



Governing Body

327th Session, Geneva, 11 June 2016

GB.327/INS/4/1

Institutional Section

INS

FOURTH ITEM ON THE AGENDA

Report of the Committee on Freedom of Association

378th Report of the Committee on Freedom of Association

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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 26 and 27 May and 3 June 2016, under the chairmanship of Mr Teramoto (Japan) in the exceptional absence of Professor Paul van der Heijden.
2. The following members participated in the meeting: Mr Albuquerque (Dominican Republic), Mr Cano (Spain), Ms Onuko (Kenya), Mr Titiro (Argentina), Mr Tudorie (Romania); Employers' group Vice-Chairperson, Mr Echavarría and members, Mr Frimpong, Ms Hornung-Draus, Ms Horvatic, Mr Mailhos and Mr Matsui; Workers' group Vice-Chairperson, Mr Veyrier (substituting for Mr Cortebeeck), and members, Mr Asamoah, Mr Ohrt and Mr Ross. The members of Colombian and Japanese nationality were not present during the examination of the cases relating to Colombia (Cases Nos 2824 and 3114), and Japan (Cases Nos 2177 and 2183).

* * *

3. Currently, there are 160 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 31 cases on the merits, reaching definitive conclusions in 20 cases, (seven definitive reports and 13 reports in which the Committee requested to be kept informed of developments) 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), 2609 (Guatemala), 2982 (Peru) and 3119 (Philippines) because of the extreme seriousness and urgency of the matters dealt with therein.

Hearing of a Government

5. The Committee recalls that, in its last reports (376th and 377th Reports, paragraph 5), it referred to its invitation to the Government of Somalia, by virtue of its authority as set out in paragraph 69 of its procedures, to come before it in light of the seriousness of the matters raised in Case No. 3113 and the apparent lack of understanding as to their fundamental importance. The Committee appreciates the efforts made by the Government to come before it at its current meeting and will examine all the information available to it at its next meeting in October–November 2016.

Cases examined by the Committee in the absence of a government reply

6. The Committee deeply regrets that it was obliged to examine the following cases without a response from the government: 3018 (Pakistan) and 3119 (Philippines).

Status of cases

7. In order to ensure better engagement with its procedures and receive more timely replies from governments, the Committee has reviewed the manner in which it communicates the status of pending cases and has made a number of adjustments below which it hopes will bring greater clarity to its expectations and ensure that its procedures are more effective. In particular, the Committee has decided to specifically highlight where governments have not provided full and timely replies to cases of a grave and serious nature as defined in paragraph 54 of its procedures. The Committee trusts that governments will understand that its aim is not to punish or blame but only to facilitate the identification of priority concerns and enable a more comprehensive dialogue thereon in order to ensure the respect of the principle of freedom of association and collective bargaining.

Urgent appeals

Absence of information in grave cases

8. As regards Cases Nos 2318 (Cambodia), 2508 (Islamic Republic of Iran), 3134 (Cameroon) and 3176 (Indonesia), which raise issues of a serious and urgent nature (see paragraph 54 of the Committee's procedures), the Committee observes that, despite the time which has elapsed since the submission of the complaints or their previous examination, it has still not received the full observations of the governments to these serious and grave matters. The Committee draws the special attention of the abovementioned governments 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 even if their observations or information have not been received in due time. In the light of the grave nature of these cases, the Committee announces its intention to proceed with their examination at its meeting in October–November 2016. It accordingly requests these governments to transmit or complete their observations or information as a matter of urgency.

Persistent non-cooperation

9. Moreover, the Committee deeply regrets the persistent absence of cooperation in respect of Cases Nos 3067 (Democratic Republic of Congo) and 3081 (Liberia), where it is obliged to observe repeated failure to send responses in reply to the Committee's requests, as approved by the Governing Body. The Committee also draws the special attention of these governments to the fact that it may present a report on the substance of these cases even if their observations or information have not been received in due time. In the light of the repeated non-cooperation, the Committee accordingly requests these governments to transmit their observations as a matter of urgency. It announces its intention to proceed with its examination of these cases at its meeting in October–November 2016 with or without the benefit of the governments' replies.

Delays in replies

10. As regards Cases Nos 3016 (Bolivarian Republic of Venezuela), 3019 (Paraguay), 3047 (Republic of Korea), 3121 (Cambodia), 3125 (India), 3126 (Malaysia), 3127 (Paraguay), 3130 (Croatia), 3138 (Republic of Korea), 3146 (Paraguay), 3159 (Philippines), 3161 (El Salvador), 3162 (Costa Rica), 3167 (El Salvador) and 3170 (Peru), 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.

