 2012. The Government nevertheless replies in detail to the complainant's allegations.

837. With regard to the right to collective bargaining, the Government refers to article 53 of the Turkish Constitution and related provisions of Act No. 2822. It indicates, in particular, that in accordance with section 12, the statistics published by the Ministry of Labour and Social Security in January and July of each year shall be the instrument used to calculate the 10 per cent of the workers engaged in a given branch of activity. Following the amendment of Act No. 5838 (Act dated 18 February 2009 amending various acts), the statistics could not be published by the Ministry in January and July of each year due to the lack of related legislative regulations. As no amendment could be made to Acts Nos 2821 and 2822, a provision was added to section 12 of Act No. 2822 through the adoption of Act No. 5921, which came into effect on 28 January 2010, requiring the Ministry to use statistics existing on 1 August 2010. With the regulation adopted pursuant to Act No. 6111, which came into effect on 25 February 2011, it was further resolved that no new statistics would be published until 30 June 2011 and that the last membership and worker statistics published by the Ministry shall be considered valid until the following publication date of statistics. In the framework of Act No. 6236 (Act to add a temporary section to Act No. 2822 on collective agreements, strikes and lockouts), it was further determined that no statistics

would be published until 31 December 2011 and that the latest membership and workers statistics published by the Ministry would be considered valid until the following publication date of statistics after this date. However, in the absence of the statistics that should have been published in January 2012 and in absence of a new suspension period, the demands of trade unions applying for competence for the purpose of collective bargaining in a workplace or enterprise could not be met. While trade unions' applications to the Ministry for the determination of competence could not be processed in accordance with section 13 of Act No. 2822, and certificates of competence could not be issued in accordance with its section 16, the Government considers that the Ministry of Labour and Social Security has not neglected its duty with regard to the publication of statistics.

838. The Government further indicates that intensive studies have been carried out in the process of drafting Act No. 6356 on Trade Unions and Collective Labour Agreements during meetings of the tripartite consultation board and technical committee with the view to bringing the legislation dealing with trade union rights into conformity with the ILO and European Union standards. According to the Government, the Act was drafted in consultation with the social partners. The Government further indicates that after the entry into force of Act No. 6356, the statistics will begin to be published regularly and that all records will be kept electronically.

839. With regard to the case of the Petrol-İş Union, the Government confirms that the union has applied to the Ministry for a certificate of competence in some workplaces. It also indicates that as of 1 October 2012, there were 1,688 applications waiting for certificates of competence, which represents 349,226 workers. The Government points out, however that the procedures for the determination for competence, which, due to the abovementioned reasons, came to a deadlock temporarily, will recommence with the entry into force of the new Act. Thus, the applications filed by the Petrol-İş for the competence certificates for the following workplaces will be examined urgently:

1. Gripin Pharmaceutical Co.
2. Elba Plaster Industry and Trade Inc.
3. Arili Plastic Industry Inc.
4. Saba Industrial Products Manufacturing and Trade Inc.
5. Reckitt Benckiser Cleaning Supplies Industry and Trade Inc.
6. Urosan Chemical Industry and Trade Inc.
7. Akin Plastic Industry and Trade Inc.
8. Sandoz Pharmaceutical Industry and Trade Inc.
9. Plastimak Profiled Injection Industry and Trade Limited Co.
10. Plaskar Plastic Injection, Automotive, Accessories, Transport, Packaging, Molding Industry, Import, Export, Trade and Industry Inc.
11. Mehmetcik Foundation Tourism, Oil, Instruction, Health, Food and Trade Limited Co.

However, according to the Government, when some of the records of the Ministry have been examined, other questions have emerged with regard to the following workplaces mentioned in the Petrol-İş' applications:

- Erze Packaging and Plastic Industry and Trade Inc.: Petrol-İş filed an application for the determination of competence on 19 December 2011. However, as the union has objected to the prior competence determination (turned down due to the absence of a required quorum), and in this respect, a case was pending before the Izmir Fifth Labour Court, the union was requested to communicate a "ruling of specific annotation". While subsequently, on 13 January 2012, the union notified that nine more members were registered so as to fulfil the required quorum, the union was reminded that it should communicate the "ruling of specific annotation" by a letter dated 2 March 2012; the union has so far failed to do so.

- Plastiform Plastic Industry and Trade Inc.: an application for the determination of competence was made on 22 May 2012. However, when the relevant records were examined, it appeared that the Inegol Chief Public Prosecutor's Office was investigating allegations of violations of trade union rights at the enterprise.

840. With regard to the allegation that without a certificate of competence, unions cannot benefit from check-off facilities, the Government indicates that with the enactment of the new legislation, there will be no problem for trade unions to collect trade union dues.

841. With regard to the complainant's allegation that the unions which cannot obtain a certificate of competence cannot appoint union representatives and that this situation endangers the sustainability of the unions organizationally, the Government referred to section 34 of Act No. 2821, which indeed requires the union to have a competence certificate in order to appoint a shop steward. The Government agrees that the duty of being a shop steward continues during the union's competence and that this situation poses a problem for the workplaces which have made a request for the determination of competence as of February 2012. The Government indicates, however, that the Ministry will start working on the determination of the authorized unions. With the enactment of the new legislation, trade unions having been granted competence certificates will be able to assign their representatives.

842. With regard to the allegation that the suspension of collective bargaining rights hinders workers' freedom of association rights, the Government provides the following information in respect to the enterprises mentioned in the complaint:

- Togo Footwear Industry and Trade Inc.: it appears from the records of the Ministry that in order to conclude a collective bargaining agreement at the enterprise, Deri-İş applied to the Ministry for a competence determination on 4 April 2012. However, as explained above, as of 1 February 2012, no such determination could be made. A case has been opened at the Ankara Third Labour Court to examine the allegation that 35 workers were dismissed by the employer following the application of Deri-İş to the Ministry. Following an examination of the Ministry's records concerning the workplace, it appeared that as of 16 November 2011, 56 workers were employed by the enterprise; however, there was no information on the number of trade union members. The Government further indicates that as of 4 April 2012, 33 out of 59 workers were union members. Deri-İş applied to the Presidency of the Grand National Assembly of Turkey Human Rights Investigation Commission alleging that all workers who were trade union members were dismissed. A case was also opened at the labour court. No application has been made to the Provincial Directorate of Labour and Employment Agency in Ankara regarding this issue.

- Ceha Office Furniture Limited Company: United Metal Workers' Union applied to the Ministry on 5 March 2012 in order to determine to which branch of activity the enterprise related. Following inspections conducted by the labour inspectors of the Ministry, it was determined that the aforesaid workplace was in the metal branch with

a sequence number of 13 of the "Regulation of Branches of Activity". The union asserted that workers were dismissed following the application for a competence certificate. Following an inquiry conducted by the Provincial Directorate of Labour and Employment Agency in Kayseri, it was determined that the contracts of 20 workers were terminated by means of paying their severance and notice pays. It was concluded, however, that no worker was dismissed due to his or her trade union activities.

C. The Committee's conclusions

843. *The Committee notes that the complainant in this case, IndustriALL Global Union, alleges that since the beginning of 2012 no union has obtained a certificate of competence, which has resulted in the de facto suspension of collective bargaining rights in the country and a situation where unions cannot appoint their representatives, benefit from check-off facilities, and protect their members from acts of discrimination and intimidation. The Committee notes the detailed reply provided by the Government thereon and observes that in general, the Government does not refute the complainant's allegations.*

844. *The Committee regrets the de facto suspension, in 2012, of collective bargaining rights in the country, triggering the suspension of the right to check-off facilities and the right to elect representatives, and recalls that the right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent. The public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof. Any such interference would appear to infringe the principle that workers' and employers' organizations should have the right to organize their activities and to formulate their programmes [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 881]. The Committee notes, however, the Government's indication that the complainant's allegations refer to the situation which existed before Act No. 6356 on Trade Unions and Collective Labour Agreements was adopted on 18 September 2012 and came into force on 7 November 2012 and that following the entry into force of this new legislation, all applications for the determination of competence will be examined, including those referred to by the complainant trade union. According to the Government, this will resolve the issues of collective bargaining, check-off facilities and the trade union representation – points raised by the complainant. While noting that allegations concerning Act No. 6356 have been recently lodged in the context of another case, which it will examine once the Government's reply thereon has been received, the Committee expects that all applications for the determination of competence to bargain collectively, including those mentioned in the complaint, will be examined without delay so as to ensure that workers can exercise their collective bargaining rights, enjoy the right to elect their representatives, and benefit from check-off facilities provided for by the national legislation. The Committee requests the Government and the complainant to keep it informed in this respect. With regard to the Plastiform Plastic Industry and Trade Inc., the Committee notes that according to the Government, an investigation into the allegations of violations of trade union rights at the enterprise was taking place and considers that this should not preclude the Ministry from examining the application for the determination of competence submitted by Petrol-İş.*

845. *With regard to the dismissal of 35 workers from the Togo Footwear Industry and Trade Inc., the Committee notes the Government's indication that while the union has applied to the Presidency of the Grand National Assembly of Turkey Human Rights Investigation Commission and that a labour court case is pending in this regard, no application has been made to the Provincial Directorate of Labour and Employment Agency in Ankara.*

The Committee recalls that anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions. The Government is responsible for preventing all acts of anti-union discrimination and it must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties concerned [see ***Digest****, op. cit., paras 769 and 817]. The Committee trusts that any information relating to the alleged anti-union nature of the dismissal will be considered by the court bearing in mind the principles above and expects that the decision will be handed down in the very near future. The Committee also expects that if anti-union discrimination is established, the workers concerned will be reinstated without loss of pay. If reinstatement is not possible for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the workers concerned are paid an adequate compensation which would represent a sufficiently dissuasive sanction for anti-union discrimination. It requests the Government to provide the court judgment as soon as it is handed down, as well as a copy of the findings of the Human Rights Investigation Commission.*

846. *With regard to the dismissal of 20 workers from the Ceha Office Furniture Limited Company, the Committee notes the Government's indication that an inquiry has been conducted by the Provincial Directorate of Labour and Employment Agency in Kayseri, which determined that while the contracts of 20 workers were terminated by means of paying their severance and notice pays, no worker was dismissed due to his or her trade union activities. Referring to the above-cited principles, the Committee requests the Government to provide a copy of the inquiry's report.*

The Committee's recommendations

847. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee expects that all applications for the determination of competence to bargain collectively, including those mentioned in the complaint, will be examined without delay so as to ensure that workers can exercise collective bargaining rights, enjoy the right to elect their representatives, and benefit from check-off facilities provided for by the national legislation. The Committee requests the Government and the complainant to keep it informed in this respect.

(b) With regard to the dismissal of 35 workers from the Togo Footwear Industry and Trade Inc., the Committee trusts that any information relating to the alleged anti-union nature of the dismissal will be considered by the courts bearing in mind the principles above and expects that the decision will be handed down in the very near future. The Committee also expects that if anti-union discrimination is established, the workers concerned will be reinstated without loss of pay. If reinstatement is not possible for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the workers concerned are paid an adequate compensation which would represent a sufficiently dissuasive sanction for anti-union discrimination. It requests the Government to provide the court judgment as soon as it is handed down, as well as a copy of the findings of the Human Rights Investigation Commission.

(c) With regard to the dismissal of 20 workers from the Ceha Office Furniture Limited Company, the Committee requests the Government to provide a copy of the inquiry's report.

CASE NO. 2254

INTERIM REPORT

Complaint against the Government of the Bolivarian Republic of Venezuela presented by
– the International Organisation of Employers (IOE) and
– the Venezuelan Federation of Chambers and Association of Commerce and Production (FEDECAMARAS)

Allegations: Marginalization and exclusion of employers' associations in decision-making, thereby denying them access to social dialogue, tripartism and consultation in general (particularly in respect of highly important legislation directly affecting employers) and by failing to comply with recommendations of the Committee on Freedom of Association; acts of violence, discrimination and intimidation against employers' leaders and their organizations; legislation that conflicts with civil liberties and with the rights of employers' organizations and their members; violent assault on FEDECAMARAS headquarters, resulting in damage to property and threats against employers; bomb attack on FEDECAMARAS headquarters; favouritism shown by the authorities towards non-independent employers' organizations

848. The Committee last examined this case at its March 2012 meeting, when it presented an interim report to the Governing Body [see 363rd Report, paras 1214–1358, approved by the Governing Body at its 312th Session (March 2012)].

849. The International Organisation of Employers (IOE) subsequently sent new allegations and additional information in communications dated 20 February and 18 September 2012.

850. The Government sent new observations in communications dated 15 October 2012 and 24 May 2013.

851. The Bolivarian Republic of Venezuela has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

852. In its previous examination of the case in March 2012, the Committee made the following recommendations on the matters still pending [see 363rd Report, para. 1358]:

(a) Regarding the abduction and maltreatment of the FEDECAMARAS leaders, Messrs Noel Álvarez, Luis Villegas, Ernesto Villamil and Ms Albis Muñoz (Employer member of the Governing Body of the ILO), the latter being wounded by three bullets, the Committee deplores the offences that were committed, emphasizes their seriousness and requests the Government to take all the steps within its power to arrest the other three persons involved in the abductions and wounding, and to keep it informed of developments in the investigations. The Committee notes the Government's statement that a public hearing was scheduled for 20 October 2011 and expresses the hope that the persons guilty of these crimes will soon be convicted and sentenced in proportion to the seriousness of the offences in order that such incidents will not be repeated and requests the Government to keep it informed in this respect. At the same time, the Committee notes with concern the IOE's statement in its additional information that Ms Albis Muñoz, employers' leader and one of the victims of aggression, has asserted that neither of the suspects arrested (Mr Antonio José Silva Moyega and Mr Jason Manjares) were the instigators of the aggression, as well as the IOE's reservations as to the idea that the motive of the aggression was car theft.

(b) Regarding the criminal investigation ordered by the Public Prosecutor's Office into the public declarations by the President of FEDECAMARAS, Mr Noel Álvarez, the Committee wishes to state that, in the context described by the IOE, the declarations do not in its opinion appear to contain any criminal content and should not normally have given rise to a criminal investigation. However, so that it can reach its conclusions in full possession of the facts, the Committee requests the Government to send its observations on the allegation.

(c) Regarding the alleged attacks on FEDECAMARAS headquarters in 2007, the Committee had requested FEDECAMARAS to file an official complaint on the subject with the Public Prosecutor's Office. The Committee reiterates that recommendation and indicates that if the organization has not done so by the Committee's next meeting, it will not pursue its examination of this allegation any further; noting however that an environment of harassment and lack of confidence in the public authorities is not conducive to the proposed lodging of its official complaints.

(d) Regarding the alleged bomb attack on FEDECAMARAS headquarters on 24 February 2008, the Committee notes the Government's statement that the persons charged, Mr Juan Crisóstomo Montoya González and Mrs Ivonne Gioconda Márquez Burgos, have confessed in full to the crimes of public intimidation and unlawful use of identity papers, that a preliminary public hearing was set for 4 November 2011 and that, as soon as a final ruling on the case was handed down, the Committee would be duly informed. The Committee emphasizes the importance that the guilty parties should be punished in proportion to the seriousness of the crimes committed and the employer organization compensated for the loss and damage on account of these illegal acts. The Committee is waiting to be informed of the sentence handed down.

(e) Observing the various acts of violence committed against FEDECAMARAS or its officials, the Committee again draws the attention of the Government to the fundamental principle that the rights of workers' and employers' organizations can be exercised only in a climate free of violence, intimidation and fear, as such situations of insecurity are incompatible with the requirements of Convention No. 87.

(f) Regarding the Committee's recommendation that the Government restore the La Bureche farm to the employers' leader, Mr Eduardo Gómez Sigala, and compensate him fully for all the damage caused by the authorities in occupying the farm, the Committee notes that there is a contradiction between the allegations and the Government's judgment that the expropriated farm of employers' leader Mr Eduardo Gómez Sigala was idle. Be that as it may, the Committee observes that the Government does not deny the IOE's allegation that the farm is currently a military training centre (as opposed to the Government's statement that the purpose of the land rescue procedure is to

encourage the agricultural use of the Valle del Río) or the allegation that Mr Eduardo Gómez Sigala has not received any compensation. The Committee therefore once again calls on the Government to respond fully to the allegations, return the farm property without delay to the employers' leader and compensate him fully for all losses sustained as a result of the intervention by the authorities in seizing his farm.

(g) The Committee requests the complainant organizations to send their comments on the information and observations presented by the Government concerning the expropriation of Agroisleña SA, Owen–Illinois and the Turbio steel plant.

(h) The Committee invites the complainants to provide their observations on the Government statement on the livestock farmer Mr Franklin Brito.

(i) Regarding the alleged confiscation ("rescue", according to the Government) of the farms owned by the employers' leaders, Mr Egildo Luján, Mr Vicente Brito, Mr Rafael Marcial Garmendia and Mr Manuel Cipriano Heredia, the Committee considers that it is impossible to discount the possibility of discrimination. The Committee requests the Government to ensure that they are granted fair compensation without delay and to initiate a frank dialogue with those affected and with FEDECAMARAS on the confiscations/rescues referred to and to keep it informed of developments. The Committee also requests the Government to send its observations on the attacks on the buildings owned by Mr Carlos Sequera Yépez, former President of FEDECAMARAS.