Observations requested from governments

- 11.** The Committee is still awaiting observations or information from the governments concerned in the following cases: 2923 (El Salvador), 2949 (Swaziland), 3094 (Guatemala), 3117 (El Salvador), 3172 (Bolivarian Republic of Venezuela), 3173 (Peru), 3174 (Peru), 3175 (Uruguay), 3178 (Bolivarian Republic of Venezuela), 3179 (Guatemala), 3180 (Thailand), 3182 (Romania), 3183 (Burundi) and 3186 (South Africa). If these observations are not received by its next meeting, the Committee will be obliged to issue an urgent appeal in these cases.

Partial information received from governments

- 12.** In Cases Nos 2203 (Guatemala), 2265 (Switzerland), 2318 (Cambodia), 2445 (Guatemala), 2508 (Islamic Republic of Iran), 2761 (Colombia), 2811 (Guatemala), 2817 (Argentina), 2830 (Colombia), 2869 (Guatemala), 2902 (Pakistan), 2927 (Guatemala), 2948 (Guatemala), 2967 (Guatemala), 2978 (Guatemala), 2989 (Guatemala), 2997 (Argentina), 3003 (Canada), 3023 (Switzerland), 3027 (Colombia), 3042 (Guatemala), 3062 (Guatemala), 3069 (Peru), 3076 (Republic of Maldives), 3078 (Argentina), 3089 (Guatemala), 3090 (Colombia), 3091 (Colombia), 3092 (Colombia), 3104 (Algeria), 3115 (Argentina), 3120 (Argentina), 3129 (Romania), 3133 (Colombia), 3137 (Colombia), 3139 (Guatemala), 3141 (Argentina), 3143 (Canada), 3148 (Ecuador), 3149 (Colombia), 3150 (Colombia), 3151 (Canada), 3152 (Honduras), 3153 (Mauritius), 3158 (Paraguay), 3163 (Mexico) and 3184 (China), 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

- 13.** As regards Cases Nos 2882 (Bahrain), 2957 (El Salvador), 2958 (Colombia), 3007 (El Salvador), 3035 (Guatemala), 3059 (Bolivarian Republic of Venezuela), 3061 (Colombia), 3068 (Dominican Republic), 3074 (Colombia), 3082 (Bolivarian Republic of Venezuela), 3093 (Spain), 3097 (Colombia), 3103 (Colombia), 3106 (Panama), 3108 (Chile), 3109 (Switzerland), 3112 (Colombia), 3116 (Chile), 3124 (Indonesia), 3131 (Colombia), 3132 (Peru), 3144 (Colombia), 3154 (El Salvador), 3156 (Mexico), 3157 (Colombia), 3160 (Peru), 3164 (Thailand), 3165 (Argentina) and 3168 (Peru), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

New cases

- 14.** The Committee adjourned until its next meeting the examination of the following cases: 3187 (Bolivarian Republic of Venezuela), 3188 (Guatemala), 3189 (Plurinational State of Bolivia), 3190 (Peru), 3191 (Chile), 3192 (Argentina), 3193 (Peru), 3194 (El Salvador), 3195 (Peru), 3196 (Thailand), 3197 (Peru), 3198 (Chile), 3199 (Peru), 3200 (Peru), 3201 (Mauritania), 3202 (Liberia) and 3203 (Bangladesh), 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.

Withdrawal of complaint

15. In a communication dated 4 April 2016, the International Federation of Musicians and the Cameroon Musician's Trade Union (SYCAMU) indicated their desire to withdraw their complaint against the Government of Cameroon (Case No. 3181) following the lifting in January 2016 of the suspension order that had been pronounced against it.

Transmission of cases to the Committee of Experts

16. The Committee draws the legislative aspects of the following cases, as a result of the ratification of Conventions Nos 87 and 98, to the attention of the Committee of Experts on the Application of Conventions and Recommendations: 2723 (Fiji), 2947 (Spain) and 3111 (Poland).

Cases in follow-up

17. The Committee examined ten cases concerning the follow-up given to its recommendations and concluded its examination with respect to six of these: Cases Nos 2430 and 2848 (Canada), 2678 (Georgia), 2947 (Spain), 3031 (Panama) and 3084 (Turkey).