(j) Regarding the alleged lack of bipartite and tripartite social dialogue with FEDECAMARAS, the Committee notes with concern the IOE's new allegations concerning the approval without any tripartite consultation of laws that affect the interests of employers and their organizations. The Committee regrets that the Government has not responded specifically to these allegations of the IOE and urges it to do so without delay. Moreover, observing that the serious shortcomings in social dialogue continue to exist, the Committee reiterates its earlier recommendation, as follows:

– deeply deploring that the Government has ignored its recommendations, the Committee urges the Government to establish a high-level joint national committee in the country with the assistance of the ILO, to examine each and every one of the allegations and issues in this case so that the problems can be solved through direct dialogue. The Committee trusts that the Government will not postpone the adoption of the necessary measures any further and urges the Government to keep it informed in this regard;

– the Committee expects that a forum for social dialogue will be established in accordance with the principles of the ILO, having a tripartite composition which duly respects the representativeness of workers' and employers' organizations. The Committee requests the Government to keep it informed in this regard and invites it to request technical assistance from the ILO. The Committee also requests it once again to convene the tripartite commission on minimum wages provided for in the Organic Labour Act;

– observing that there are still no structured bodies for tripartite social dialogue, the Committee emphasizes once more the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights and that it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by detailed consultations with the most representative independent workers' and employers' organizations. The Committee once again requests the Government to ensure that any legislation concerning labour, social and economic issues adopted in the context of the Enabling Act be first subject to genuine, in-depth consultations with the most representative independent employers' and workers' organizations, while endeavouring to find shared solutions wherever possible;

– the Committee requests the Government to keep it informed with regard to social dialogue and any bipartite or tripartite consultations in sectors other than food and agriculture, and also with regard to social dialogue with FEDECAMARAS and its regional structures in connection with the various sectors of activity, the

formulation of economic and social policy and the drafting of laws which affect the interests of the employers and their organizations;

– the Committee requests the Government to ensure that as part of its policy of inclusive dialogue (including within the Legislative Assembly), FEDECAMARAS is duly consulted in the course of any legislative debate that may affect employer interests, in a manner commensurate with its level of representativeness.

The Committee deeply deplores that the Government has once again ignored these recommendation despite the fact that the Committee has been insisting on them for years.

(k) Regarding the alleged discrimination by the authorities against FEDECAMARAS and the allegations of favouritism vis-à-vis parallel organizations close to the Government and lacking in independence, the Committee reiterates the conclusions, recommendations and principles contained in its previous examination of the case and requests the Government to reply in detail to the allegations concerning the financing of parallel organizations and of favouritism vis-à-vis EMPREVEN and the "social production companies" and the discrimination against private companies. Regarding the IOE's new allegations concerning the sending of electronic mails between senior officials and parallel employers' organizations, the Committee calls on the Government to verify without delay with the senior officials concerned whether or not they or their representatives sent the electronic mail attached to the IOE's deposition.

(l) Regarding the Defence of Political Sovereignty and National Self-Determination Bill, the Committee calls on the Government to ensure respect for the abovementioned principle as regards international financial assistance to workers' and employers' organizations so that, if the Bill does indeed apply to them, to take the necessary measures without delay to amend the Bill (or the Act) so as to guarantee explicitly the rights of employers' and workers' organizations to receive international financial assistance without prior authorization from the authorities for activities related to the promotion and defence of the interests of their members.

(m) Regarding the complainant organization's comments on the Central Planning Commission Act, the Committee had observed in its earlier examination of the case that the legislation establishes strong state intervention in the economy and national economic structure under the aegis of central planning in order to construct the Venezuelan socialist model and had requested the complainant organizations to provide information on the relationship between the allegations and the violation of Conventions Nos 87 and 98. The Committee reiterates this recommendation and indicates that if the organizations have not done so by the Committee's next meeting, it will not pursue its examination of these allegations any further.

(n) The Committee requests the Government to send its observations in relation to the recent IOE communication dated 20 February 2012 alleging repeated failure to engage in tripartite consultations with respect to legislative matters.

(o) The Committee draws the attention of the Governing Body to the serious and urgent nature of this case.

B. Additional information and new allegations presented by the complainants

853. In joint communications dated 22 February and 18 September 2012, the IOE and the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS), despite the keenness that FEDECAMARAS has demonstrated in recent months to promote genuine social dialogue and tripartite consultation in the Bolivarian Republic of Venezuela, as called for in Convention No. 144 ratified by Venezuela in 1983 and Recommendation No. 152, no such developments have taken place. In some cases the Government has merely convened at its own discretion specific private sectors other than FEDECAMARAS, which is widely recognized by the ILO as being the most representative employers' organization in the country; in others, the consultation is a

mere formality that does not allow time to reply, or else the views of the independent social partners consulted are simply ignored. On other occasions there has either been no consultation whatsoever or else it has been held just with a few hand-picked organizations that support the Government. The complainants observe that there have been further incidents have taken place in violation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), ratified by the Bolivarian Republic of Venezuela in 1982, 1983 and 1944 respectively, and that these have had negative consequences for employers in general and for FEDECAMARAS in particular, as the most representative employers' organization,.

854. The complainants recall that, in paragraph 1292(i) of its Report No. 359 of March 2011, the Committee deeply deplored that the Venezuelan Government had ignored its earlier recommendations, in which it requested the Government:

- to keep it informed with regard to social dialogue and any bipartite or tripartite consultations in the various sectors and also with regard to social dialogue with FEDECAMARAS and its regional structures in connection with the various branches of activity, the formulation of economic and social policy and the drafting of laws which affect the interests of the employers and their organizations;
- to ensure that, as part of its policy of inclusive dialogue (including within the Legislative Assembly), FEDECAMARAS is duly consulted in the course of any legislative debate that may affect employer's interests, in a manner commensurate with its level of representativeness.

855. However, according to the complainants, the Government continued adopting a series of measures in 2011 and 2012 which have had a major impact on private enterprise in the Bolivarian Republic of Venezuela, which violate ILO Conventions Nos 26, 87 and 144 in that they were implemented without undue consultation of the most representative employers' organization, FEDECAMARAS, and which restrict the exercise of freedom of association and violate ILO standards concerning the approval of increases in minimum wages. The relevant legal texts are discussed below.

Security of Employment Decree

856. In *Official Gazette* No. 39828 of 26 December 2011 and without holding proper consultations with the social partners for the eleventh year running, the Government of the Bolivarian Republic of Venezuela promulgated Security of Employment Decree No. 8732. Articles 2 and 3 of the decree stipulate that workers benefiting from special security of employment may not be dismissed, demoted or transferred without just cause having been duly certified in advance by the Labour Inspector of the jurisdiction concerned. Failure to observe this procedure automatically entitles workers to request reinstatement in their jobs and the payment of wages due. This special protection is accorded irrespective of accrued wages to: (i) workers on open-ended contracts as from the third month of employment; (ii) workers on fixed-term contracts up to the end of their contract; and (iii) workers under contract to carry out a specific job or task until the entire job or task – or that part for which they are responsible – has been completed. In other words, the new standard has extended the scope of employment security to all workers governed by the Organic Labour Act, whatever their wage. Article 6 of the Decree specifies that this protection does not apply to workers in management positions and in positions of trust or to temporary, casual or public-sector workers. The Decree came into effect upon its publication in the *Official Gazette* of 26 December 2011, based on a decision taken without any kind of consultation, even though in recent years FEDECAMARAS had drawn attention to the inappropriateness of employment security being extended by the Executive without

consulting the social partners – which shows that there is no such things as genuine social dialogue in the Bolivarian Republic of Venezuela.

New Organic Labour and Workers Act

857. The complainants allege that *Official Gazette* Special Issue No. 6076 of 7 May 2012 a new Organic Labour and Workers Act was promulgated in the form of a legislative decree that was issued by the President of the Republic under the Enabling Act adopted by the National Assembly on 17 December 2010, without due consultation of the most representative employers' organizations and in violation of ILO Convention No. 144 (see below).

858. In December 2011 the President of the Republic announced the creation of a Presidential Committee to prepare a draft reform of the Organic Labour Act. The members of the Committee were:

1. Nicolás Maduro, People's Minister of External Relations
2. María Cristina Iglesias, People's Minister of Labour
3. Jorge Giordani, People's Minister of Planning and Finance
4. Wills Rangel, representative of the Bolivarian Socialist Federation of Urban, Rural and Seafaring Workers (CSBT), the recently established government-backed trade union of the state petroleum company
5. Omar Mora, Magistrate, President of the Social Chamber of Appeals of the Supreme Court of Justice
6. Francisco Torrealba, deputy of the National Assembly for the United Socialist Party of Venezuela (PSUV), the Government party, and Vice-President of the Railways Section of the CSBT
7. Oswaldo Vera, deputy, PSUV President of the National Assembly's Integrated Social Development Committee
8. Braulio Álvarez, deputy, PSUV
9. Juan Rafael Perdomo, Magistrate, Vice-President of the Social Chamber of Appeals of the Supreme Court of Justice
10. Jesús Martínez, labour lawyer with connections to the government-inspired Bolivarian University
11. Antonio Espinoza Prieto, lawyer, adviser to the PSUV
12. Carlos Sainz Muñoz, lawyer, legal adviser to Oswaldo Vera, deputy, President of the National Assembly's Committee on Social Affairs
13. Carlos López, government sector trade unionists, Coordinator of the CSBT
14. Orlando Castillo, government sector trade unionist for public service employees
15. Carlos Escarrá (deceased) and his successor Cilia Flores, Public Prosecutor

16. For the employer sector, Miguel Pérez Abad, President of FEDEINDUSTRIA (a government-biased parallel body previously denounced by FEDECAMARAS in Case No. 2254, who was appointed by the President of the Republic as a deputy member of the Council of State established by Presidential Decree No. 8937 (*Official Gazette* No. 39912 of 30 April 2012) and of the Higher Council of Labour established by Presidential Decree No. 9003 (*Official Gazette* No. 9003 of 22 May 2012) in pursuance of the Organic Labour and Workers Act.

859. It is obvious from the list of members of the Presidential Committee that they are all part of the Executive, Legislative or Judiciary or are otherwise supporters of the Government. This is notably the case of the sole representative of the employer sector (Miguel Pérez Abad, President of the Venezuelan Federation of Craft, Micro, Small and Medium-sized Business Associations (FEDEINDUSTRIA) who, as a member of the Council of State and of the Higher Council of Labour, is a direct adviser to the Venezuelan Government on matters of State and on labour affairs. (Pérez Abad has issued press releases concerning his appointment.)

860. Moreover, of the 18 members of the Higher Council of Labour 13 are members of the Presidential Committee, along with five public officials, three ministers and two vice-ministers of the People's Ministry of Labour and Security, which shows that the Presidential Committee is very largely made up of government supporters, virtually the only sector consulted.

861. Moreover, the Labour and Workers Act contained in the Presidential Decree was issued as an Organic Act in violation of article 203 of the Constitution, as it was not approved by the two-thirds majority of the National Assembly required for the adoption of an organic act; instead, it is based on an Enabling Act issued by the National Assembly in 2010 to empower the President to deal with specific issues arising exclusively from a natural disaster caused by that year's heavy rains, but which he has used to legislate on any matter he deems fit.

862. In other words, no proper consultation of the most representative segments of the employer sector was held on the new Organic Labour and Workers Act, in blatant violation of ILO Convention No. 144.

863. FEDECAMARAS was neither convened nor at any time invited to express its opinion on the Act, and the text of the draft law was almost unknown when it was published in the *Official Gazette.* Before that the social media had only cited the views of members of the Presidential Committee and government spokespersons on certain broad aspects of the law. The text was submitted to the President towards the end of April by the Committee that had been hand-picked; it was then approved by him at a public event on 30 April and promulgated on 7 May.

864. The Government informed the media that it had received and examined 19,000 proposals, which one must assume reached the Presidential Committee from some other source without any of them being officially registered. But even if it is true that there were any number of proposals, that is no substitute for genuine social dialogue as understood by the ILO. The kind of social dialogue alluded to in Convention No. 144 cannot be selective; it cannot be simply the unilateral expression of opinions or proposals by non-representative social actors or sectors linked to the Government and it cannot bypass the compulsory consultation of the most representative employers' organizations in the country, that is, FEDECAMARAS.

865. FEDECAMARAS naturally informed the media that the law had been passed without any social dialogue and that the Federation would apply to the ILO to denounce the violation of

the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and this was in fact recognized by Oswaldo Vera, deputy, member of the Presidential Committee and PSUV President of the Standing Committee on Social Development of the National Assembly.

866. The worker sector also protested against the lack of social dialogue on the proposed law and, on 26 March 2012, the FADESS trade union appealed to the Supreme Court of Justice for protection under the Constitution in a bid to prevent the legislative reform being issued under an Enabling Act. It requested specifically in its appeal that the Court submit the proposed law to the National Assembly for more extensive discussion. Moreover, a number of trade unions (FADESS, CTV and others) organized a march on 1 May to protest against the passing of the new Act without any consultation.

867. This lack of social dialogue is nothing new for the Venezuelan Government, which for over 10 years has failed to comply with its obligation to hold tripartite discussions on labour affairs. In the last two years particularly, the President has used the Enabling Act to appropriate the power of the Legislature to issue unilaterally a whole set of legislative decrees on all kinds of subject, as shall be seen below.

868. In the Bolivarian Republic of Venezuela, the Labour Act is considered to be the country's most important social contract after the Constitution. Consequently, a legislative reform of this nature needs both a consensus of the social partners and wide support from the community, which was not the case as the text of the new law was not known or publicized prior to its official promulgation.

869. Moreover, the new Act imposes a series of additional economic and political burdens on the private sector:

(1) For employers the law is highly punitive and discriminatory, since it provides for six to 15 months' prison or detention for any employer who refuses to re-employ a worker, on grounds of non-compliance with administrative orders or non-payment of fines (the sanctions apply to management board members but not to the administrators of state enterprises). Moreover, natural persons in their capacity as employers are jointly and severally responsible with the shareholders for compliance with their obligations vis-à-vis the workers and are liable to have their assets seized.

Another discriminatory aspect of the new Act is that the Government assumes none of the prior debts and liabilities of the companies it expropriates, which have to be met by the former shareholders and are deducted from the price paid.

(2) The Act provides for greater state intervention in labour relations, stipulating as it does that the principal objective of the social process of labour is to overcome the "capitalist form of exploitation" (i.e., production) and that the workers alone are "creators of socially produced wealth", thereby denying capital any value as a generator of employment.

(3) The new Act imposes new restrictions and burdens on the employer sector that are liable to result in restrictions on investment and production by Venezuelan enterprises. For example, it makes social benefits (seniority) retroactive, the implications of which are highly negative in an inflationary context; it provides for a shorter working day; it complicates the procedure for dismissing workers and imposes penal sanctions on employers who refuse to re-employ them; it institutes employment security as a legal standard (this also applies for two years in the case of the parents of newborn children and of adoptive parents of children under the age of three.

(4) It institutes the concept of Workers' Councils alongside trade unions, in some cases with similar powers, under regulations issued subsequently in a special law.

(5) The powers of trade union organizations include supervising and monitoring the enterprise's costs and profits so as to ensure that the prices paid for its goods and services are fair.

(6) It establishes a Register of Workers' and Employers' Organizations within the People's Ministry of Labour and Social Security through which it regulates the content of their statutes and the appointment and functioning of their executive bodies, which must conform to the guidelines set out in the Register. Each year the organizations must provide the Register with a complete list of affiliated bodies, along with any other information required. Failure to register limits the legitimacy of employers' or workers' organization to engage in collective bargaining, which means that they lose all their autonomy and severely undermines their freedom of association.

870. The complainants emphasize that the Act's legal provisions clearly curtail the employers' exercise of the economic freedom and freedom of association that are provided for in both the Constitution and ILO Convention No. 87 and make it increasingly difficult for enterprises to continue to operate in the country, especially the small and medium-sized companies that account for 50 per cent of all enterprises.

871. The undermining of freedom of association by the Government has already had very serious repercussions on employers in the Bolivarian Republic of Venezuela, and the new Labour Act will further aggravated the situation. In recent years the Government's economic policies have visibly caused a decline in the number of companies operating in the country. In 2002, the Bolivarian Republic of Venezuela's official National Statistical Institute (INE) reported that there were 611,803 active employers. For the month of January 2012 the INE's figures showed 425,404 employers, a drop of 180,013 since 2002. By May 2012 some 217,204 private employers had closed down since 2002, and their number continues to increase steadily. More than 800,000 people could have found work in the enterprises that today are closed. An article published by the former President of FEDECAMARAS Zulia, Néstor Borjas, comparing the official figures for employers and employees between 2002 and 2012 confirms that the number of employers fell by 35.5 per cent during the period.

Approval of new legislative decrees on economic and social affairs issued by the President of the Republic under the Enabling Act adopted by the National Assembly

872. The complainants allege that, during the 18 months for which the National Assembly delegated the power to legislate to the President of the Republic under article 3 of the Enabling Act it passed on 17 December 2010, the President issued 38 legislative decrees between January 2011 and May 2012. On 15 June 2012, just two days before his delegated powers came to an end on 17 June 2012 and when the country was busy preparing the 7 October presidential elections, the President issued another 14 legislative decrees that had major implications for the economy – a total of 52 decrees issued during the period covered by the Enabling Act.

873. None of the most representative employers' organizations were consulted on these 52 decrees when they were promulgated by presidential decree, which means that in each case the Venezuelan Government violated the provisions of ILO Convention No. 144.

874. There was none of the "people's participation" and "open consultation" on legislative issues that is called for in the preamble and in articles 187.4 and 211 of the Constitution, which do not exclude from its provisions legislative decrees issued by the President in exercise of legislative powers delegated to him by the National Assembly.

875. In his use of the Enabling Act, the President of the Republic appropriated the power to legislate at his sole discretion on a whole array of issues that were not delegated to him under an Enabling Act that was adopted solely to attend to situations arising from the heavy rains in 2010. Consequently, because they were drafted without any consultation or participation of the people and because they went beyond the matters delegated under the Enabling Act, every one of the decrees constituted a violation of the Constitution and non-compliance with ILO Convention No. 144.