Case No. 2430 (Canada)

18. The Committee last examined this case at its March 2015 meeting [374th Report, approved by the Governing Body at its 323rd Session, paras 25–30]. On that occasion, the Committee expressed its concern at what appeared to be a very lengthy process of certification of a collective bargaining agent for the part-time staff employed at community colleges in Ontario. In the absence of any new information on the developments following the 2013 decisions of the Ontario Labour Relations Board (OLRB), the Committee requested the Government to review, in consultations with the social partners, the provisions of the Colleges Collective Bargaining Act (CCBA), 2008 so as to ensure that the procedures in place are not prone to excessive delays and manipulation that might effectively impede the right of part-time employees to bargain collectively. The Committee also requested the Government to indicate the manner in which part-time academic and support staff employed in Ontario's public colleges could exercise their collective bargaining rights.
19. In a communication dated 14 August 2015 transmitted by the Government of Canada, the Government of Ontario recalls the background to this case as follows. In December 2008, the Ontario Public Service Employees Union (OPSEU) filed a certification application to represent part-time and sessional faculty at Ontario's 24 colleges. In July 2009, the OPSEU filed an application to represent part-time support staff at colleges. In both certification applications, secret ballot votes supervised by the OLRB were conducted. The ballot boxes were sealed pending the resolution of issues around whether the OPSEU met the 35 per cent threshold of signed membership cards needed to hold a certification vote under the CCBA. Between 2010 and 2013, the OLRB issued a number of rulings providing direction and clarity around who should and should not be counted as part of the bargaining units for the purposes of determining whether the 35 per cent threshold was met. On 12 August 2013, the OLRB ruled that the union had filed membership cards from fewer than 35 per cent of the members of each bargaining unit, and as such dismissed the applications for certification. The ballot boxes were destroyed without counting the votes.

20. The Government of Ontario reiterates that the CCBA provides part-time academic staff and part-time support staff at Ontario colleges of applied arts and technology with the statutory right to join a trade union and to participate in its lawful activities. The CCBA sets out a certification process by which a union may secure the right to represent the employees in a bargaining unit. The certification process under the CCBA seeks to balance interests and ensure that employees' true preferences are respected. The OLRB, which is an independent quasi-judicial tribunal with expertise in labour relations, has responsibility for resolving disputes that may arise between the parties during the certification process, and for determining when, and/or if, there is undue or unfair delay in the certification process. The certification process in the CCBA is modelled on the process in place for other workers in Ontario who are covered by the Labour Relations Act (LRA), 1995, which is similar to that found in other Canadian jurisdictions. Given its similarity to the LRA process, it is the view of the Ontario Government that the CCBA's certification process does not impede the right of part-time employees at Ontario colleges of applied arts and technology. As such, a review is not being considered at this time.
21. The Government of Ontario further indicates that per the CCBA, an employee organization may apply at any time to the OLRB for certification as the bargaining agent for a bargaining unit that has no certified bargaining agent or collective agreements. An employee organization must wait one year following the dismissal of an application for certification by the OLRB to apply for certification as the bargaining agent for the bargaining unit that was the subject of the OLRB dismissal. The Government of Ontario points out that with respect to academic and support staff at Ontario colleges of applied arts and technology, more than a year has passed since the OLRB dismissed the applications for certification, and nothing is preventing an employee organization from organizing an application for certification to represent either of the part-time college staff bargaining units.
22. *The Committee takes due note of the Government of Ontario's reply. The Committee moreover observes that collective agreements between the College Employer Council (for colleges of applied arts and technology) and the OPSEU have been concluded with regard to support staff employees (valid from 1 September 2014 to 31 August 2018) and academic employees, including those employed on a part-time or seasonal basis (valid from 1 September 2014 to 30 September 2017).*

Case No. 2848 (Canada/Alberta)

23. The Committee last examined this case at its March 2015 meeting [see 374th Report, paras 184–219]. On that occasion, the Committee made the following recommendations:
- (a) The Committee expects that in the future the Government will engage, at an early stage of the process, in full and frank consultations with the relevant workers' and employers' organizations on any questions or proposed legislation affecting trade union rights so as to permit the attainment of mutually acceptable solutions.
 - (b) Noting that the Public Sector Services Continuation Act (Bill 45) is not currently in force and is the subject of domestic litigation, the Committee requests the Government to keep it informed of the outcome of the judicial proceedings and expects that its conclusions above will be taken into account within the framework of the review Bill 45.
24. By a communication dated 16 July 2015, the Government of Canada transmits the following observations of the Government of Alberta.
- On 30 January 2015, the Supreme Court of Canada released its decision in *Saskatchewan Federation of Labour v. Saskatchewan* (SFL decision) concerning the Government of Saskatchewan's "essential services" labour legislation for the public sector. The Court ruled that the right to strike, when collective bargaining reaches an

impasse, is constitutionally protected under the Canadian Charter of Rights and Freedoms because such a right is necessary for meaningful collective bargaining. The Court struck down Saskatchewan essential services legislation as unconstitutional because it restricted the right to strike more than necessary to ensure provision of essential services.