Organic Act on Community Management of Skills, Services and Other Attributes, Act to Promote and Regulate New Forms of Association with the State, and Legislative Decree to Determine the Fair Price of Real Estate

876. Among the 14 legislative decrees issued by the President on 15 June 2012, two were especially significant as they modify extensively the functioning of the economic actors and employers in the country: the Organic Act for Community Management of Skills, Services and Other Attributes (Legislative Decree No. 9043, *Official Gazette* Special No. 6079 of 15 June 2012) and the Act to Promote and Regulate New Forms of Association with the State (Legislative Decree No. 9052, *Official Gazette* No. 39945 of 15 June 2012), a private and community initiative for the development of the national economy. A third legislative decree, the Legislative Decree to Determine the Fair Price of Real Estate for Housing Purposes in Cases of Emergency (Legislative Decree No. 9050, *Official Gazette* No. 39945 of 15 June 2012), establishes the "fair price" that the Government sets unilaterally in the event of emergency expropriations.

877. The first two of these legislative decrees lay down the rules and regulations for associations between the State and organized communities or private entrepreneurial entities. The decree offers a number of advantages whose objective is obviously to replace traditional private enterprise by new forms of state associations that follow government guidelines, since it is a sine qua non that such associations "promote and extend the construction of the socialist model" – to the exclusion of any form of enterprise that is not party to that particular political model. This goes further than the definition of the Government found in the Constitution, where it is described as democratic, participative, elective, decentralized, alternating, responsible, pluralist and revocable (article 6).

878. These legislative decrees provide for the almost total centralization and control of economic activity by the State, since they do not contemplate the possibility of harmonious development in collaboration with private enterprise, as called for in the Constitution (article 299), but rather that the State should determine how the country's economy is run in accordance with the guidelines set in the Socialist Plan of the Nation and in the new legislative decrees promoting the development of enterprises associated with the State. It is the State that plays the leading role as an economic agent in determining how the economy of the country is to function, either unilaterally or in association with enterprises or communities that are entitled to certain advantages that are designed to make the system attractive. These privileges that entrepreneurial entities gain from their association with the State include:

– tax exemptions;

– access to state distribution and marketing networks;

– access to direct state purchases (without bidding); and

– access to special loans and funds under preferential terms.

879. These privileges obviously give the associations an unfair advantage in their economic dealings. Contrary to the Constitution, entrepreneurs that do not bow to the Government and to socialism are excluded, which means that independent entrepreneurial systems will eventually disappear. Both state enterprises and their associated entities should compete on equal terms with the other economic agents. The new system thus discriminates against employers that do not conform to the socialist model or set up entrepreneurial associations in which the State in any case takes all the most important decisions, According to the Act to Promote and Regulate New Forms of Association with the State, even if a private entity enters into an association with the State it still has no margin for manoeuvre in its economic activity since the decision-taker in the day-to-day running of the associations is the State, either because it is the majority shareholder or, if not, because under the law on these mixed enterprises (in which it holds a minimum of 40 per cent of the shares) the State has power of decision in all strategic matters (a very general concept).

880. In the case of the last two decrees especially, under which the State can set up associations with community organizations and private entities committed to socialism, the President of the Republic has the power of an autocrat in deciding how the economy of the country is to function, without consulting the Venezuelan people either individually or as organized social units; it thereby violates the constitutional requirement of "democratic participation" and "open consultation" specifically where the determination of the country's socio-economic system and the harmonious development of the national economy are concerned (article 299) and curtails the constitutional right to economic freedom (article 112). Since, quite apart from the absence of consultation, these decrees severely restrict the exercise of freedom of association, all this points to the Government's blatant violation of ILO Conventions Nos 87 and 144.

881. The third legislative decree referred to as being significant among the 14 decrees issued on 15 June 2012 is the Legislative Decree to Determine the Fair Price of Real Estate for Housing Purposes in Cases of Emergency, according to which any enterprise and even any individual citizen expropriated by the State for housing purposes is paid only the "fair price" calculated according to the formula set out in the decree. Under the new system the State has decided that the fair price will be based on the most recent purchase price of the building indicated in the registered document of ownership, updated according to the following simple arithmetic formulas:

(1) variation in the national consumer price index;

(2) nominal interest rate on deposits of over 90 days; and

(3) nominal weighted average lending rate.

Example of the impact of the 2011–12 formula for the month of May

Index title	Value
National consumer price index	22.60
Nominal interest rate on deposits	16.75
Nominal weighted average lending rate	14.50
Indexation formula	(22.6+16.75+14.50)/3
Total	**17.95**

882. Moreover, the decree states explicitly that the fair price excludes:

(1) the market price or value;

(2) any influence or impact deriving from public or private investment in the area; and

(3) expected rental value from uses scheduled under territorial or urban development plans.

883. The decree is designed to minimize as far as possible the amount payable to the persons expropriated, who suffer not only from having to leave the building but also from being unable to acquire a building of similar value with the amount paid in compensation, which does not take the market value into account. Refusing to consider the market value means ignoring the monetary value that a society operating under a system of supply and demand assigns to a product at any given moment. The new system does away with the "negotiation" of a fair price and replaces it by compulsory acquisition of the asset; even the possibility that formerly existed of appealing to the Supreme Court of Justice to set a fair price when the parties concerned cannot agree no longer exists. The decree's inclusion of this provision means that the price paid for the expropriated building is determined exclusively by the expropriating party. Imposing the price through administrative channels (which may apply for any building at all) violates of the right to private property, is tantamount to confiscation and is therefore unconstitutional. if the indexing does not take into account the building's potential rental value, enterprises will tend not to go ahead with expansion projects that involve its acquisition, as the long-term return on the project is directly linked to the building in which it is to take place. The new legal arrangement thus also violates ILO Conventions Nos 87 and 144, since the most representative employers' organization in the Bolivarian Republic of Venezuela, FEDECAMARAS, was not consulted and since it severely restricts the exercise of economic freedom and freedom of association.

884. Of course, it is impossible to say at this stage what repercussions the new legislative decrees issued by the President of the Republic – of which only the three decrees liable to have the greatest impact on the country's employer sector have been analysed here – will have on the normal operations of the Bolivarian Republic of Venezuela's employers.

New Presidential decree on minimum wage increases

885. The complainant organizations allege that Presidential Decree No. 8920 of 24 April 2012 approving the increase in minimum wages for 2012 was promulgated on 27 April, once again without any consultation of the most representative employers' organizations.

886. In 2012, without convening the National Tripartite Committee, as required explicitly by articles 167, 168 and 169 of Organic Labour Act that was still in force at the time the increase in the minimum wage for the year was made official, the People's Ministry Of Labour and Social Security sent FEDECAMARAS communication No. 1179 dated 16 March and received by the Federation on 20 March, giving it just 15 days to express its views on the fixing of the mandatory minimum wage. The communication was an attempt to claim the existence of social dialogue in the setting of the minimum wage for 2012, whereas in fact it violated the basic rights and guarantees, the freedom of association and the right to a legal defence of both physical and to persons (articles 3 and 4), as well as the very structure of a criminal code based on subjective responsibility. The law also establishes the principle of the joint and several responsibility of enterprises (article 16), likewise on the basis of their objective criminal responsibility, and thus violates their right to freedom and to all constitutional guarantees. In addition, the decree establishes the principle of the enterprises' objective criminal responsibility for acts attributable to their

dependents, which is a violation of the freedom of the individual and of associations as well as of their individual rights and guarantees. As further proof that the decree violates all the rights and guarantees of the individual and of enterprises, article 22 claims competency to conduct criminal investigations into administrative personnel not attached to the Judiciary. Yet according to the Enabling Act any issue as crucial as the increase in minimum wages has to be properly discussed in the Tripartite Committee.

887. As FEDECAMARAS has repeatedly noted in complaints presented to the ILO for more than ten years, the State of Venezuela has failed to comply with this legal requirement of the Tripartite Committee regarding the fixing of the minimum wage.

888. In the new Organic Act on Labour and Workers the Tripartite Committee is now not mentioned at all. Regarding the annual increase in the minimum wage the Act merely states (article 129): "After due consideration, the Executive shall each year fix the minimum wage by decree. In doing so it shall conduct a broad consultation of the views of the various social organizations and socio-economic institutions". As can be seen, the new Act omits any requirement that the most representative employers' and workers' organizations should be consulted, referring merely to the "broad consultation" of various organizations.

889. The preambular paragraphs of Presidential Decree No. 8920 of 24 April 2012 concerning the minimum wage increase for 2012 (*Official Gazette* No. 39908 of 27 April 2012) states explicitly that "the Bolivarian Republic of Venezuela has endorsed and ratified ILO Conventions Nos 26, 95 and 100 concerning minimum wage fixing, protection of wages and equal remuneration for men and women for work of equal value, respectively".

890. Notwithstanding the fact that all the ILO Conventions cited as a basis for the presidential decree stipulate that the most representative employers' organizations must be consulted, the Government of the Bolivarian Republic of Venezuela continues to ignore this provision as it relates to minimum wage fixing, in so far as there is no genuine social dialogue on the subject but, by way of lip service to this requirement, a mere communication giving very little time for a reply which does not conform to national and international standards and is in blatant violation of ILO Conventions Nos 26 and 144.

Costs and Fair Prices Act

891. The complainants allege that during 2012 the Government continued to adopt price control measures under the Costs and Fair Prices Act (Presidential Decree) of 18 July 2011, which was again issued under the Enabling Act without due consultation of the social partners. This was the subject of the amplified complaint presented to the Office of the ILO Director-General on 20 February 2012.

892. According to article 1 of the Act it is designed to establish regulations and administrative and monitoring machinery for maintaining stable prices. For this purpose it creates a National Integrated Cost/Price System whose purpose, among other things, is to "identify economic agents that set excessively high prices in terms of the services they offer or the products they sell". Given the Bolivarian Republic of Venezuela's insecure investment climate and its galloping inflation caused by uncontrolled public expenditure, this would suggest that it is to become a police State which, instead of punishing the real irregularities that occur because of the speculative practices of certain economic agents, will carry out ex ante investigations into the financial situation of all Venezuelan entrepreneurs in order to fix the prices of their products.

893. A new bureaucratic institution is to be set up that will attempt to establish a system for supervising the whole production, marketing and distribution chain of every kind of goods

or services. And a new National Price Register of Goods and Services is to be added to the large number that enterprises already have to cope with, under the responsibility of the National Cost/Price Department. Registration, which according to article 10 is to be compulsory, will be required for certain administrative formalities vis-à-vis the State.

894. The Department established under the Act will be able to fix prices that it considers "fair", based on information supplied by enterprises and its own cost structure review. Price setting depends on so many factors that this process will end up being quite arbitrary, because in practice it is impossible to assess the cost structure of all Venezuelan enterprises and all available products fast enough to set their price causing a negative impact on the availability of goods for the public. The cost structure of any product changes constantly and can be affected by a variety of factors, and so they have to be constantly revised. In most cases bodies that are set up to regulate prices are highly specialized in each sector they are concerned with and each regulates a specific group of products and services. This calls for a very large staff. But the new law is not concerned with regulating a basket of products; the same procedure may be applied to any product, and this will entail a long-drawn-out process that will encourage the growth of discretionary powers and generate a great deal of legal uncertainty for producers and consumers alike. In other words, the prime object of the law, which is to protect the population, will prove to be unattainable in practice; faced with such an uncertain situation enterprises will be inclined to reduce their output, and this which in turn will cause shortages of regulated products and ultimately penalize the population and, further down the line, of the enterprises' workers whose jobs will thus be threatened.

895. Finally, the Act renders the protection of private property subject to national security and sovereignty and to public utility and the general and social interest. Article 46, for instance, provides for enterprises to be sanctioned by temporary occupation, a penalty that already exists under the Defence of Persons in Access to Goods and Services Act (INDEPABIS).

896. It is clear from the above that the whole set of regulations in the Costs and Fair Prices Act, which has the rank, value and force of law, places severe restrictions on the right of citizens to engage in their chosen economic activity, as provided for in article 112 of the Constitution, and will steadily whittle away free enterprise, entrepreneurship and the constitutional rights and guarantees of the Venezuelan people as a whole. In any case, as with all the other legislative initiatives referred to here as having implications for the activity of employers, the promulgation of the Act should first have complied with the constitutional, legal and international requirement of consultation or tripartite dialogue.

897. Since February 2012 a series of products saw their maximum price regulated first in their "regular" form and then in their "premium" form, regardless of the fact that some of them come in anything from 100 to 300 different versions.

898. Although the companies' manufacturing the goods were asked for financial details, the maximum prices set by SUNDECOP, the National Costs and Prices Department's regulatory body, were based on the unit cost without any allowance for other costs such as advertising, taxation, etc. Once prices have been set, companies can submit observations and ask for the prices to be revised (see Costs and Just Prices Act in *Official Gazette* No. 39715 of 18 July 2011, the Regulations made under Presidential Decree No. 8563 in *Official Gazette* No. 39802 of 17 November 2011, and SUNDECOP's Ruling No. 007 in *Official Gazette* No. 39805 of 22 November 2011).

899. Obviously, the Government's failure to consult the most representative employers' organizations not only before promulgating the Act but also before its implementation (when not even the enterprises affected by the measure were consulted on the maximum prices for their products) eventually had repercussions impact on production and in many cases resulted in shortages, as has happened with such basic products as milk, meat, oil, corn flour, etc.

900. On 7 March 2012 the National Commerce and Services Council (CONSECOMERCIO), a trade association affiliated to FEDECAMARAS, applied to have the Costs and Just Prices Act repealed on the grounds that it violated the economic freedom and free enterprise of the employer sector as provided for in the Constitution. The appeal is currently before the Supreme Court of Justice.

Penal Law on the Environment

901. This law, which was approved by the National Assembly on 16 December 2011 (likewise without the employer sector being consulted) establishes the concept of objective criminal responsibility of both physical and juridical persons (articles 3 and 4), in violation of the minimum rights and guarantees of persons, of individual freedom and the right to a judicial defence in a court of law and of the very structure of criminal law, founded as it is on the notion of subjective responsibility. Moreover, again on the basis of objective criminal responsibility and again in violation of freedom and of all constitutional guarantees, the law provides for the joint and several responsibility of enterprises (article 16). It also declares that enterprises are objectively responsibility under criminal law for all the actions of their dependents, which is a violation of the right to individual freedom and freedom of association and of the rights and guarantees of all persons and associations. Yet another demonstration of the fact that the law violates the rights and guarantees of individuals and of enterprises is article 22, which empowers administrative officials who are not members of the Judiciary to conduct criminal investigations.

Attempt to remove FEDECAMARAS as the employers' representative in the Bolivarian Republic of Venezuela's delegation to the 101th Session of the International Labour Conference

902. In deciding on the composition of the Bolivarian Republic of Venezuela's employers' delegation to the 101th Session of the International Labour Conference in Geneva, Switzerland, from 30 May to 15 June 2012, the People's Ministry of Labour and Social Security attempted to replace FEDECAMARAS as the leader of the delegation. By communication No. 34/2012 dated 4 May 2012, FEDECAMARAS was invited to a meeting at the Ministry on 8 May, along with other employers' organizations, to pick the delegate and technical adviser(s) who would attend the annual session of the ILO Conference.

903. At the meeting, after the Ministry had received an application to be designated most representative employers' organization in a communication from FEDECAMARAS dated 24 April 2012, some other employers' organizations announced that they too had submitted their own application and rejected the proposal that they be represented by FEDECAMARAS. This position was adopted by the Bolivarian Council of Manufacturers, Enterprises and Micro-enterprises (COBOIEM), which proposed that the employers' delegate be Fanny Suárez of FEDEINDUSTRIA, who in turn proposed a list of technical advisers that included Miguel Valderrama, FEDEINDUSTRIA's Vice-President. During the meeting, and without any formal communication, the representative of Entrepreneurs for Venezuela (EMPREVEN) proposed that the delegation be led by its own

representative, Keyla de la Rosa. Subsequently, at the invitation of the representative from the Ministry and after a series of discussions at which the representatives of the Ministry and of FEDECAMARAS were not present, the representatives of the aforementioned minority employers' organizations and of the National Confederation of Agricultural and Livestock Workers (CONFAGAN), all of whom were present at the meeting, stated that they had reached agreement on the designation of the delegate and technical advisers and withdrew their earlier applications. CONFAGAN proposed that the employer delegate be Miguel Valderrama, Vice-President of FEDEINDUSTRIA; his proposal was seconded by the other organizations apart from FEDECAMARAS, as noted in the minutes of the meeting (as if, added together, the other employers' organizations in the country could claim majority representation). The said organizations also proposed their own representatives as technical advisers to the Conference, separately from those of FEDECAMARAS.

904. After this proposal had been made by the parallel organizations and at the request of the Ministry, which FEDECAMARAS challenged in the ILO as not being representative, FEDECAMARAS placed on record, at the meeting on 8 May 2012 and in a communication from its President to the Ministry dated 9 May 2012, that the Federation refused to accept that a member of minority employers' organization should lead the delegation and accordingly confirmed the designation of its delegation for the posts of employer delegate and technical advisers as per its communication to the Ministry dated 24 April 2012, insisting that they could not be replaced by representatives of organizations which were not more representative and which could therefore only attend the Conference as observers.

905. During the 101st Session (2012) of the International Labour Conference FEDECAMARAS presented a complaint to the Credentials Committee because, even though the candidate proposed by the other organizations eventually declined the leadership of the delegation which was therefore undertaken by FEDECAMARAS, five technical advisers, four special guests and 11 other persons representing the parallel organizations also attended the Conference, that is, 20 people who were not members of FEDECAMARAS, the most representative employers' organization in the Bolivarian Republic of Venezuela. Eventually, the Ministry included five technical advisers and a special guest in the delegation in addition to the leader.

906. In the case of the Bolivarian Republic of Venezuela's employer delegation to the 101st Session of the Conference, the Credentials Committee, as on previous occasions when an attempt has been made to remove the Federation from the delegation or reduce its participation, decided in favour of FEDECAMARAS as the country's most representative organization.