- On 30 March 2015, the Government of Alberta repealed the Public Sector Services Continuation Act with Bill 24, the Public Sector Services Continuation Repeal Act.
- Additionally, the domestic litigation concerning the Public Sector Services Continuation Act concluded when the Government of Alberta did not oppose a court order that declared section 70 of the Public Service Employee Relations Act and sections 96(1)(b) and (c) of the Labour Relations Code (the strike prohibitions at issue in this case) as unconstitutional and invalid. The court order was signed on 31 March 2015 and suspended the declaration of invalidity for one year to allow time for the Government of Alberta to introduce replacement legislation.

25. The Government of Canada concludes that with the repeal of Bill 45, Public Sector Services Continuation Act on 30 March 2015, all outstanding legal proceedings related to this piece of legislation have concluded.

26. *The Committee takes notes of this information with interest.*

Case No. 3039 (Denmark)

27. The Committee last examined this case, in which the complainants alleged that the Government violated the principle of bargaining in good faith during the collective bargaining process and extended and renewed the collective agreement through legislation without consultation of the workers' associations concerned, at its October 2014 meeting [see 373rd Report, paras 230–265]. On that occasion, the Committee expressed the expectation that during the 2014–15 bargaining rounds between the Danish Union of Teachers (DUT), the Local Government Denmark (LGDK) and the Agency for the Modernization of Public Administration (Modernization Agency): (a) the Government would endeavour to promote and give priority to free and voluntary good faith collective bargaining as the means of determining employment conditions in the education sector, including working time; and (b) the principles concerning consultation with the organizations of workers and employers, when drafting legislation affecting collective bargaining or conditions of employment, would be fully respected.

28. In their communication dated 27 May 2015, the complainants provide additional information. Firstly, they allege that for two years the Government has not allowed the DUT to contribute to calculations of the financial impact of the statutory intervention on groups of teachers. In this regard, the complainants explain that calculations of the costs of possible improvements are generally made in public collective bargaining on employment, pay and working hours. According to the complainants, the Ministry of Employment and the public employers stated that they have applied normal, standard calculation rules, which means that the statutory intervention has deprived teachers of several hundred million Danish krone, which over time have been allocated through collective bargaining to improve teachers' working hours and the resources released from phasing out the special age reduction for teachers who have passed 60 years of age. The complainants indicate that since the introduction of Act No. 409, the DUT has repeatedly requested a meeting with the Ministry of Employment in order to discuss the matter but the meeting was consistently refused. Following the issuance of the Committee's recommendations, the meeting finally took place in January 2015. Despite the purpose of the meeting having been made clear, the Minister of Employment refused to discuss both the circumstances leading to the statutory

intervention by Act No. 409 and the financial calculation methods applied, stating that he had already acknowledged that the employee organizations had not been included in the preparation of the bill and that he had apologised for this. As this was the sole purpose of the meeting, it was concluded.

- 29.** Secondly, the complainants assert that the Government has again become involved in collective bargaining and has failed to allow genuine and free negotiations on working hours in the education sector in 2015. In particular, the complainants allege that although the DUT had put forward a demand that collective bargaining was to result in a new agreement on working hours to replace Act No. 409, both employers' representatives had stated from the beginning of the negotiations that they could not change the content of the statutory intervention. In order to avoid subjecting schools to another conflict, lockout or strike, the DUT decided to participate in the negotiations. In addition, the complainants specify that the negotiations with the LGDK were influenced by the political interest in teachers' working hours and in particular, at the moment when negotiators appointed by the employers and the DUT had completed a draft agreement, the LGDK was contacted by the Ministry of Finance and urged to change the draft agreement, thus stalling and prolonging the negotiations (although there is no written evidence, DUT negotiators were direct witnesses to this interference). It was not possible to negotiate new agreements on working hours but only to make initiatives to realise the Act locally. According to the complainants, the Government has been unable to maintain the "arms-length" principle, has influenced and limited free and genuine negotiations and undermined collective bargaining in the education sector. As a result, teachers at state schools, private schools and some adult education institutions are still subject to rigid regulation of their working hours. The complainants argue that public authorities should encourage free collective bargaining when they act as employers and have accepted responsibility to enter into agreements by co-signing them.
- 30.** Thirdly, the complainants indicate that even though Act No. 409 stipulates a possibility for the local parties to conclude agreements on working hours, the Ministry has again advised against concluding such agreements, which weakened the possibilities for organizations to influence agreements locally and undermined the entire bargaining model. According to the complainants, this demonstrates the Government's need to retain the Act as the foundation for regulating teachers' working hours, so that its amendment introducing more teaching hours can still be implemented using the same number of teachers.
- 31.** Fourthly, the complainants indicate that the Government established an Implementation Committee composed of representatives from the LGDK, the Modernization Agency, the Ministry of Economic and Business Affairs, the Ministry of Social Affairs and the Ministry of Education, aimed at ensuring that the Government's reforms, including on working time, meet its goals. The complainants further argue that it is clearly stated that the Implementation Committee is to ensure that Act No. 409 is realized, which documents that the Government had a clear political goal with its 2013 intervention, which was not just an intervention to stop the conflict for societal reasons. The complainants also denounce that employer organizations are represented in the secretariat of the Implementation Committee, while the employees' organizations are not, which demonstrates that the Government still has a practice of involving employers without involving employees' organizations. In the complainant's opinion, the Government has dismantled the Danish collective bargaining model and wrecked any possibility for concluding collective agreements for a large part of the public labour market.
- 32.** In its communication dated 24 September 2015, the Government replies to the complainants' additional information and indicates in relation to the first point that it is aware that the DUT disagrees with the size of economic compensation as a result of the statutory intervention but that the statutory intervention did not intervene in the existing collective bargaining rights. It further states that as a result of the preceding industrial action the parties were no