907. The membership of the Bolivarian Republic of Venezuela's employer delegation has in fact been discussed again and again in the ILO and for the past 68 years there has never been any doubt about the Federation being the most representative organization in the country's employer sector. FEDECAMARAS covers every branch of Venezuela's 13 macroeconomic sectors: agriculture, banking, construction, energy, fishing, industry, mining, insurance, social media, telecommunications, trade, tourism and transport (see article 31 of the Federation's statutes). It also has a regional representation in every state in the country through with hundreds of affiliated Chambers, as has been clearly demonstrated to the Conference's Credentials Committee again and again. No other employers' organization in the country has been able to claim any comparable representativity and, in its third report to the100th Session of the Conference in 2011, the Conference Committee stated that the Venezuelan Government had not demonstrated to the Conference, on the basis of objective and verifiable criteria, the representativeness of any organization other than FEDECAMARAS, even offering the Government technical

assistance in defining the relevant criteria. Similarly, in a decision handed down at the 17th American Regional Meeting of the ILO on 17 December 2010, the Credentials Committee stated that the Government's application of the participatory democracy principle did not correspond to criteria for consultation drawn from principles established in the ILO and ruled that, that being so, the presence was required of both the employers' and the workers' organizations with the greatest representativeness.

908. On several occasions the Ministry has maintained that a delegation can comprise more than one organization, but for that to happen the other organizations have to prove that they are as representative as they claim if they are to be recognized by the ILO as being among the most representative. This kind of mixed delegation can only be justified when more than one organization can demonstrate fully to the ILO that it is equally representative, and this is not the case in the Bolivarian Republic of Venezuela where the representativeness of the other organizations, even when all added together, is in no way equivalent or similar to that of FEDECAMARAS which, as already mentioned, covers all the activities of the Venezuelan economy, has regional organizations in every state in the country and has hundreds of Chambers directly or indirectly affiliated to it.

909. The facts described above illustrate clearly the Venezuelan Government's intention to restrict FEDECAMARAS exercise of its trade union rights and freedom of association at the annual Sessions of the ILO Conference, in violation of the Convention No. 87.

910. All this points yet again to the total lack of social dialogue and restrictions on freedom of association whereby the Venezuelan Government has violated ILO Conventions Nos 26, 87 and 144. In doing so threatens the very existence of independent employers' organizations, especially that of FEDECAMARAS as the country's most representative employers' organization, which was not consulted prior to the adoption of any of the government measures referred to above, and this has had serious repercussions not just for the employer sector but for all Venezuelan workers. The issues raised here therefore call for the ILO's immediate attention.

911. Finally, the complainant organizations request the Committee to urge the Government of the Bolivarian Republic of Venezuela to hold tripartite consultations to decide on the dates of the planned High-level Mission.

C. The Government's reply

912. In its communication dated 15 October 2012, the Government states that it has already responded in detail to many of the points that the complainants are raising once again and that it confirms every one of its previous replies to the ILO's supervisory body. Its communication contains a detailed summary of all that the Government can say on the subject; in the interests of brevity, it therefore presents its partial observations, while reserving the right to continue responding to each of the points separately.

913. The Government begins with the following statement:

(a) This case is linked to the High-level Mission that was agreed upon in March 2011 and whose visit to the country has been held up for reasons outside the Government's control, as noted in information documents submitted to the 312th (November 2011), 313rd (March 2012) and 316th (November 2012) Sessions of the Governing Body. Specifically, the IOE took advantage of this complaint at the Governing Body Session in November 2010 to request the application of article 26 against the Government of the Bolivarian Republic of Venezuela as a matter of urgency. At the Governing Body Session in February 2011 the Government agreed that a High-level Tripartite Mission could visit the country to verify the points that were still pending with regard to Case

No. 2254. However, although the mission was approved 18 months ago it has twice been postponed for reasons outside the Government's control. Abiding strictly by the Governing Body's decision, the Government has maintained contact with the Office, collaborated fully on the case, made itself constantly available, set precise dates, presented a timetable for the visit, made logistical arrangements, etc. Despite the Governing Body's decision and the Government's willingness, however, the mission has twice been postponed. On both occasions the Government has respectfully accepted the postponement.

(b) With regard to the allegations in the case concerning the cattle-breeder Franklin Brito, the Agroisleña SA company, Owen – Illinois and the Turbio steelworks, the Government recalls that in its previous examination of the case the Committee requested the complainants to send comments on the information and statements sent by the Government on the subject. It therefore explicitly requests that, since the Committee has not received those comments, it state unequivocally that it does not intend to pursue its examination of the allegations and that it has concluded its examination of the matters at hand. The Government makes this request so that the Committee on Freedom of Association can maintain the uniformity, consistency and transparency of its consideration of all the cases that come before it, as it did in the face of the lack of information from the complainant in Cases Nos 2674 (paras 1160 and 1165) and 2727 (paras 1179 and 1190(d)) in its 360th Report (June 2011).

(c) The Government once again draws the Committee on Freedom of Association's attention to the fact that sufficient grounds do not exist for an objective and impartial study of the allegations, and that vague and imprecise accusation cannot be admitted when, instead of being conducive to the resolution of disputes between the parties and of conforming to the Committee's fundamental purpose, they are responsible for delays in procedure and give rise to unfounded rulings against the Government.

(d) Finally, the Government requests the Committee to review carefully the extension of the allegations that has been admitted as part of the joint IOE and FEDECAMARAS complaint, since they refer to matters to which the Government has sufficiently responded and are therefore not an extension but a repetition of their allegations.

914. Regarding the abduction and maltreatment of FEDECAMARAS leaders Noel Álvarez, Luis Villegas, Ernesto Villamil and Albis Muñoz, the Government states that it has all ready replied extensively on this matter and has taken appropriate action, as stated in paragraphs 1257–1263 of the Committee's 359th Report (March 2011) and paragraph 1304 of 363th Report (March 2012). It has supplied the same information and details to the Committee of Experts on the Application of Conventions and Recommendations in its communication No. 340/2010 of 1 December 2010, which has been duly registered by the ILO's Department of Standards and was referred to by the Committee of Experts in connection with Convention No. 87 in Report III (Part IA) to the Conference in 2011 [page 195].

915. In paragraph 1328 of its 363rd Report (March 2012) the Committee expresses "its grave concern that according to the allegations the suspects have not been identified by Ms Albis Muñoz as being responsible for the crime and that the charges do not include attempted homicide and the wounding of the employers leaders". The Government has already stated with regard to this unfortunate incident, which the Government condemned from the outset, that it was originally presumed that five perpetrators were involved and that details had been supplied on each one. That being so, there is a major contradiction on the part of the Committee, since on the one hand it says that the two persons were not recognized by Ms Muñoz but then it goes on to express concern that they were not charged with attempted murder and causing her bodily harm.

916. Such a contradictory analysis is surprising. In the first place, although Ms Muñoz did not recognize the facts, the Office of the Public Prosecutor considered that the investigation had provided sufficient evidence to charge the persons accused of robbing her. When the Committee makes the statement referred to, is it contesting the fact that the persons charged committed the theft? Does it have any evidence that some other persons were responsible for the incident?

917. Moreover, the Committee has once again acted outside its mandate, since it is not competent in criminal matters and cannot tell a Government whether or not a person should face criminal charges following an investigation, which is strictly a matter for the country's judiciary. It would be interesting to hear why the Committee, when it expresses doubts as to the authorship of the crime without any grounds for doing so, is convinced it knows what charges should be brought against the persons in custody. Ought the Committee not explain its grounds for such a contradictory statement?

918. It is worth repeating what the Government has already stated, namely, that the Committee has no competence in criminal matters and has once again gone beyond its mandate by making such false statements, as if its members were judges, and, even worse, by issuing a ruling without knowing anything about the judicial proceedings.

919. The Government appeals to the Committee on Freedom of Association to stop exceeding its mandate, to stop passing judgement on matters it knows nothing about and, above all, to stop commenting on penal procedures being conducted by a country's own institutions. The Bolivarian Republic of Venezuela's judicial system will charge the people involved in the incident with whatever crimes are appropriate, depending on the evidence that comes to light in the course of the proceedings.

920. Notwithstanding the above, and in order once again to clarify the circumstances, the Government requested information from the Public Prosecutor, who replied that, regarding the case in which Antonio José Silva Moyega and Jaror Manjares have been charged with a criminal offence, the 11th Court of First Instance of the Criminal Judicial Circuit of Metropolitan Caracas set a public hearing for 22 October 2012. In the course of the investigation, three other persons were presumed to have been implicated in the incident, but the Office of the Public Prosecutor has stated that no evidence has so far come to light allowing their involvement to be established beyond doubt. Moreover, one of the persons concerned was killed in a confrontation with the police in 2010.

921. With regard to the investigation ordered into the public statements made by Noel Álvarez, the Public Prosecutor's Office recently stated that the investigation was in its preparatory stage and that it was taking the necessary steps to clarify the incident and determine who was responsible. The Government repeats that it is for the relevant official bodies to clarify the situation, hand down their rulings and determine who, if anyone, was responsible for the incident. The matter does not come within the mandate of the Committee on Freedom of Association.

922. Regarding the events that allegedly occurred at FEDECAMARAS headquarters in 2007, the Government once again finds itself obliged to reject the Committee's subjective appreciation of the circumstances as being irresponsible and, by referring to an "environment of harassment and lack of confidence in the public authorities [that] is not conducive to the proposed lodging of ... official complaints", of being disrespectful. The Committee's partial and subjective appreciation, which the Government rejects categorically, calls into question the very institutions, authorities and Judiciary of the Bolivarian Republic of Venezuela. The leaders of FEDECAMARAS systematically use the media as part of the political strategy which the Federation's executive body pursues as an opposition faction. The Government challenges the Committee to produce the slightest

evidence of any incident at FEDECAMARAS' headquarters in 2007 that the Venezuelan people are unaware of. The Government states clearly and emphatically that it is not for the Committee to cast doubt on the proceedings of the Bolivarian Republic of Venezuela's judicial authorities, which are objective, transparent, entirely lawful and devoid of the subjectivity and partisan interests demonstrated by the Committee. The Government insists that the Committee show proper respect and objectivity in dealing with the country's institutions and public authorities and trusts that there will be no repetition of its disrespectful, irresponsible and subjective proceedings and judgements. Furthermore, the Government wishes to remind the Committee that, in its previous examination of the case, it asked FEDECAMARAS to lodge an official complaint with the Public Prosecutor's Office and Committee informed it that, if the complainants did not comply with its recommendation, it would not pursue its examination of the allegations any further. The Government therefore expressly requests the Committee to rule on this point and to reject the allegations once and for all, since the complainants have not presented any complaint on the subject to the Office of the Public Prosecutor. In doing so, the Committee will be acting with the objectivity and lack of prejudice that is required of it and will be complying with the terms of its own recommendation in paragraph 1358 (c) of its 363th Report (March 2012).

923. Regarding the incidents that took place at FEDECAMARAS on 24 February 2008, the Government states that the Public Prosecutor's Office has informed it that criminal charges have been brought against Crisóstomo Montoya González for public intimidation and the use of false identity papers and against Ivonne Gioconda Márquez Burgos, his accomplice, for public intimidation prejudicial to the community. The 28th Court of First Instance of the Criminal Judicial Circuit of Metropolitan Caracas agreed on 5 September 2012 to set a new date for the public hearing, following the defence's request for postponement, and a new hearing was scheduled for 30 October 2012.

924. With regard to the La Bureche farm and Eduardo Gómez Sigala, the Government confirms its previous replies on the subject and will send further details when it receives them from the specialized body responsible for the strategic agro-ecological rescue plan for the Turbio Valley. Meanwhile, it is important that the Committee on Freedom of Association understand clearly that the farm has undergone the rescue procedure laid down in the Land and Agrarian Development Act, as explained previously. The Government categorically rejects and explicitly denies the unsubstantiated allegation presented by the IOE and FEDECAMARAS that the farm is "a military training centre".

925. The Government would like the Committee to explain how a feature of country's agrarian development policy to recover land and prevent arable areas from being used for urban development, which applies equally to all Venezuelan citizens, can constitute a violation of freedom of association? The fact that Gómez Sigala is or has been a member of FEDECAMARAS does not dispense him from complying with the law, unless it is the Committee's contention that a trade unionists is not subject to the law. Gómez Sigala is a deputy in the National Assembly (the legislative power), which is unequivocal proof that his trade union and political activities have never been restricted. Can the Committee explain why it believes that, in Gómez Sigala's particular case and not in others where it has been implemented, the Land and Agrarian Development Act is a violation of freedom of association. Is the Committee aware of the content of the Act, which it was previously sent?

926. Regarding the cases involving lands of Egildo Luján, Vicente Brito, Rafael Marcial Garmendia and Manuel Cipriano Heredia, the Committee considers that it is impossible to discount the possibility of discrimination. The Committee requests the Government to ensure that they are granted fair compensation without delay and to initiate a frank dialogue with those affected and with FEDECAMARAS on the confiscations/rescues

referred to and to keep it informed of developments. The Committee also requests the Government to send its observations on the attacks on the buildings owned by Mr Carlos Sequera Yépez, former President of FEDECAMARAS. On this point the Government states that all acquisitions of property carried out by the State for purposes of public utility or social interest confer an entitlement to due payment of fair compensation in accordance with article 115 of the Constitution. The procedure laid down stipulates that all acquisitions are preceded by a conciliatory stage for the parties to agree on a price for the property being acquired by the State. Where no agreement as possible, the matter is submitted to a competent tribunal to set a fair price.

927. In the instances referred to by the Committee and in all other instances, that has been the procedure followed. Is it to be understood from the Committee's insistence that compensation be paid "without delay" that the persons concerned renounce their right to have the fair price of the property set by a tribunal and that they accept the price fixed by the State? If that is so, the Government would appreciate being informed of its decision in writing.

928. Regarding the alleged attack on buildings owned by Carlos Sequera Yépez, no such incident has been reported by the police or by any other institution in the Bolivarian Republic of Venezuela, and the Government therefore requests the Committee on Freedom of Association to provide information on the subject.

929. Regarding the alleged lack of bipartite and tripartite social dialogue with FEDECAMARAS, the Committee notes with concern the IOE's new allegations concerning the approval without any tripartite consultation of laws that affect the interests of employers and their organizations. The Committee regrets that the Government has not responded specifically to these allegations of the IOE and urges it to do so without delay. Moreover, observing Moreover, observing that the serious shortcomings in social dialogue continue to exist, the Committee reiterates its earlier recommendation. The Government states that consultations on all laws passed in the Bolivarian Republic of Venezuela are held with the entire population and with social organizations. Moreover, some of FEDECAMARAS' members are deputies in the National Assembly where the vast majority of laws are discussed. Laws approved by the President of the Republic under the Enabling Act adopted by the National Assembly have also been preceded by public consultation. The Constitution of the Bolivarian Republic of Venezuela provides for a referendum to revoke any laws that are approved without the requisite support of the population. FEDECAMARAS, however, has boycotted many of these consultations or has limited itself to rejecting them outright in declarations to the media, often before the law has been promulgated in an effort to prevent it from being passed. The Federation's policy of opposing any form of consultation and then saying that has not been consulted has been its strategy ever since 1998, when the Venezuelan people opposed the Government backed by the Tripartite Committee and amended labour laws without consulting the people and in defiance of the historical rights of Venezuela's workers.

930. The Government recalls that a High-level Tripartite Mission has been scheduled to visit the country for 18 months to verify that the country has the broadest possible consultation machinery for approving its law, but that the mission has twice been postponed at the request of the IOE. The most firmly established employers' organizations in the Bolivarian Republic of Venezuela participate in all the consultation procedures on these laws, usually with the exception of FEDECAMARAS for strictly political reasons.

931. The new Constitution of 1999 restored all the workers' rights that the Tripartite Committee had been infringing between 1993 and 1998, whereupon the Committee's members, acting as if it was a political body, started to campaign against the Constitution. They were, however, defeated, and the Constitution was approved in a referendum by the majority of the people.

932. In 2002 the members of the Tripartite Committee publicly and infamously fomented a coup d'état against the constitutionally elected President and for 40 hours installed the President of FEDECAMARAS as de facto President of the Republic, but the people of the Bolivarian Republic Venezuela took to the streets and restored constitutional order.

933. This is why today any mention of the Tripartite Committee of 2002 evokes painful memories in the Venezuelan people and is associated with the infringement of workers' and human rights. It is also why the Constitution and other laws refer to a broad social dialogue that transcends the so-called tripartite dialogue restricted to an elite that is divorced from the country's social movements; in this new social dialogue all the social actors are involved in every decision through their organizations or directly through assemblies.

934. Regarding the alleged discrimination by the authorities against FEDECAMARAS and the allegations of favouritism vis-à-vis parallel organizations close to the Government and lacking in independence, the Committee reiterates the conclusions, recommendations and principles contained in its previous examination of the case and requests the Government to reply in detail to the allegations concerning the financing of parallel organizations and of favouritism vis-à-vis EMPREVEN and the "social production companies" and the discrimination against private companies. The Government states that there is no discrimination whatsoever against any employers' organization. Ever since it was founded in 1999, FEDECAMARAS benefited from favouritism and financial and political support from the Government which excluded and grossly discriminated against other employers' organizations in the country, some of which still exist and can testify to the fact. The Government indicates that, prior to 1999, every employer had to belong to a chamber that was affiliated to FEDECAMARAS in order to have access to State loans, contracts or purchases. This discriminatory and anti-union policy was abolished by the Constitution that was approved by referendum in 1999, since when employers are free to join any organization they wish and their affiliation or non-affiliation is not a requirement for engaging in an activity with the State.

935. The Committee on Freedom of Association's reference to an alleged financing of EMPREVEN has absolutely no basis in fact. The document to which it refers concerns resources that are granted to social production enterprises through that organization, as is quite clear from the document itself. There is no evidence whatsoever to indicate that the resources were for financing EMPREVEN.

936. With regard to the IOE's allegations concerning the sending of electronic mails between senior officials and parallel employers' organizations, the Committee calls on the Government to verify without delay with the senior officials concerned whether or not they or their representatives sent the electronic mail attached to the IOE's deposition. The Government states emphatically that the Committee on Freedom of Association would appear not to have read its reply on the matter; it therefore feels obliged once again to refer to paras 1323 and 1324 of the Committee's 363th Report of March 2012 in which it is reproduced. Once more the Government rejects and repudiates the IOE's attempts to give credence to electronic mail that emanates neither from the Government nor from any of its representatives.