longer committed to the collective agreements and the standard model has been applied for estimating the value of changes to the collective agreements. Regarding the second point made by the complainants, the Government states that collective bargaining in the state sector area in 2014–15 was conducted within the usual framework and the final result of the collective bargaining negotiations (encompassing the renewal of the collective agreements), including a joint non-judicial declaration on working time conditions was approved by the employees' organization on 10 April 2015. With regard to the complainants' third point, the Government indicates that the collective agreements in the state sector area stipulate a general possibility for local parties to enter into agreements which supplement or deviate from the centrally agreed regulations on working time but that the Modernization Agency has, in its capacity as employers' association for the state sector, advised local employers that for the education sector as well as for the rest of the state sector, it is not the intention that this possibility should be used to enter into local agreements that restrict the rights of the employers to allocate and manage the work of the employees. Regarding the fourth point, the Government states that it set up the Implementation Committee to ensure that the practical effects of the implementation of the comprehensive reforms of the primary and lower secondary schools and the vocational education and training, as well as the new working time regulations, fulfil the objectives set by the Government and the Parliament but that the Implementation Committee is not linked to the collective bargaining process.

- 33.** In relation to recommendation (a), the Government provides general information concerning the 2014–2015 collective bargaining in the state, municipality and regional sectors. It states that concerning the state sector, the Modernization Agency has informed that collective bargaining was conducted within the usual framework, which is agreed upon between the Modernization Agency and the Danish Central Federation of State Employees' Organizations (CFU) ahead of each bargaining cycle, with the set-up usually being identical. The general agreement stipulates the termination of collective agreements and rules of industrial action. In relation to the 2014–15 collective bargaining in the state sector, the Government states that: exchange of demands and negotiations between the parties took place; general issues regarding terms of pay and employment were settled; the general agreement included projects of mutual interest and a renewal of terms of pay and employment for upper secondary teachers in the state education sector; secondary agreements of terms of pay and employment between the Modernization Agency and the individual employees' organizations were completed by 9 March 2015; a secondary agreement between the Modernization Agency and employees' organizations representing primary and lower secondary teachers in the state education sector included a renewal of terms of pay and employment, minor technical adjustments and a joint non-judicial declaration on working-time conditions; and the final result of the collective bargaining negotiations was approved by the employees' organizations as of 10 April 2015. Concerning the municipality sector, the Government indicates that the Ministry of Employment does not participate in the proceedings of collective bargaining and since the LGDK is a private organization, the Ministry has no access to detailed information on the negotiations, which are closely followed by the media. With regard to the regional sector, the Government states that the Danish Regions are also a private organization and the Ministry of Employment has no access to detailed information on the negotiations. Concerning the 2014–15 collective bargaining in these two sectors, the Government indicates that: exchange of demands and negotiations between the parties took place; general issues regarding terms of pay and employment were settled; issues on pay and employment were settled between the LGDK and the Confederation of Teachers Union (municipality sector) and between the Danish Regions and the Confederation of Teachers Union (regional sector); the parties did not conclude a new working-time agreement but a declaration on working-time conditions was agreed upon; and the final result of the collective bargaining negotiations between the parties was approved for both sectors on 16 March 2015.

34. In a communication dated 10 November 2015, the complainants provide additional information and claim that the Government's information in reply to their communication dated 27 May 2015 is only a general description of the application of the Danish model of collective bargaining in the public labour market and a description of formalities in the negotiations and approval of the results agreed on by the parties but does not address the content of the negotiations. With regard to their first point, the complainants indicate that the Government's reply is merely a repetition of its previous remarks, it does not address the concrete allegations and the Government refuses to account for the economic aspects of the statutory intervention. Concerning the Government's reply to their second point, the complainants denounce that the Government did not address the main points they have raised concerning the collective bargaining in 2015 but has only mentioned the formal course of the negotiations and given a very general description of the agreement results. It further asserts that the Government had adopted the following attitude: as Act No. 409 on working hours in the education sector had been adopted, there was no intention to let the next round of collective bargaining (2014–15) change anything. According to the complainant, this attitude also meant that Local Government Denmark had no mandate to negotiate without the consent of the Ministry of Finance, which clearly restricts the real and free negotiations. With regard to the third point, the complainants assert that when legislation de facto authorizes the parties to an agreement to enter into local agreements regarding working hours, it should be left to the local parties to an agreement to decide how to apply this option. Consequently, the complainants allege that in the renewal of the collective agreement in 2015, the Government has failed to afford the negotiators the right to free negotiations and that the Government maintained that Act No. 409 was adopted with a purpose, which is still being pursued, and is apparent in the Implementation Committee. According to the complainants, the Government continues to supervise the implementation of Act No. 409 through the Implementation Committee without demonstrating any willingness to hand over the negotiations on the regulation of teachers' working hours to the parties to the collective agreement and with its statements the Government has confirmed that the implementation of Act No. 409 has not been and will not be surrendered to the parties but will be retained by the Government in cooperation with employers' representatives. Finally, the complainants indicate that because there is a desire to ensure that regulations on working hours meet the goals the Government has set in Act No. 409, it is clear that negotiations on working hours in the education sector are no longer an issue for the parties to the collective agreement.
35. In a communication received on 2 March 2016, the Government indicates that it does not consider that the communication of the complainants dated 10 November 2015 calls for any further observations from the Government. Accordingly, the Government states that it does not have any further observations to add to those dated 24 September 2015.
36. *The Committee duly notes the detailed information provided by the complainants as well as the Government's follow-up information and its reply to the complainants' communication. With regard to the Committee's recommendation to promote free and voluntary bargaining in the education sector in 2014–15, the Committee notes a divergence of views between the complainants and the Government. While the complainants allege that the Government became involved in the negotiations with the LGDK and advised employers against concluding local agreements on working hours, the Government claims that the 2014–15 collective bargaining was conducted in the usual framework and explains that the Modernization Agency can, in its capacity as employers' association for the state sector, advise local employers not to enter into local collective agreements. Recalling that Act No. 409 stipulates a possibility to conclude local collective agreements on working hours, the Committee urges the Government to take the necessary measures to allow collective bargaining at the local level, including on working time. The Committee regrets that the Government does not reply to the serious allegations of its intervention in the LGDK negotiations and of its refusal to hand over negotiations on the regulation of teacher's*

working hours to the parties to the collective agreement within the framework of the statute, and trusts that in all future collective bargaining rounds between the parties, the Government will endeavour to promote and give priority to free and voluntary good faith collective bargaining as the means of determining employment conditions in the education sector, including working time, and will ensure that the authorities refrain from any substantial intervention in such collective bargaining.

- 37.** *With regard to the Committee's recommendation to consult workers' and employers' organizations when introducing legislation affecting collective bargaining or conditions of employment, while noting that no further legislation had been drafted in this respect, the Committee notes with concern that the Implementation Committee, established by the Government to ensure the implementation of Act No. 409, is exclusively composed of the LGKD, the Modernization Agency and government representatives, whereas employees' representatives are excluded. The Committee notes that the Government asserts that the Implementation Committee is not linked to the bargaining process but was set up to ensure that the practical effects of the implementation of the comprehensive reforms fulfil the objective set by the Government and the Parliament, without, however, indicating why representatives of employers' organizations form part of the Implementation Committee while representatives of employees' organizations may not participate in its activities. In this regard, the Committee wishes to refer to the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), Paragraph 1 of which provides that measures should be taken to promote effective consultation and cooperation between public authorities and employers' and workers' organizations without discrimination of any kind against these organizations. In accordance with Paragraph 5 of the Recommendation, such consultation should aim at ensuring that the public authorities seek the views, advice and assistance of these organizations, particularly in the preparation and implementation of laws and regulations affecting their interests [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006., para. 1068]. Accordingly, the Committee expects that the Government will take the necessary measures to ensure that workers' organizations are consulted in relation to the implementation of Act No. 409 and in respect of other initiatives which affect their interests. The Committee requests the Government to keep it informed of any developments in this regard.*

Case No. 2947 (Spain)