937. The Committee is ill advised to "call on the Government to verify without delay with the senior officials concerned whether or not they or their representatives sent the electronic mail attached to the IOE's deposition" as the circumstances are obvious from the paragraphs of its 363rd Report referred to above, unless the Committee simply wishes to delay matters. If it wanted to act coherently, juridically, objectively and in keeping with the basic legal principle of the burden of proof, it would ask the IOE to explain where it dug up, forged or invented the so-called electronic mail involving government officials. Given that the Government has already denied the existence of any such mail, the burden of proof lies with IOE to defend its allegations.

938. The Committee on Freedom of Association should realize that it is the IOE that it must ask to explain this delicate matter, since ascribing this electronic mail to the Government (which once again emphatically denies that it emanated from any government official or representative) is such a serious accusation as to have criminal implications. The case is especially serious because it seeks to incriminate one of the Government's diplomatic representatives, who has categorically denied any knowledge of the email, which the Government can only assume emanates from the IOE. It is therefore for the IOE to provide a full explanation to the Committee and to the Government, which warns that it reserves the right to take any appropriate legal action in the matter

939. Regarding the Defence of Political Sovereignty and National Self-Determination Bill, the Committee calls on the Government to ensure respect for the abovementioned principle as regards international financial assistance to workers' and employers' organizations so that, if the Bill does indeed apply to them, to take the necessary measures without delay to amend the Bill (or the Act) so as to guarantee explicitly the rights of employers' and workers' organizations to receive international financial assistance without prior authorization from the authorities for activities related to the promotion and defence of the interests of their members. The Government states that the spirit of the Bill is not to prevent any organization from receiving financing for the promotion and defence of its affiliates, since if that is what the funds are for there is no reason to hide their origin or how they were used to promote the interests of their affiliates. The purpose of the future law is to prevent the financing of political activity – or, worse still, clandestine activities – by certain organizations to the detriment of other organizations, as a form of discrimination aimed at excluding them and promoting one set of options against another. The Government states that it will take the ILO's observations into account in drafting the future law.

940. With regard to the Central Planning Commission Act, the Government recalls that, in its previous examination of this case, the Committee on Freedom of Association requested the complainant organizations to provide information on the relationship between the allegations and the violation of Conventions Nos 87 and 98 and stated that, if they did not do so by its next meeting, it would not pursue its examination of the allegations any further. The Government therefore explicitly requests the Committee to rule on the matter and, if it has not received the information it requested from the complainant organizations, that it decide not to pursue its examination of the allegations any further. It makes this request so that the Committee can maintain can maintain the uniformity, consistency and transparency of its consideration of all the cases that come before it, as it did in the face of the lack of information from the complainant in Cases Nos 2674 (paras 1160 and 1165) and 2727 (paras 1179 and 1190(d)) in its 360th Report (June 2011).

941. With regard to the IOE's communication of 20 February 2012 concerning an alleged absence of tripartite consultation in legislative matters (Security of Employment Decree, Organic Labour and Workers Act, Costs and Fair Prices Act, Penal Law on the Environment), the Government provides the following information on the allegations and

exhorts the Committee not to allow government bodies be discredited without a proper reason for doing so.

942. The Security of Employment Decree is a legal measure introduced under the authority conferred on the President of the Republic to protect the people, the working class and individual workers from any arbitrary action by private sector employers. Under the capitalist system unemployment is the bane of the working class and therefore used by certain big employers to trample the workers underfoot by denying them social benefits and violating all their rights and the Constitution itself. The purpose of the decree is to protect workers' rights as a fundamental means of promoting the welfare of the people and the construction of a just and peace-loving society. The Government categorically rejects the public declarations by FEDECAMARAS spokespersons against the decree, which originated precisely in the events surrounding the coup d'état of April 2002 and the economic sabotage between December 2002 and February 2003 in which the CTV, FEDECAMARAS and other sectors of the bourgeoisie openly participated by dismissing of some 100,000 workers in the private sector. The fundamental objective of the Decree is to guarantee security of employment and to protect workers from employers who use unjustified dismissal as a means of punishing them for their political, class-conscious and revolutionary views.

943. As to the new Organic Labour and Workers Act the Government states that, pursuant to Decree No. 8661 published in *Official Gazette* No. 39818 of 12 December 2011, the President established a the committee to draft a new Act redefining labour relations on a just and balanced basis according to guidelines that are appropriate to a social state of law and justice in which workers are the counterpart to their employer. On 1 May saw a new, revolutionary Organic Labour and Workers Act was promulgated in whose drafting a committee composed of representatives of all sectors – workers, peasants, employers, Government, the Judiciary and the Legislature – had participated with the single objective of presenting a Bill that reflects the will of the people, is an expression of community interests and respects the intangible and progressive nature of workers' rights under the Constitution.

944. The new law is a synthesis of ten years of National Assembly meetings with various sectors. In the six months preceding the law's promulgation alone, over 19,000 proposals were submitted directly to the Committee to be studied and debated publicly. It was this constructive national debate that gave rise to the new Labour and Workers Act.

945. The new Act shows that only through social dialogue is it possible to establish the laws and labour relations that our countries so desperately need, laws that fully respect human rights. Thanks to direct dialogue with the workers and their employers it leaves possible in it was possible to draft a law that was heralded by everyone even before its promulgation and has been a key element in the sustained economic development of the country and in the reduction of unemployment to under 8 per cent, thus … the gloomy forecasts of closed enterprises and high unemployment and demonstrating that guaranteeing and protecting workers' rights are fundamental to a countries economic stability.

946. The Bolivarian Republic of Venezuela is an example of the consolidation of workers' rights and of the protection of freedom of association, collective bargaining and the right to strike, where the family is protected by extending women's entitlement to postnatal leave to 6 months and the security of employment of a child's parents is established until he or she is two years' old.

947. The Organic Labour and Workers Act does away with child labour, prohibits outsourcing, shortens the working week to 40 hours, guarantees employment security for all workers, grants equal workers' rights to domestic workers and consolidates a social security system

whose coverage includes non-dependent workers and which recognizes women's work as homemakers.

948. Under the Bolivarian Republic of Venezuela's social welfare system pensions are equal to the minimum wage. Enterprises are required to provide traineeships and apprenticeships to stimulate youth employment. The fundamental rights and historic struggles of the working class that were denied by capitalism and unbridled globalization are now recognized.

949. This is a far cry both from the former law, which had been imposed by closed and discriminatory form of tripartite that prevailed in 1997, and from economic models that today are causing structural crises and a marked regression of earlier working-class attainments.

950. The Bolivarian Republic of Venezuela provides clear evidence that social dialogue with the social actors must be direct so that they cannot be blackmailed by self-serving group interests, that the collective welfare must be guarded against the manipulation of individual groups and that the national objective must be the advancement of workers' rights, because labour is fundamental to the achievement of a peace-loving society.

951. As the Vice-Minister of Labour stated in plenary at the 101st Session of the International Labour Conference, "this was a national, a magnificent, a constructive debate that gave rise to a revolutionary Labour and Workers Act that was penned by the workers themselves and signed by our President, Hugo Chávez. It left aside those who chose not to take part in the public debate, those proponents of old-style tripartism who claim for themselves a representativity that they no longer possess and a voice in public affairs that they do not deserve".

952. Regarding the Costs and Fair Prices Act the Government emphasizes that it is designed to favour the Venezuelan people. The law stems from the need to prevent speculation, a recurrence phenomenon in the Bolivarian Republic of Venezuela that has severely affected the price of certain products in recent years. The Act sets out to reduce speculation and the hoarding of basic commodities – the main cause of inflation – by regulating, administering, monitoring and controlling prices. The price adjustments are based on a survey of production processes, transport and storage, so as to ensure that the manufacturers do not lose money but do not speculate on the people's basic needs either. The Act has many advantages:

- It establishes price controls for enterprises whose profits are excessive in terms of the cost structure of the goods they produce or market and the services they provide.
- It identifies economic agents that demand excessive prices for the services or products they provide.
- It establishes exchange criteria that are fair.
- It encourages fair prices by providing a mechanism for calculating real costs and expenditure.
- It promotes administrative practices that are based on equity and social justice.
- It increases economic efficiency, a decisive factor in the production of goods and services to meet people's needs.
- It helps to raise the standard of living of the Venezuelan people.

- It facilitates the insertion of the Venezuelan economy at the regional and international level by promoting the integration of Latin America and the Caribbean and by defending the country's economic and social interests.

- It provides the means of obtaining information on technical criteria for following up consumers' complaints of speculation and other irregular practices that hamper their access to goods and services.

953. With regard to the allegations concerning the Penal Act on the Environment, and notably articles 3, 4, 16 and 22, the Government makes the following points to demonstrate how important the Act is for the implementation of international agreements and for the life-giving environment itself:

- Article 3: criminal responsibility. In the case of environmental crimes, penal responsibility is an objective criterion based on an administrative standard. Criminal responsibility is determined by proof of an infringement of the law, not by proof of culpability.

- Article 4: criminal responsibility of juridical persons. Juridical persons are responsible for their actions or omissions if the crime entails the violation of standards or provisions contained in laws, decrees, orders, ordinances, resolutions and other general or specific administrative rules that are compulsory.

- Article 16: joint responsibility. Juridical persons are held jointly and severally responsible if they enter into an agreement whereby one carries out a specific piece of work for the benefit of or for use by the other and whose implementation results in risks or damage to the environment or to natural resources.

- Article 22: criminal investigation bodies. Officials identified in the Act to establish a Scientific, Penal and Criminal Investigation Department as well as in special laws and the regulations made under them are empowered to conduct criminal investigations into environmental crimes. They include:

  (1) technical and administrative officials responsible for the monitoring and control activities of the ministry concerned with the environment, for all environmental issues;

  (2) technical and administrative officials responsible for the monitoring and control activities of the ministries concerned with energy, petrol, mines, health, agriculture, housing and infrastructure, for matters coming within their purview;

  (3) technical and administrative officials responsible for monitoring and control in areas under special administrative authority;

  (4) competent officials of governorships and mayoral offices, within their sphere of competence.

954. The Government goes on to state that the spirit, purpose and objective of the Act is to prevent the commission of crimes against the ecological equilibrium or against any species in the environment. The Act comes under the country's criminal jurisdiction and, as such, lists certain actions that are punishable in the specific domain of the environment. The Act provides for the preservation and protection of the country's natural resources and for the welfare of the population, which is part of the Government's basic mandate.

955. Finally, the Government states that it is completely unaware of any link between this Act and Conventions Nos 87 and 98 with which the Committee is concerned. It therefore requests the Committee to explain that link explicitly or to insist that any allegation presented by the complainant organizations be related to the purpose, mandate and purview of the Committee and be duly supported by evidence.

956. In its communication dated 24 May 2013, the Government refers to the allegations in relation to the Enabling Act concerning the approval of new legislative decrees on economic and social affairs issued by the President of the Republic. The Government states that FEDECAMARAS is a civil association of entrepreneurs, the activities of which are of a political and non-trade union nature. The enabling Act was passed by the National Assembly with an overwhelming majority and was called into question by political sectors of the opposition who voted against its approval, which is their right.

957. Nonetheless, for strictly political reasons, the political sectors of the opposition continued to contest this Act on the occasion of any activity or fact that occurred in its framework. For instance, in the context of the elaboration of several decrees issued by the President during the period for which he was empowered to do so, various organizations of national life interested in submitting proposals and recommendations were consulted, but political organizations from the opposition refrained from participating. FEDECAMARAS, which often rather reflects political positions than professional interests, declined to participate for the reason mentioned above. Thus, in the Government's view, it is absurd for FEDECAMARAS to argue that it was not consulted on these issues, when in reality it refused to participate in the debate and to present proposals or recommendations.

958. As for the alleged shifting of the representation of FEDECAMARAS when establishing the delegation of the Bolivarian Republic of Venezuela to the 101st annual Conference of the ILO, the Government states that, every year on the occasion of the celebration of the International Labour Conference, the Ministry for Labour and Social Security calls a meeting with various business organizations in the country to discuss and agree on the formation of the employers' representation in the delegation attending the Conference. The Government emphasizes that it respects and promotes the democratic principles of the Bolivarian resolution. Therefore, while not negating the existence of FEDECAMARAS, it also recognizes the existence of other employers' organizations, regardless of their political position, since they illustrate the existing political pluralism in the country. The Government has never and will never negate the existence of an employers' organization, but it also has the obligation not to allow for the disavowal of other employers' organizations.

959. As to the allegations concerning the Presidential Decree on the Minimum Wage Increases (2012), the Government states that, during the period 1991–99, a National Tripartite Commission was set up, with the duty of, inter alia, annually revising the national minimum wage. Throughout this period, the minimum wage was raised only twice in nine years, in exchange for the elimination of other workers' rights such as social benefits. The new Constitution approved by referendum on 15 December 1999 establishes the obligation of the State to review and fix annually the national minimum wage, i.e. through a mechanism over and above the political interests of the economic elite. In this framework, at the beginning of each year, at the request of the Government, or in some cases on their own initiative, the social, economic and trade union organizations submit their views and recommendations on the fixing of the national minimum wage. All proposals are received and analysed, whether they are presented individually by those organizations or as a result of joint meetings of several organizations. However, since the annual fixing of the minimum wage is a constitutional guarantee, it is not permitted to exchange, like on a market, the setting and value of the minimum wage against other labour rights or claims.

D. The Committee's conclusions

960. *Recommendation (a). Regarding the abduction and maltreatment of the FEDECAMARAS leaders Noel Álvarez, Luis Villegas, Ernesto Villamil and Albis Muñoz (Employer member of the Governing Body of the ILO), the latter being wounded by three bullets, the Committee in its previous examination of the case deplored the offences that were committed, emphasized their seriousness and requested the Government to take all the steps within its power to arrest the other three persons involved in the abductions and wounding, and to keep it informed of developments in the investigations. The Committee noted the Government's statement that a public hearing had been scheduled for 20 October 2011 and expressed the hope that the persons guilty of the crimes would soon be convicted and sentenced in proportion to the seriousness of the offences in order that such incidents would not be repeated and requested the Government to keep it informed in that respect. At the same time, the Committee noted with concern the IOE's statement in its additional information that Ms Albis Muñoz, employers' leader and one of the victims of aggression, had asserted that neither of the suspects arrested (Antonio José Silva Moyega and Jason Manjares) were the instigators of the aggression, as well as the IOE's reservations as to the idea that the motive of the aggression was car theft*

961. *The Committee takes note that the Government, on the one hand, states once again that from the very outset it condemned this incident in which five perpetrators were allegedly involved and, on the other hand, draws attention to a major contradiction in the Committee's conclusions, since it says that the two persons were not recognized by Ms Muñoz but then goes on to express concern that they were not charged with attempted murder and causing this employers' leader bodily harm. The Committee informs the Government that the abduction of the four employer's leaders, one of whom, Albis Muñoz, received three gunshot wounds, fully justifies the Committee's concern and that the Government has not informed it of any charges having been brought for causing bodily harm or attempted murder. Contrary to the Government's assertion, the Committee's expression of concern does not exceed its mandate but testifies to its critical assessment of the findings of the investigation into the wounding of an employer's leader by bullets.*

962. *The Committee takes note of the Government's statement that the Public Prosecutor's Office has informed it that two persons, Antonio José Silva Moyega and Jaror Manjares, are being held in connection with the incident and that the 11th Court of First Instance of the Criminal Judicial Circuit of Metropolitan Caracas ordered their public hearing to be held on 22 October 2012. Three other persons were mentioned in the course of the investigation as being implicated, but the Prosecutor's Office has stated that so far no evidence has been found establishing their involvement with any degree of certainty and that one of the three died in a confrontation with the police in 2010.*

963. *The Committee regrets that the information provided by the Government is not such as to dispel the concerns it expressed in its previous examination of the case and it therefore reiterates its previous recommendations.*

964. *Recommendation (b). Regarding the criminal investigation ordered by the Public Prosecutor's Office into the public declarations by the President of FEDECAMARAS, Noel Álvarez, the Government states that the Public Prosecutor's Office recently informed it that the investigation was at a preparatory stage, which implies that the Prosecutor's Office is making the necessary enquiries to clarify the incident and determine responsibilities, and that it is for the relevant official bodies and not for the Committee on Freedom of Association to do so. In its previous examination of the case the Committee noted that, in the context, the declarations did not in its opinion appear to contain any criminal content and should not normally have given rise to a criminal investigation. The Committee requests the Government to send its observations on the decisions*

handed down by the authorities (Office of the Public Prosecutor, the judicial authority) in this case.

965. *Regarding the alleged bomb attack on FEDECAMARAS headquarters on 24 February 2008, the Committee takes note of the Government's statement that the Office of the Public Prosecutor has informed it that: (1) criminal charges were brought against Crisóstomo Montoya González for public intimidation and the use of false identity papers and against Ivonne Gioconda Márquez Burgos, his accomplice, for public intimidation prejudicial to the community; (2) the 28th Court of First Instance of the Criminal Judicial Circuit of Metropolitan Caracas agreed on 5 September 2012 to set a new date for the public hearing following a request by the defence for its postponement, and the new hearing was scheduled for 30 October 2012. The Committee stresses the importance of the perpetrators being sanctioned in a manner commensurate with the crimes committed and of the employers' organization receiving compensation for the losses and damage resulting from these illegal acts. The Committee is waiting to be informed of the sentence handed down.*

966. *Regarding the various acts of violence committed against FEDECAMARAS and its officials, the Committee again draws the attention of the Government to the fundamental principle that the rights of workers' and employers' organizations can be exercised only in a climate free of violence, intimidation and fear, as such situations of insecurity are incompatible with the requirements of Convention No. 87.*

967. *Regarding the allegation concerning the employers' leader Eduardo Gómez Sigala and the La Bureche farm, the Committee takes note that the Government confirms its earlier replies and states that it will send further details. The Committee also takes note that the Government categorically denies the allegation by the IOE and FEDECAMARAS that the farm is a military training centre. The Committee observes that the Government has not denied that this union leader has not received compensations for the confiscation of his farm. The Committee takes note of the Government's argument that the law applies to an employers' leader (who is, moreover, a deputy of the National Assembly) in the same way as it applies to any other citizen and that the Government wonders why the case is classified as a violation of freedom of association. The Committee recalls that it has already twice examined the substance of this allegation, refers the Government to its previous conclusions and recalls that it is competent to examine acts of discrimination against employers' leaders. It recalls, moreover, that when it is alleged that an act is prejudicial to an employers' or workers' leader it applies the principle of the reversal of the burden of proof and that it is therefore the Government's responsibility to demonstrate that the incident had nothing to do with the employers' leader or with his activities in that capacity. The Committee continues to await the Government's observations on the matter and requests it once again to return Eduardo Gómez Sigala's farm to him without delay and to compensate him fully for all damages resulting from the confiscation of the farm by the authorities.*

968. *Recommendation (k). The Committee takes note of the Government's statement that the electronic mail communicated by the IOE was not sent by any government official or representative. As to the alleged financing of parallel organizations, favouritism towards EMPREVEN and "social production enterprises" and discrimination against private enterprises, the Government states that there has been no such discrimination against any employer's organization whatsoever. According to the Government, the allegation of a supposed financing of EMPREVEN is completely unfounded, since the document to which the allegation refers has to do with resources granted to social production enterprises that went through EMPREVEN in its capacity as administrator, as the document itself indicates, and there is no evidence whatsoever that the resources are for funding EMPREVEN itself..*

969. *Recommendation (i). Regarding the alleged confiscation (“rescue”, according to the Government) of the farms owned by employers’ leaders Egildo Luján, Vicente Brito, Rafael Marcial Garmendia and Manuel Cipriano Heredia, the Committee considered that it is impossible to discount the possibility of discrimination. The Committee requested the Government to ensure that they are granted fair compensation without delay and to initiate a frank dialogue with those affected and with FEDECAMARAS on the confiscations/rescues referred to and to keep it informed of developments. The Committee also requested the Government to send its observations on the attacks on the buildings owned by Carlos Sequera Yépez, former President of FEDECAMARAS.*

970. *The Committee takes note of the Government’s statement that no reference to the alleged attack on the buildings owned by Carlos Sequera Yépez, the former President of FEDECAMARAS, has been found in any report by the authorities. The Committee also notes the Government’s statement that all Venezuelan state acquisitions of property on grounds of public utility or social interests entitle their former owner to due payment of fair compensation, as provided for in article 115 of the Constitution; the established procedure in all such acquisitions is that there should be a conciliation stage for the parties to agree on a price for the property being acquired by the State and that, where no agreement as possible, the matter is submitted to a competent tribunal to set a fair price.*

971. *The Committee regrets that the Government does not provide any information on the frank dialogue that it had requested it to enter into with the four employers’ leaders concerned and, since the Government refers only in general terms to the procedure in cases of “rescue” without indicating whether the payment of fair compensation has been decided on, it must therefore reiterate its earlier recommendations. The Committee requests the Government once again to provide information on the subject, to engage in a frank dialogue with the interested parties and with FEDECAMARAS and to grant the interested parties fair compensation without delay.*

972. *The Committee takes note of the allegations presented by the IOE and FEDECAMARAS regarding the composition of the Bolivarian Republic of Venezuela’s employers’ delegation to the 101th Session of the International Labour Conference, in which the Federation’s greater representativeness was challenged, as well as of the Government’s reply. The Committee informs the complainants that the composition of delegations to the Conference is the responsibility of the Credentials Committee, which has repeatedly ruled in favour of FEDECAMARAS. The Committee will therefore not examine the allegation, though it notes that it raises an issue which confirms the relevance of the other allegations in this report.*

973. *Recommendation (j) (social dialogue). The Committee takes note of the numerous allegations presented by the IOE and FEDECAMARAS regarding the Government’s persistent rejection of consultation and social dialogue with the employers’ and workers’ representative organizations and its continuing disregard of the Committee’s recommendations. The complainant organizations have linked the lack of dialogue and the legal steps taken by the authorities to a serious increase in unemployment, economic problems and the difficulty for enterprises to conduct their business and note that between 2002 and 2012 the number of private employers dropped by 35.5 per cent and that 217,204 employers closed down.*

974. *The complainants, in their allegations, reiterate that, despite the keenness that FEDECAMARAS has demonstrated in recent months to promote genuine social dialogue and tripartite consultation in the Bolivarian Republic of Venezuela, no such developments have taken place. In some cases the Government has merely convened at its own discretion specific private sectors other than FEDECAMARAS, which is widely recognized by the ILO as being the most representative employers’ organization in the country; in others, the*

consultation is a mere formality that does not allow time to reply, or else the views of the independent social partners consulted are simply ignored. According to these allegations, on yet other occasions there has either been no consultation whatsoever or else it has been held just with a few hand-picked organizations that support the Government. The complainants allege that these incidents violate the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), all ratified by the Bolivarian Republic of Venezuela, The Committee observes that the complainants point out that, since January 2011, 52 legislative decrees on crucial issues have been issued without consulting the representative employers' organizations and without any citizens' participation or open consultation. According to the allegations, the decrees have harmed the economy and the functioning of private enterprises, which have faced discrimination and sanctions.

975. *Taking into account the problems relating to the presidential decrees, whose constitutionality the complainant organizations challenge as going beyond of the mandate and issues initially agreed to (deriving from a natural disaster caused by heavy rainfall), are set out in detail in the allegations. The Committee will therefore highlight here just some of the points alleged by the complainant organizations, namely: (1) the decree on security of employment was promulgated without any consultation for the eleventh year running and now applies to all workers except those at the management level, those in positions of trust, temporary and casual workers and public officials; the new Organic Labour Act (which, to be qualified as "organic" should have been approved by a two-thirds majority in the National Assembly) was drafted by a Presidential Committee of authorities and other persons linked to the Government (for instance, a representative of FEDEINDUSTRIA but not of FEDECAMARAS or of the workers' representative organizations). According to the allegations, the new Act places additional economic and political burdens on the private sector, introduces prison sentences other than for the administrators of state enterprises, provides for a damaging system of retroactivity of social benefits for seniority, institutes workers' councils alongside trade unions, requires trade unions to provide the Register with a list of their members and imposes its guidelines on them, etc.; moreover, the Act does away with the National Tripartite Committee on Minimum Wages; (2) the Organic Act on Community Management of Skills, Services and Other Attributes and the Act to Promote and Regulate New Forms of Association with the State are subject to government guidelines and are designed to promote or extend the socialist model by means of widespread centralization and state control of the economy, the granting of special advantages to entrepreneurial associations with the State and discrimination against other enterprises; (3) the Legislative Decree to Determine the Fair Price of Real Estate for Housing Purposes in Cases of Emergency is designed to minimize as far as possible the amount payable to the persons expropriated by ignoring the market value and violating the right to private ownership; (4) the new presidential decree on the minimum wage, according to the allegations, introduces the concept of objective criminal responsibility to renders enterprises responsible for the actions of their dependence and gives administrative officials powers of investigation; (5) the Costs and Fair Prices Act entails a long-drawn-out and laborious process that may be applied to any product at all so as to control the chain of production, marketing and distribution and so that the Department set up for the purpose can fix the maximum prices that it considers "fair", and provides for sanctions such as temporary occupation; (6) the Penal Act on the Environment is contrary to the very structure of penal law based on subjective as opposed to objective responsibility.*

976. *The Committee takes note that the Government confirms its previous replies and states that the complainants' allegations are not an extension of the complaint but a repetition. On this point the Committee wishes to point out that the new allegations refer to the lack of consultation on new presidential legislative decrees.*

977. *In addition to the Government's statement that FEDECAMARAS is a civil association of entrepreneurs the activities of which are of a political nature, the Committee takes note of the Government's indication: (1) that all laws in the Bolivarian Republic of Venezuela are subject to broad consultation of the entire population and of social organizations; that some members of FEDECAMARAS are deputies in the National Assembly, where the great majority of the laws are discussed; that the population was also consulted on the laws approved by the President of the Republic under an Enabling Act adopted by the National Assembly; and that the Constitution of the Bolivarian Republic of Venezuela provides for a referendum to revoke any laws that are approved without the requisite support of the population; (2) that FEDECAMARAS chose not to take part in many of the consultations and restricted the expression of its views to outright rejection in statements it made to the media, often before the Act was published in the belief that the Federation could prevent it from being approved; FEDECAMARAS's attitude of opposing any form of consultation and then saying that it has not been invited to take part has been its strategy since 1998 when the people of the Bolivarian Republic of Venezuela rose against a Government backed by the Tripartite Committee, which without any consultation had amended labour laws and trespassed on the historical rights of the Bolivarian Republic of Venezuela's working class; the dominant employers' organizations in the country take part in all consultations on legislation, in most cases with the exception of FEDECAMARAS for strictly political reasons; (3) that any mention of the Tripartite Committee of those years (from 1991 to 1999, the minimum wage was raised only twice) brings back painful memories for the Venezuelan people and is associated with the infringement of workers' and human rights and the coup d'état of 2002; that that is why the Constitution and other laws refer to a broad social dialogue which transcends so-called tripartite dialogue that is restricted to an elite divorced from the country's social movements, as all the social actors are involved in every decision through their organizations or directly through assemblies; (4) that, as to the allegations regarding presidential decrees issued under the Enabling Act, the Committee should not allow government bodies to be discredited without a proper reason for doing so; and (5) the Government receives and analyses the views and recommendations of social and economic organizations with respect to the minimum wage.*

978. *Regarding the Defence of Political Sovereignty and National Self-Determination Bill calling on the Government to ensure respect for the principles governing international financial assistance to workers' and employers' organizations (so that, if the Bill does indeed apply to them, it can take the necessary measures without delay to amend the Bill (or the Act) and thus guarantee explicitly the rights of employers' and workers' organizations to receive international financial assistance for activities involving the promotion and defence of the rights of their members), the Committee takes note of the Government's statement that it is not in the spirit of the Act to prevent any organization from receiving funding to promote and defend its members since, if that were so, there would be no reason to conceal the source of the funds and how they were used "to promote the interests of their members"; according to the Government, the object of the Bill is to prevent the financing of the political or, worse, clandestine activities of certain organizations to the detriment of others, in a discriminatory and exclusive manner that is designed to favour some options over others. The Committee notes the Government's statement that it will take the ILO's observations into account in drafting the future Act. The Committee hopes to be able to note progress once the legislation has been adopted.*

979. *The Committee also takes note of the following statements by the Government:*

(1) The purpose of the Security of Employment Decree is to protect workers' rights as a fundamental means of promoting the welfare of the people and the construction of a just and peace-loving society, to guarantee workers' security of employment and to protect them from employers who use unjustified dismissal as a means of punishing them for their political, class-conscious and revolutionary views.

(2) As to the new Organic Labour and Workers Act, the workers participated in a committee composed of representatives of all sectors – workers, peasants, employers, the Government, the Judiciary and the Legislature – with the single objective of presenting a Bill that would reflect the will of the people, be an expression of community interests and respect the intangible and progressive nature of workers' rights under the Constitution; the new Act is a synthesis of 10 years of National Assembly meetings with various sectors, and in the six months preceding the law's promulgation over 19,000 proposals were submitted directly to the committee to be studied and debated publicly; this was a national and constructive debate, a direct dialogue with the workers; according to the Government, the Act consolidates the fundamental rights of workers, does away with child labour, prohibits outsourcing, shortens the working week to 40 hours, guarantees employment security for all workers, grants equal workers' rights to domestic workers and consolidates a social security system whose coverage includes non-dependent workers and which recognizes women's work as homemakers; it requires enterprises to provide traineeships and apprenticeships to stimulate youth employment and reclaims the fundamental rights and historic struggles of the working class that were denied by capitalism and unbridled globalization.

(3) The purpose of the Costs and Fair Prices Act is to regulate, administer, monitor and control prices in order to put an end to speculation and hoarding, which is the main cause of inflation in Venezuela; a study was first carried out of production processes, transport and storage in order to ensure that enterprises would not lose money in manufacturing their products but that they would not speculate on the needs of the people, either; the Act introduces prior control mechanisms for enterprises whose profits are excessive in terms of the cost structure of the goods they produce or market or the services they provide; it identifies economic agents who demand excessive prices for the services or products they offer; it establishes exchange criteria that are fair; it provides the means of obtaining information on technical criteria for following up consumers' complaints of speculation and other irregular practices that hamper their access to goods and services, etc.

(4) The Penal Act on the Environment is crucial to Venezuela's compliance with international agreements and to the life-giving environment itself; it introduces the concept of objective penal responsibility for environmental crimes as well as an administrative standard whereby responsibility is determined by proof of an infringement of the law, not by proof of culpability; it renders juridical persons responsible for their actions or omissions if the crime entails the violation of standards or rules contained in administrative or legislative provisions; juridical persons are held jointly and severally responsible if they enter into an agreement whereby one carries out a specific piece of work for the benefit of or for use by the other and whose implementation results in risks or damage to the environment or to natural resources; investigation officers identified by the Scientific, Penal and Criminal Investigation Department and in special laws and the regulations made under them are empowered inter alia to conduct criminal investigations into environmental crimes; the Act provides for the preservation and protection of the country's natural resources and for the welfare of the population; the Government explicitly requests the Committee to explain what the allegations regarding the Act have to do with its mandate. The Committee informs the Government that the complainant organizations allege that FEDECAMARAS was not consulted, that the absence of consultation on this and other laws is discriminatory and that, from its standpoint, its wording is unfair and prejudicial.

980. *The Committee wishes to point out that it is not called upon to rule on the substance of laws and legislative decrees that the complainant organizations claim have been adopted without FEDECAMARAS being consulted, even though it is the most representative employers' organization, unless they contain provisions that constitute a violation of workers' and employers' trade union rights, discrimination between organizations or favouritism vis-à-vis certain organizations or have been drafted without any tripartite consultation. That said, the Committee emphasizes that the substance of the laws and decrees under examination do affect the interests of employers' organizations and that the Government has not sent it a timetable of consultations with FEDECAMARAS on the numerous laws and presidential decrees adopted in recent years and it therefore does not consider the argument concerning FEDECAMARAS' so-called self-exclusion from the consultation process to be justified. Moreover, the Committee regrets that the National Tripartite Committee on Minimum Wages has not been maintained in the new Organic Labour Act on the grounds that its functioning and the 2002 coup d'état were reprehensible in the 1990s. The Committee concludes that social dialogue with employers' organizations has continued to deteriorate, especially as a result of enabling acts that give rise to the issuance of new presidential decrees without FEDECAMARAS being involved even though the affect the Federation's interests and are adopted independently of the Parliament. The Committee is examining this matter, along with a number of provisions contained in the Organic Labour and Workers Act in this report, in the context of another case (Case No. 2968).*

981. *The Committee wishes to draw the Government's attention to the fact that it has on many occasions emphasized the importance that should be attached to full, frank, comprehensive, detailed and unfettered consultation taking place with the most representative workers' and employers' organizations on matters of common interest, including matters relating to working conditions and any legislation or measure relating to those conditions, as well as any draft labour legislation. The Committee has repeatedly stressed that the parties concerned must make a sufficient effort to reach, as far as possible, solutions that are acceptable to all. It has also drawn attention to the importance that consultations take place in good faith and mutual trust and respect and that the parties have sufficient time to express their views and discuss them in full with a view to reaching a suitable compromise [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 1065–1088; see also, for example, the 353th Report of the Committee, Case No. 2254 (Bolivarian Republic of Venezuela), para. 1381].*

982. *That being so, and observing the grave shortcomings in matters of social dialogue – especially with FEDECAMARAS – and its deterioration in recent years, the Committee reiterates its earlier recommendations as follows:*

- *Deeply deploring that the Government has ignored its recommendations, the Committee urges the Government to establish a high-level joint national committee in the country with the assistance of the ILO, to examine every one of the allegations and issues in this case so that the problems can be solved through direct dialogue. The Committee trusts that the Government will not postpone the adoption of the necessary measures any further and urges the Government to keep it informed in this regard.*
- *The Committee expects that a forum for social dialogue will be established in accordance with the principles of the ILO, with a tripartite composition that duly respects the representativeness of workers' and employers' organizations. The Committee requests the Government to keep it informed in this regard and invites it to request technical assistance from the ILO. The Committee also requests the Government once again to convene the tripartite commission on minimum wages provided for in the Organic Labour Act.*

– *Observing that there are still no structured bodies for tripartite social dialogue, the Committee emphasizes once more the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights and that it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment be preceded by detailed consultations with the most representative independent workers' and employers' organizations. The Committee once again requests the Government to ensure that any legislation concerning labour, social and economic issues adopted in the context of the Enabling Act be first subjected to genuine, in-depth consultations with the most representative independent employers' and workers' organizations, while endeavouring to find shared solutions wherever possible.*

– *The Committee requests the Government to keep it informed with regard to social dialogue and any bipartite or tripartite consultations in sectors other than food and agriculture, and also with regard to social dialogue with FEDECAMARAS and its regional structures in connection with the various branches of activity, the formulation of economic and social policy and the drafting of laws that affect the interests of the employers and their organizations.*

– *The Committee requests the Government to ensure that as part of its policy of inclusive dialogue (including within the Legislative Assembly), FEDECAMARAS is duly consulted in the course of any legislative debate that may affect employers' interests, in a manner commensurate with its level of representativeness.*

The Committee deeply deplores that the Government has once again ignored these recommendation despite the fact that the Committee has been insisting on them for years.