- 38.** The Committee examined this case, which concerns allegations of restrictive legislation on collective bargaining and trade union leave, at its March 2014 meeting [see 371st Report, paras 317–465]. On that occasion the Committee: (a) drew the Government's attention to the principles concerning consultation of the most representative workers' and employers' organizations with sufficient advance notice of draft laws and draft Royal Legislative Decrees prior to their adoption by the Government, and hoped that these principles would be fully respected in the future; (b) stressed, with regard to the new provisions contained in Acts Nos 3/2012 and 20/2012, the importance of ensuring that the essential rules governing the system of labour relations and collective bargaining are agreed, to the maximum extent possible, with the most representative workers' and employers' organizations, and therefore invited the Government to promote a tripartite dialogue in order to achieve this goal from the perspective of the principles of freedom of association and collective bargaining laid down in the relevant ILO Conventions; and (c) requested the Government to transmit to it the Constitutional Court and Supreme Court rulings on Acts Nos 3/2012 and 20/2012.
- 39.** In response to the Committee's recommendations, the Government sent eight communications, dated 10 and 22 September, 24 November and 23 December 2014; 6 March, 4 June, 22 November and 27 November 2015, providing the following information and documentation: (i) the Supreme Court judgment of 26 March 2014 (which partly upheld the trade unions' appeals and rejected some declarations contained in the contested decision

of the National High Court Labour Chamber, of the invalidity of provisions of the general collective agreement on the cement products sector); (ii) Constitutional Court Judgments Nos 119/2014 of 16 July 2014 and 8/2015 of 22 January 2015 (both dismissing constitutional challenges to certain provisions of Act No. 3/2012); (iii) Constitutional Court Judgments Nos 81/2015 of 30 April 2015, 156/2015 of 9 July 2015 and 83/2015 of 30 April 2015 (the first two dismissing constitutional challenges to certain provisions of Royal Legislative Decree No. 20/2012 and the third declaring the claim regarding the alleged failure to pay extra wages to have been resolved through a later budgetary law); (iv) lists of the meetings of the Government and the social partners held in 2014 and 2015; (v) the agreement on proposals for tripartite negotiation to strengthen economic growth and employment, adopted by the Government and the social partners on 29 July 2014; and (vi) Royal Legislative Decree No. 16/2014 of 19 December, which regulates the Employment Acceleration Programme, a result of the agreement between the Government and the social partners. Considering that it has complied with the recommendations of the Committee, the Government requests it to close the case definitively.

40. *In these circumstances, taking due note of the information provided by the Government, not having received additional information from the complainant organizations and bearing in mind that some of the issues raised in the complaint are being examined by the Committee of Experts on the Application of Conventions and Recommendations, the Committee will not pursue its examination of the case.*

Case No. 2678 (Georgia)

41. The Committee last examined this case, which concerns allegations of interference in trade union activities of the Educators and Scientist Free Trade Union of Georgia (ESFTUG), at its October 2013 meeting [see 370th Report, paras 45–57]. On that occasion, noting the spirit of the stated improved cooperation between the Ministry of Education and Science (MES) and the ESFTUG, the Committee requested the Government to: (i) take the necessary measures to ensure that the ESFTUG can enjoy check-off facilities; (ii) conduct an independent inquiry into the allegation of dismissal of 11 workers from Public School No. 1 of Dedoplistskaro district and, if it is found that these teachers were dismissed on account of their ESFTUG affiliation, to take the necessary measures to reinstate them without loss of pay. If reinstatement is not possible for objective and compelling reasons, the Committee requested the Government to take the necessary measures to ensure that the trade union leader and members concerned were paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-union dismissal; (iii) take the necessary measures, without delay, in full consultation with the social partners concerned, to amend the Labour Code so as to ensure specific protection against anti-union discrimination, including anti-union dismissals, and to provide for sufficiently dissuasive sanctions against such acts; and (iv) indicate the measures taken or envisaged to promote collective bargaining in the education sector and to inform it as to whether any collective agreement had been signed in the education sector and whether the ESFTUG was a party to such an agreement or participated in the negotiation.
42. By its communication dated 14 June 2014, Education International (EI) transmits the ESFTUG's report on the situation of trade union rights in Georgia. According to the ESFTUG, after the parliamentary elections of 2012, the attitude of the Government towards the union has changed: the pressure on the public schools has been removed; the ESFTUG representatives are no longer subject to harassment and are able to exercise their rights; the ESFTUG has started widespread activities to re-establish its operations and strengthen its actions; on the surface, trade union rights are recognized in compliance with Georgian and international legislation. The ESFTUG alleges, however, that the authorities are using "hidden methods" to interfere with its trade union activities.