983. *With regard to its earlier recommendations (g), (h) and (m) requesting the complainant organizations for information on the Planning Commission Act, the allegations regarding the livestock farmer Franklin Brito and the expropriation of Agroisleña SA, Owen – Illinois and the Orinoco steel plant, the Committee observes that the Government points out that the requested information has not been received and, invoking the principle of consistency with other cases, requests the Committee to consider that it has concluded its examination of the allegations. The Committee will not pursue its examination of these allegations any further.*

984. *Finally, the Committee takes note of the Government's statement that the High-level Tripartite Mission approved in March 2011, which the Government agreed could look into the issues that were still pending with regard to Case No. 2254, has twice been postponed for reasons outside the Government's control. The Committee is strongly of the view that the Mission should take place in the near future and requests the Office to contact the Government to that effect. The Committee considers that the Mission should be able to make a contribution to resolving the problems raised.*

The Committee's recommendations

985. ***In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) Regarding the abduction and maltreatment of the FEDECAMARAS leaders Noel Álvarez, Luis Villegas, Ernesto Villamil and Albis Muñoz (Employer member of the Governing Body of the ILO), the latter being wounded by three bullets, the Committee – which had taken note that two of the suspects had been arrested – deplores the offences that were committed, emphasizes their seriousness and requests the Government to take all the steps within its power to arrest the other three persons involved in the abductions and wounding, and to keep it informed of developments in the investigations. The Committee notes the Government's statements on developments in the

proceedings and expresses the hope that the perpetrators of these crimes will soon be convicted and sentenced in a manner commensurate with the seriousness of the offences so that such incidents are not repeated, and requests the Government to keep it informed in this respect. At the same time, the Committee notes that the Government's observations are not conducive to dissipating the concern it had expressed in its previous examination of the case (according to the IOE the employers leader Albis Muñoz asserted that neither of the suspects arrested by the Government (Antonio José Silva Moyega and Jason Manjares) were the instigators of the aggression).

(b) Regarding the criminal investigation ordered by the Public Prosecutor's Office into the public declarations by the President of FEDECAMARAS, Noel Álvarez, the Committee wishes to state once again that, in the context described by the IOE, the declarations do not in its opinion appear to contain any criminal content and should not normally have given rise to a criminal investigation. The Committee requests the Government to send it the decisions handed down by the authorities (Office of the Public Prosecutor, the judicial authority) in this case.

(c) Regarding the alleged bomb attack on FEDECAMARAS headquarters on 24 February 2008, concerning which the Government had stated that the persons charged (Juan Crisóstomo Montoya González and Mrs Ivonne Gioconda Márquez Burgos) confessed in full to the crimes of public intimidation and unlawful use of identity papers, the Committee notes the information sent by the Government on these developments in the criminal proceedings. The Committee emphasizes the importance that the guilty parties be punished in a manner commensurate with the seriousness of the crimes committed and that the employer's organization be compensated for the losses and damages sustained as a result of these illegal acts. The Committee is waiting to be informed of the sentence handed down.

(d) Observing the various acts of violence committed against FEDECAMARAS and its officials, the Committee once again draws the attention of the Government to the fundamental principle that the rights of workers' and employers' organizations can be exercised only in a climate free of violence, intimidation and fear, as such situations of insecurity are incompatible with the requirements of Convention No. 87.

(e) Regarding the Committee's recommendation that the Government restore the La Bureche farm to employers' leader Eduardo Gómez Sigala and compensate him fully for all the damage caused by the authorities in occupying the farm, the Committee notes that there is a contradiction between the allegations and the Government's reply to the effect that the expropriated farm of employers' leader Eduardo Gómez Sigala was idle. Be that as it may, the Committee observes that the Government does not deny the IOE's allegation that Eduardo Gómez Sigala has not received any compensation. The Committee looks forward to receiving the information that the Government says it will send and again calls on it to return the farm without delay to the employers' leader and to compensate him fully for all losses sustained as a result of the authorities' seizure of his farm.

(f) Regarding the alleged confiscation ("rescue", according to the Government) of the farms owned by the employers' leaders Egildo Luján, Vicente Brito, Rafael Marcial Garmendia and Manuel Cipriano Heredia, the Committee considers that it is impossible to discount the possibility of discrimination and once again requests the Government to ensure that they are granted fair compensation without delay, to initiate a frank dialogue with those affected and with FEDECAMARAS on the confiscations/rescues referred to and to keep it informed of developments. The Committee requests the Government to indicate whether the payment of compensation has been decided.

(g) Regarding the alleged lack of bipartite and tripartite social dialogue and of consultations with FEDECAMARAS, the Committee notes with concern the IOE's new allegations concerning the approval without tripartite consultation of numerous presidential legislative decrees and laws that affect the interests of employers and their organizations. Observing that serious shortcomings in social dialogue continue to exist and have even grown, the Committee reiterates its earlier recommendation, as follows:

- ***deeply deploring that the Government has ignored its recommendations, the Committee urges the Government, with the assistance of the ILO, to establish a high-level joint national committee in the country to examine every one of the allegations and issues in this case so that the problems can be solved through direct dialogue. The Committee trusts that the Government will not postpone the adoption of the necessary measures any further and urges it to keep the Committee informed in this regard;***
- ***the Committee expects that a forum for social dialogue will be established in accordance with ILO principles, with a tripartite composition that duly respects the representativeness of workers' and employers' organizations. The Committee requests the Government to keep it informed in this regard and invites it to request technical assistance from the ILO. The Committee also requests it once again to convene the tripartite commission on minimum wages provided for in the Organic Labour Act;***
- ***observing that there are still no structured bodies for tripartite social dialogue, the Committee emphasizes once more the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights and that it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment be preceded by detailed consultations with the most representative independent workers' and employers' organizations. The Committee once again requests the Government to ensure that any legislation concerning labour, social and economic issues adopted in the context of the Enabling Act be first subjected to genuine, in-depth consultations with the most representative independent employers' and workers' organizations, while endeavouring to find shared solutions wherever possible;***
- ***the Committee requests the Government to keep it informed with regard to social dialogue and any bipartite or tripartite consultations in sectors other than food and agriculture, and also with regard to social dialogue with FEDECAMARAS and its regional structures in connection with the various branches of activity, the formulation of economic and social policy and the drafting of laws that affect the interests of the employers and their organizations;***
- ***the Committee requests the Government to ensure that as part of its policy of inclusive dialogue (including within the Legislative Assembly), FEDECAMARAS is duly consulted in the course of any legislative debate that may affect employers' interests, in a manner commensurate with its level of representativeness.***

The Committee deeply deplores that the Government has once again ignored its recommendations despite the fact that the Committee has been insisting on them for years.

(h) Finally, the Committee takes note of the Government's statement that the High-level Tripartite Mission approved in March 2011, which the Government had agreed could look into issues that were still pending with regard to Case No. 2254, has twice been postponed. The Committee is strongly of the view that the Mission should take place in the near future and requests the Office to contact the Government to that effect. The Committee considers that the Mission should be able to make a contribution to resolving the problems raised.

(i) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of the matters dealt with in this case.

CASES NOS 2917 AND 2968

INTERIM REPORT

Complaints against the Government of the Bolivarian Republic of Venezuela presented by
– the Confederation of Workers of Venezuela (CTV) (Case No. 2917) and
– the Association of Teachers of the Central University of Venezuela (APUCV) (Case No. 2968)

Allegations: Adoption of the Basic Act on Labour and Workers (LOTTT) without consultation with the representative organizations and with content that is in violation of the Conventions on freedom of association and collective bargaining

986. The complaint relating to Case No. 2917 was made by the Confederation of Workers of Venezuela (CTV) in a communication dated 9 January 2011 and the complaint relating to Case No. 2968 by the Association of Teachers of the Central University of Venezuela (APUCV); the latter organization transmitted additional information and further allegations in a communication dated 16 November 2012.

987. The Government sent its observations in communications dated 1 October 2011 and 22 February 2013.

988. The Bolivarian Republic of Venezuela has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

989. In its communication of 9 January 2011, the CTV alleges that Decree No. 8661, dated 6 December 2011, was published in *Official Gazette* No. 39818 of the Bolivarian Republic of Venezuela, of 12 December 2011, which created the "Presidential Commission for the Creation and Drafting of the new Basic Labour Act". This Commission, in addition to

being exclusive and closed, failed to include the CTV, the most representative trade union organization of Venezuelan workers. All of the members of the Commission (section 2 of the Decree) are representatives or persons tied to official circles in one way or another (ministers, the Attorney-General of the Republic, the President of a Bolivarian Socialist Central Organization of City, Rural and Maritime Workers, appointed personally and without election and who is part of a trade union bureaucracy designated by the President of the Republic, the President of a federation of employers (FEDEINDUSTRIA), magistrates of the Supreme Court of Justice, certain labour experts, deputies in the National Assembly, and representatives of official circles). However, there was no representation of the real social partners who, in a democratic society, should be included, particularly when a new Basic Labour Act is to be discussed and drawn up to regulate labour relations in the country.

990. The CTV, nevertheless, observes that articles 21(1) and 89(5) of the Constitution of the Bolivarian Republic of Venezuela provide for the prohibition of any type of discrimination on grounds of politics, age, race, sex, belief or any other condition. Furthermore, recognition of the principle of tripartite consultation set out in ILO Convention No. 144 requires the Venezuelan State, in accordance with Article 2(1), "to operate procedures which ensure effective consultations … between representatives of the government, of employers and of workers". The CTV suffered discrimination by not being represented on the Presidential Commission for the drafting of the new Basic Labour Act. There was also discrimination against other pluralist and democratic trade union confederations in the country. All of this is in violation of Conventions Nos 87 and 98, particularly taking into account that under the terms of section 3(8) of the Decree, the Presidential Commission for the Creation and Drafting of the new Basic Labour Act shall include in its functions: "reviewing the current situation with regard to social benefits, rest periods, the working day, stability and the trial period, subcontracting, trade union membership and collective agreements, as well as any other area of labour regulation that it is necessary to adapt to the paradigms of a social State of law and justice, as well as proposing the establishment of new social institutions which dignify the condition of labour as an element of society".

991. Furthermore, in the third and fourth preambular paragraphs of the Decree, reference is made to the construction of a socialist foundation and a workers' socialist government, which is in violation of article 112 of the Constitution respecting economic freedom and the role of the State. Finally, it was decided that the new Act would not be adopted through the ordinary legislative procedures, but through an enabling act of the Legislative Assembly in favour of the President of the Republic.

992. In its communications dated 24 May 2012 and 16 November 2012, the APUCV alleges that the new Basic Act on Labour and Workers (LOTTT) is in violation of freedom of association. The Act was adopted by a Decree of the President of the Republic without any dialogue being held with the representative organizations of workers and employers, with the exception of the recently created and official "Socialist Central Organization of City, Rural and Maritime Workers". In the end, a legal text was imposed in which the exclusive ideological position of the governing party is visible to the detriment of the plurality of ideas existing among Venezuelan workers.

993. Moreover, in the Decree, the Government has ignored the recommendations made by the supervisory bodies of the ILO, which urged it to amend the legislation to bring it into line with the provisions of Conventions Nos 87 and 98, on freedom of association and the right to collective bargaining, in consultation with the representative organizations of workers and employers. The reports of the Committee on the Application of Standards of the International Labour Conference record the repeated occasions on which the National Government has undertaken to comply with these recommendations. Nevertheless: (1) it failed to hold consultations and dialogue with the representative trade union organizations

of Venezuelan workers, which are distinct from official organizations; (2) in open violation of the Constitution of the Bolivarian Republic of Venezuela, it refused to allow the LOTTT to be discussed and approved by the National Assembly, which is the competent body for the adoption of laws; and (3) a brief review of the content of the chapter of the LOTTT on freedom of association shows that its rules are incompatible with Convention No. 87 on freedom of association.

994. In this respect, the APUCV alleges that in the regulations set out in the LOTTT, the ideological aspects of certain rules give rise to serious uncertainties concerning trade union activity, since trade unions are assigned responsibilities which are those of the State. By way of example, section 367(2) and (3) respecting the attributions and objectives of trade unions, reads as follows:

> Section 367. Trade union organizations of workers shall have the following attributions and objectives:
>
> 1. […]
> 2. Contributing to the production and distribution of goods and services for the satisfaction of the needs of the people.
> 3. Exercising control and vigilance over costs and earnings, so that the prices of the goods and services produced are just for the people.

995. In the view of the APUCV, such obligations are completely inconsistent with ILO Convention No. 87, which provides that trade union organizations shall be free to determine their programmes of action and the State shall refrain from any interference which limits this right. Furthermore, it is also the case that if a trade union does not fulfil the mandate set out in section 367, the Government will refuse to register it, as indicated in section 387(1) of the LOTTT:

> Section 387. The National Registrar of Trade Union Organizations may refuse to register a trade union in the following cases:
>
> 1. If the trade union does not have as its objective the attributions and objectives envisaged in this Act.

996. With regard to the right of organizations to draw up their rules and to elect their representatives in full freedom, the APUCV alleges that: (1) trade unions are required to set out in their by-laws the "replacement" of the members of their executive boards (sections 399 and 403 of the LOTTT) and "a system of balloting which includes the election of the executive board by a single vote and the proportional representation of minorities" (section 403(e)); (2) despite the reduction in the powers of the National Electoral Council (CNE) in trade union elections, there remain serious doubts concerning the purpose of the notification that has to be made by trade unions to the CNE when they decide to hold elections (section 405 of the LOTTT); (3) in clear contravention of the rights envisaged in Convention No. 87, trade union leaders are required to submit a "sworn declaration of property" to a state body, the Office of the Comptroller-General of the Republic. This requirement, which exists in the country only for persons who are public officials or who administer public property, undermines the private nature of trade union organizations and their assets: in other words, the basis is being established to qualify trade unions as legal persons in public law, subject to the control of the State; moreover the possibility for the controller to carry out audits of trade union accounts is also envisaged (sections 416–417); and (4) section 2 of the transitional provision of the LOTTT requires trade union organizations to "adapt their by-laws" to the Act "before 31 December 2013".

997. In its communication of 16 November 2012, the APUCV indicates that the Presidential Decree approved the provisions that are in violation of freedom of association which had been noted with concern for years by the supervisory bodies, and particularly the

Committee on Freedom of Association, and set out new rules which may also be contrary to freedom of association, as described below.

998. The Legislative Decree explicitly lays down, in contradiction with the recommendations of the ILO supervisory bodies:

(a) The "electoral abeyance" of trade unions, and particularly their leaders (sections 402, 401, 399, 395, 387(8) and 384(11)). In accordance with these sections, the members of the executive board of a trade union have to be elected for a maximum period of three years (for unions and federations) or five years (confederations and central organizations). If this period elapses without new elections being held, the leaders automatically remain "in abeyance" and, as a result, can only carry out simple acts of administration and, accordingly, cannot represent the union in collective bargaining. This means that once abeyance has been declared, the leaders are incapacitated to act for the benefit of the union and the workers, and from joining within one year the provisional leadership of a new organization (section 387(8)). The trade union is therefore left a rudderless ship. Moreover, from this moment, a vicious circle arises which makes it difficult to hold new trade union elections.

(b) Inadmissible and interventionist requirements for the registration of trade unions, which is indispensable for them to have legal personality (sections 387(1) and 518).

(c) Interference in relation to the personal data of members of trade unions, as for each stage of the procedures that have to be undertaken by the trade union it is required to provide a list of its members, with a series of specifications. Moreover, the determination of trade union representative status is based in the first place on the list of members recorded in the National Register of Trade Unions (section 438). It should be recalled that these lists have a very unsavoury history in the country, as they have been used in the past for trade union dismissals or can be used to deny employment in the public service or in state enterprises.

(d) As indicated in the previous communication of the APUCV concerning interference by the CNE and the Ministry of Labour in trade union elections, there would appear to be acceptance in the Legislative Decree of the viewpoints of the ILO supervisory bodies, as it is envisaged that the CNE should provide advice and logistical support to trade unions only if they so request (section 405). Nevertheless, the CNE maintains its control over trade union elections in a much more subtle but real manner since, in accordance with sections 407–408, in all cases:

- trade unions are required to notify the CNE when they hold elections, so that the CNE can publish the respective call for elections in the *Electoral Gazette*;

- the Legislative Decree creates the requirement to establish a trade union electoral commission, but defines the terms of its action and converts the CNE into the arbitrator of trade union electoral decisions, as it hears appeals made against the decisions of this commission;

- the CNE is responsible for "ensuring" observance of the proper procedures, and possibly intervening if so requested by "those concerned";

- the electoral commission has to provide the CNE with documentation of the procedure followed, with a view to the publication of the results. Even when the trade union does not request the "advice and support of the CNE", the Legislative Decree complicates and renders bureaucratic trade union electoral procedures, especially for small trade unions, which make up the great majority, and particularly those in cities and locations distant from the institutions of the "electoral authority". Moreover, all

trade union electoral processes have to comply with a series of requirements and procedures in relation to the Ministry of Labour, which applies double standards in relation to trade unions, depending on whether they are independent or promoted by the Government;

- moreover, the rules of the CNE remain in force to guarantee the human rights of workers in trade union elections (Resolution No. 090528-0265, of 28 May 2009), which have been criticized by the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association, and which have turned out to be an effective instrument for paralysing the electoral procedures of independent trade unions through appeals of all types, and particularly against the decision to call elections;

- the vicious circle of interference is completed by obstacles to collective bargaining, particularly in the public sector, with the Government taking advantage of its own negligence (failure to calculate the cost of bargaining, the absence of instructions for negotiations, or the lack of approval by the Council of Ministers, sections 443, 444, 446 and 447) to oppose negotiation, in an approach that it has adopted systematically over the years. And, as if all this were not enough, the administration controls in a discretionary manner the competence of labour inspectors to "approve" collective agreements, without which they are not considered to be in force (sections 450–451).

999. The APUCV adds that the Legislative Decree refers to workers' councils, which are undefined, but in any case distinct from trade unions, and requires both workers' councils and trade unions to develop initiatives of support, coordination, supplementary action and solidarity in the social process of labour, intended to strengthen awareness and unity (sections 497–498). The precise scope of these provisions is not clear although, considering the systematic anti-union attitude of the Government, they give rise to doubts concerning their implications for freedom of association.

1000. The APUCV alleges that the Legislative Decree has been added to a legal framework which severely restricts the exercise of freedom of association, including the exercise of public freedoms, and which is made up of rules which limit and allow the repression of the exercise of the freedom to demonstrate and call strikes, and the criminalization of trade union activities is now beginning to be carried out by military tribunals. For example, on 13 August 2012, Hictler William Torres, Luis Arturo González, José Martín Mora, Wilander Pedro Operaza and Ramiro Parada, trade unionists in the construction sector, were detained and referred to military tribunals, and were required to appear every week before the military penal judicial circuit of the 11th Supervisory Military Tribunal of the State of Táchira. They have to be added to the hundred or so workers who have faced criminal charges for exercising their trade union rights. In this case, the workers were detained for having protested to demand the payment of their social benefits by the private enterprise Xocobeo CA, under contract with the Ministry of Housing and Environment for the construction of housing units in a military zone, Murachí Fort. "The crimes with which they were charged were: failure to respect a sentry and failure to respect the armed forces, sections 502 and 505 of the Basic Code of Military Justice, and violation of the security zone established by section 56 of the Basic Act on the Security of the Nation."

1001. With reference to the high-level mission that is to visit the country soon, the APUCV indicates that, with the new LOTTT, the Government is not only failing to take steps to resolve the problems that gave rise to the decision to send the mission, but has aggravated them.

1002. Finally, it indicates that, on the one hand, independent trade unions are being asphyxiated and, on the other, parallel trade unions are being promoted and workers are coming under pressure to migrate to these new trade unions, and that a new confederation has been created under the title of the "Socialist Central Organization of City, Rural and Maritime Workers", under the patronage of the President of the Republic himself.

B. The Government's reply

1003. In its communication dated 1 October 2012, the Government sent its observations on the complaint by the CTV, alleging that the "Presidential Commission for the Creation and Drafting of the new Basic Labour Act" is exclusive, closed and in addition did not include the CTV, the trade union organization which, according to the CTV, is the most representative of Venezuelan workers.

1004. In this respect, the Government indicates that the citizen President, through Decree No. 8661, published in *Official Gazette* No. 39818, of 12 December 2011, established a Commission for the Creation and Drafting of the new Basic Labour Act, with a view to adapting, balancing and redefining labour relations existing in the jurisdiction of the Bolivarian Republic of Venezuela in accordance with a social State of law and justice, in which workers are in a situation of balance in relation to employers.

1005. On 1 May 2012, the modern and revolutionary LOTTT was adopted; a commission composed of representatives of all sectors – workers, rural workers, employers, the Government, the judicial and legislative authorities – participated in its drafting, with a single objective: to put forward a bill reflecting the view of the people and which expressed collective interests and respected the inviolability and progressive nature of the rights of workers as set out in the Constitution.

1006. The Government indicates that ten years of meetings held in the National Assembly with various sectors were synthesized, and that during the last six months prior to the adoption of the Act, over 19,000 proposals were transmitted directly to the Commission, which were examined and publicly debated. A national and constructive debate gave rise to the Labour Act.

1007. The Government adds that the new Act demonstrates that only through social dialogue is it possible to build the laws and labour relations that are needed urgently by countries, with full respect for human rights. A direct dialogue with workers and their employers meant that an Act which was welcomed by all even before being adopted and which has been key to the sustained economic growth experienced by the country and an unemployment rate below 8 per cent, proved wrong those doubters who had warned of the closure of enterprises and unemployment, and demonstrated that the guarantee and protection of labour rights is a basic condition for the economic stability of a country.

1008. The Bolivarian Republic of Venezuela is an example of the consolidation of labour laws, the protection of freedom of association, collective bargaining and the right to strike. Protection is afforded to the family, extending the right to post-natal leave for women to six months and establishing the employment security of the father and the mother until the child has reached two years of age.

1009. The Government adds that the Act eradicates child labour, prohibits subcontracting, reduces working hours to 40 a week, guarantees the employment security of all workers, grants equal labour rights to domestic workers and consolidates a system of social security which includes self-employed workers and recognizes the work of women as housewives. In the Bolivarian Republic of Venezuela, the social protection system provides that the pension received shall be equal to the minimum wage. The requirement is placed on

enterprises to allow traineeships and apprenticeships to stimulate youth employment. The Act recognizes fundamental rights and the historical struggle of the working class in the face of capitalism and savage globalization.

1010. There is a clear difference, not only with the repealed Act imposed by a closed and exclusive tripartism in 1997, but also in relation to the economic models throughout the world which are today giving rise to structural crises with a substantial regression in the conquests of the working class.

1011. The Bolivarian Republic of Venezuela is the illustration that social dialogue has to be held directly with the social actors, avoiding the blackmail of underhand and group interests, that the collective interest has to be placed above the manipulations of groups, that the progressive nature of workers' rights has to be our objective, as work is a fundamental process in achieving a peace-loving society.

1012. As indicated by the Vice-Minister of Labour during the plenary of the 101st Session of the International Labour Conference, "there was a positive and constructive national debate, which gave rise to this revolutionary Labour Act written by the workers themselves and signed by our President, Hugo Chávez. Those who excluded themselves from this public debate remained on the sidelines: supporters of the old tripartite system who claim a representativeness they no longer enjoy and a voice to which they are no longer entitled …".

1013. Taking into account the fundamental aspects and great progress of the new Basic Act on LOTTT, the Government indicates that the reasons for which this complaint was admitted have to be set aside, as the Act was discussed and adopted in the country, for which reason it calls on the Committee to close the present complaint as it now lacks any basis or validity.

1014. In reply to the complaint of the APUCV alleging violations of freedom of association in relation to the adoption of the LOTTT, the Government reiterates in its communication of 22 February 2013 the declarations made in its previous communication and emphasizes that all the points and considerations made by ILO bodies with regard to the previous legislation were considered in the new Basic Labour Act, which is in conformity with the provisions of Conventions Nos 87 and 98 on freedom of association and collective bargaining. In view of the above, the Government rejects and is unable to understand the arguments of the APUCV, which are so blasphemous against the Act, and it rebuts each and every issue raised by the complainant as the new LOTTT guarantees and broadly protects freedom of association and collective bargaining.

C. The Committee's conclusions

1015. *The Committee observes that in this complaint the complainant organizations object to the procedure followed by the authorities for the adoption of the new LOTTT, and more specifically the use of the mechanism of an enabling law by the Legislative Assembly to empower the President of the Republic to legislate, and the lack of consultation with the most representative trade union organizations, in violation of Convention No. 144 on tripartite consultations. One of the complainant organizations, which presented its complaint after the adoption of the LOTTT, also alleges that its content is in violation of Conventions Nos 87 and 98 and that it retains the legal provisions that are contrary to freedom of association as indicated by the ILO supervisory bodies, as well as provides for new provisions which are also contrary to those Conventions.*

1016. *The Committee notes the Government's statements according to which: (1) the citizen President, by means of Decree No. 39818, published on 12 December 2011, established a Commission for the Creation and Drafting of a new Basic Labour Act, composed of representatives of all sectors (workers, rural workers, employers, the Government, the judicial and legislative authorities); (2) ten years of meetings with the various sectors in the National Assembly were synthesized and, during the six months prior to the adoption of the Act (the LOTTT), over 19,000 proposals were transmitted to the Commission which were examined and discussed in a constructive national debate; (3) all the issues raised and considerations put forward by the ILO supervisory bodies in relation to the previous legislation were considered in the new Act which, in the view of the Government, is in accordance with the provisions of Conventions Nos 87 and 98 on freedom of association and collective bargaining; the Government denies and rebuts each and every issue raised by the complainant organization APUCV and emphasizes that the new Act respects the inviolability and progressive nature of the rights of workers as set out in the Constitution; and (4) in contrast with what happened with the former Basic Labour Act, which was imposed by a closed and exclusive tripartism, in the process followed in relation to the LOTTT those who excluded themselves from the public debate remained on the sidelines, namely the proponents of an old tripartism who claim a representativeness that they no longer enjoy and a voice to which they are not entitled.*

1017. *The Committee notes that the Government refers to a series of achievements and progressive steps contained in the LOTTT in various areas, but recalls that its competence is confined to issues relating to freedom of association and collective bargaining, and it examines below the issues raised by the complainant organizations.*

1018. *In this respect, the Committee notes that, in its observations on the application of Conventions Nos 87 and 98, the Committee of Experts on the Application of Conventions and Recommendations made the following comments in relation to the new LOTTT:*

> *Convention No. 87*
>
> *…*
>
> *The Committee notes the Government's indications concerning the enactment of the Basic Act on labour and [men and women] workers (LOTTT) of 30 April 2012. The Committee welcomes the fact that the new Act takes into account a number of the observations made during the technical assistance provided by the ILO and as requested by the Committee. For example, foreign nationals are no longer required to be resident for ten years to hold trade union office, the functions of the CNE are limited in relation to the previous situation, and the number of workers required to establish a union is reduced.*
>
> *However, the Committee notes that the minimum number of employers (ten) required to establish an employers' organization (section 380) has not been reduced, the enumeration of the objectives of trade unions and employers' organizations continues to be too extensive (sections 367 and 368), including for example the objectives according to which organizations need to guarantee the production and distribution of goods and services at the correct price in accordance with the law, undertaking studies on the characteristics of the respective industrial branch, providing reports as requested by the authorities in conformity with the law, conducting campaigns to combat corruption actively, etc.*
>
> *The Committee observes that the new Act provides, as indicated above, that the logistical support of the CNE for the organization of elections is only provided at the request of the trade union executive boards. Nevertheless, the Committee notes that the CNE (which is not a judicial body) continues to be competent to examine any complaints which may be made by members. Furthermore, in breach of the principle of trade union independence, the text of the Act also maintains the principle that delays in the electoral process (including when complaints are lodged with the CNE) prevent the trade unions concerned from engaging in collective bargaining. The Act also imposes a system of ballots which includes the election of the executive board by single vote and proportional representation (section 403), while the Act continues to require trade unions to provide to the authorities the complete list of their*

members, and to supply the competent officials with the information that they request on their statutory obligations (section 388). The Act also interferes in numerous matters that should be regulated by union statutes, for example, by indicating that the purpose of collective bargaining is to achieve the objectives of the State (section 43), the eligibility of trade union leaders is subject to them having called trade union elections within the time limits when they were leaders of other organizations (section 387), and a referendum is required to be held to revoke those holding trade union office (section 410).

The Committee further notes that, in the event of a strike, it is the competence of the People's Minister responsible for Labour (and not the judicial authorities or an independent body, particularly in the case of strikes in public enterprises or institutions) to determine the areas or activities which cannot be paralyzed during the strike on the grounds that they would affect the production of goods or essential services, the stoppage of which would harm the population (section 484). The Committee notes the Government's statement that referring this to the judicial authorities would delay the right to strike. The Committee emphasizes that in the public sector the administrative authorities are an interested party in relation to the determination of minimum services. Furthermore, the system for the appointment of the members of arbitration boards in the event of strikes in essential services does not guarantee the confidence of the parties in the system since, where agreement is not reached by the parties, they are appointed by the labour inspector (section 494). The Act also recognizes workers' councils, although their functions are not determined clearly, even though it is provided in the Act that they may not encroach upon the functions of trade unions. ***The Committee requests the Government to provide additional information on this subject.***

Convention No. 98

The Committee notes the adoption of new Basic Labour Act No. 6076 of 7 May 2012 concerning labour and [men and women] workers (LOTTT), which contains provisions providing full protection for workers against acts of anti-union discrimination and interference, with sufficiently dissuasive sanctions.

Article 4 of the Convention. Free and voluntary negotiation. The Committee observes that section 449 of the LOTTT provides that "discussion of proposals for collective bargaining shall take place in the presence of a labour official, who shall chair the meetings". The Committee considers that this amounts to interference in the negotiations between the parties and is therefore contrary to the principles of free and voluntary negotiation and the autonomy of the parties. ***The Committee emphasizes the importance of amending this provision to bring it into full conformity with the abovementioned principles and requests the Government to indicate the measures taken or contemplated in this respect.***

Moreover, the Committee notes that section 450 concerning the registration of collective agreements states that "the labour inspector shall verify its conformity with the applicable public order regulations, with a view to granting approval". Section 451 concerning the granting of approval states that "if the labour inspector considers it appropriate, he or she shall make the appropriate observations or recommendations to the parties instead of granting approval, and such observations and recommendations must be complied with within the next 15 working days". The Committee recalls that, in general terms, making the entry into force of collective agreements concluded by the parties dependent on their approval by the authorities is contrary to the principles of collective bargaining established by Convention No. 98. The Committee considers that provisions of this sort are compatible with the Convention on condition that refusal of approval is restricted to cases in which the collective agreement contains flaws regarding its form or does not comply with the minimum standards laid down by the general labour legislation. ***The Committee requests the Government to provide further information on the scope of sections 450 and 451.***

Furthermore, the Committee notes that section 465 concerning mediation and arbitration states, with regard to bargaining by branch of activity, that "if conciliation is not possible, the labour official, at the request of the parties or on his or her own initiative, shall submit the dispute to arbitration unless the participating trade union organizations state their intention to exercise the right to strike". The Committee further notes that section 493 states that "should a dispute be submitted to arbitration, an arbitration board composed of three members shall be established. One member shall be chosen by the employers from a list submitted by the workers; another shall be chosen by the workers from a list submitted by the employers; and the third member shall be chosen by mutual agreement. If no agreement is

reached on nominations at the end of five successive days, the labour inspector shall designate the representatives". The Committee recalls that arbitration ordered by the authorities should be restricted to essential services in the strict sense of the term and cases involving public servants exercising authority in the name of the State and considers that the designation of members by the labour inspector does not ensure that the parties will have confidence in the board that is established. ***The Committee requests the Government to indicate the measures contemplated to abolish arbitration ordered on the initiative of the authorities (except in the abovementioned cases) and to ensure that the composition of the arbitration board enjoys the confidence of the parties.***

1019. *The Committee considers it indispensable that the Government submit the legal provisions criticized above to tripartite dialogue with the most representative organizations of workers and employers with a view to bringing those provisions of the LOTTT into full conformity with Conventions Nos 87 and 98. The Committee requests the Government to take the necessary measures in this respect.*

1020. *The Committee wishes to emphasize that over the years when examining various complaints relating to the Bolivarian Republic of Venezuela it has noted the use in many cases of enabling legislation by the Legislative Assembly empowering the President of the Republic to adopt many decrees and laws which affect the interests of workers' and employers' organizations without a parliamentary debate being held. In the present case, through the enabling Act, the President of the Republic established a special Commission to draft the new LOTTT, however, alongside the various representatives of the state authorities it only included one representative of a workers' central organization (the representativeness and independence of which is questioned by the complainant organization APUCV) and a representative of an employers' federation (when there exists a more representative federation (FEDECAMARAS) in the country), with the result that the most representative organizations did not participate in the Commission. The Committee deeply deplores the situation so described and expects that, in future, in-depth consultations will be held with the most representative organizations of workers and employers on draft legislation covering labour or social matters which affect their interests and those of their members, prior to the drafting of the legislation, and that it is the Legislative Assembly, in the context of parliamentary debate, which adopts labour and social legislation.*

1021. *Under these conditions, the Committee draws the Government's attention to the principle that tripartite consultation should take place before the Government submits a draft to the Legislative Assembly or establishes a labour, social or economic policy, and that it is essential that the introduction of draft legislation on labour matters should be preceded by consultations with organizations of workers and employers [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 1070 and 1075]. The Committee recalls that such consultations should be full, frank and detailed [see* ***Digest****, op. cit., paras 1074–1075], and that the process of consultation on labour and minimum wages helps to give laws, programmes and measures adopted or applied by public authorities a firmer justification and helps to ensure that they are well respected and successfully applied. The Government should seek general consensus as much as possible, given that employers' and workers' organizations should be able to share in the responsibility of securing the well-being and prosperity of the community as a whole. This is particularly important given the growing complexity of the problems faced by societies. No public authority can claim to have all the answers, nor assume that all its proposals will naturally achieve all of their objectives [see* ***Digest****, op. cit., para. 1076]. The Committee requests the Government to respect these principles in full in the future.*

1022. *Furthermore, although the Committee notes that the Government rejects all the allegations made by the complainant organization APUCV, it wishes to emphasize the gravity of the allegations relating to the criminalization of trade union activities through military*

tribunals, and in particular the detention and referral to military courts, including the requirement to report every week to the judicial military authorities, of five trade unionists in the construction sector (for having called for the payment of social benefits by a private enterprise Xocobeo CA, working under contract for the Ministry of Housing and the Environment), in addition, according to the allegations, to the hundred or so workers facing criminal charges for exercising their trade union rights. The Committee requests the Government to reply to these allegations without delay.

The Committee's recommendations

1023. ***In light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) Regretting that the Commission entrusted with drafting the new LOTTT excluded the most representative workers' and employers' organizations, the Committee requests the Government to submit to tripartite dialogue with the most representative organizations of workers and employers the provisions of the LOTTT respecting freedom of association and collective bargaining criticized by the Committee of Experts with a view to bringing those provisions into full conformity with ILO Conventions Nos 87 and 98 and to keep it informed of developments in this respect. The Committee requests the Government to comply in future with the principles relating to consultation and social dialogue set out in its conclusions.

(b) The Committee emphasizes the gravity of the allegations relating to the criminalization of trade union activities through military tribunals, and in particular the detention and referral to military tribunals, and the imposition of the requirement to report periodically every week to the military judicial authorities, of five trade unionists in the construction sector (for having demanded the payment of social benefits by a private enterprise Xocobeo CA, working under contract for the Ministry of Housing and Environment), in addition, according to the allegations, to the hundred or so workers who have faced criminal charges for exercising their trade union rights. The Committee requests the Government to reply to these allegations without delay.

Geneva, 7 June 2013

(Signed) Professor Paul van der Heijden
Chairperson

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