- 43.** In particular, the ESFTUG alleges that the Government shows unconditional support to a newly established (on 2 November 2012) trade union, the General Education Trade Union (GETU). According to the complainant, the GETU was established with the encouragement of the Government. The ESFTUG alleges that the promotion and propaganda in favour of the new trade union has been encouraged at the teachers' professional development sessions organized by the National Center of Teachers Professional Development (NCTPD) of the MES and its trainers, who have been working on convincing teachers to join the new union. The ESFTUG indicates that it had informed the MES about trainers' activities using administrative resources. The complainant considers that the MES response was not sufficient: while the head of the NCTPD was dismissed, no measures had been taken against the trainers and one of the founders of the GETU (also an ex-chair of the ESFTUG Tbilisi organization).
- 44.** The complainant further alleges that the GETU exercises pressure on the school principals to convince the teachers to join the new union and that the educational resource centers (ERCs) of the MES continue to support and recognize the GETU and damage the image of the ESFTUG. In some instances, teachers were given promises to receive assistance ("credits" from the Teachers Professional Development Center) "in case they join the GETU". In several regions, the GETU representatives were enlisted in the ERC Personnel Recruitment Commission instead of the ESFTUG elected trade union leaders, despite the recommendation of the MES.
- 45.** The ESFTUG refers to several discrepancies in the GETU registration process of which it informed the National Agency of Public Registry (NAPR) and the Ministry of Justice. The complainant considers that the actions taken by the NARP and silence of the Ministry of Justice demonstrate the favouritism from the Government towards the GETU. The ESFTUG considers that the GETU is a non-governmental organization, non-commercial legal entity, which has no ties with trade unions because it has not been founded on the basis of the Law on Trade Unions (e.g., allegedly, it did not submit a list of 50 founding members as per the Law) and that by using words "trade union" in its title, the GETU violates the Civil Code.
- 46.** With regard to the check-off system, the ESFTUG indicates that in general, and pursuant to the legislation in force, it signs agreements with school principals on the transfer of trade union dues to the ESFTUG account. However, some school principals still need to be convinced to comply with the legislation in force. The complainant alleges that in Telavi, the regional branch of the union succeeded in signing collective agreements only in two schools.
- 47.** In its communication dated 19 December 2013, the Government indicates that sections of the Labour Code dealing with collective agreements have been amended and that a new wave of amendments to the Code was planned for the future and that it was possible that the issue of anti-union discrimination would be considered as well.
- 48.** In its communication dated 5 September 2014, the Government transmits the comments made by the MES on the ESFTUG allegations transmitted by EI. The MES indicates that NCTPD trainers are selected throughout Georgia on the basis of a public competition and that trade union affiliation is not taken into account; furthermore, it makes no recommendations to the ERC regarding any specific union.
- 49.** The Government also indicates that following an internal audit, which confirmed the allegations of illegal lobbying of trade unions, on 12 April 2013, the then Director of the NCTPD was dismissed and the labour contract of one of the trainers was terminated.
- 50.** The MES further provides detailed information on the allegation of refusal to sign collective agreements on check-off facilities. In particular, the Government indicates that the ERC

employees explained to a school principal in Telavi that according to the General Administrative Code of Georgia, a school principal has to register teachers written requests. After these explanations, the principal received written requests and concluded a collective agreement. The MES further indicates that: (1) the ESFTUG representatives have not presented themselves in nine out of 27 schools in the Telavi area; (2) seven schools have signed an agreement with the ESFTUG; (3) the ESFTUG representatives held meetings in other schools but teachers have not shown the desire to affiliate, however, more meetings were planned to take place.

51. With regard to the allegation that public school principals were promoting the GETU among their employees as the only organization capable of providing the best service, the Government indicates that an internal audit of the MES conducted three inquiries into this allegation. The inquiry confirmed that such acts did not take place. To the contrary, according to the MES, the representatives of the ESFTUG exercised pressure on the local ERC by demanding to ensure that the GETU representatives are not allowed to enter schools and meet teachers.
52. *The Committee takes note of the ESFTUG report transmitted by EI. In particular, it notes with interest that the ESFTUG appears to confirm, as previously observed by the Committee, that the Government's attitude towards the complainant has changed and that there were no cases of direct interference into its activities.*
53. *The Committee further takes note of the new allegations submitted by the ESFTUG through EI and the Government's reply thereon. With regard to the allegations relating to the establishment and the functioning of the GETU, the Committee points out that while only judicial intervention would permit a clarification of the situation from the legal point of view for the purpose of settling the question of the organizational nature of the GETU, on the basis of the information provided by the complainant and the Government, the Committee does not have sufficient evidence to conclude that the GETU is wrongfully supported by the Government. It notes in this respect that the Government had carried out inquiries into the allegations of interference and where violations have been confirmed, penalties have been imposed.*
54. *As regards its request to amend the Labour Code, the Committee notes with interest from the 2014 comments of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) that the Labour Code was amended on 12 June 2013 so as to expressly prohibit anti-union discrimination both at the pre-contractual stage and through the employment relationship. In particular, the Labour Code expressly prohibits termination based on anti-union discrimination and the burden of proof lies with the employer if the employee refers to circumstances which establish a reasonable doubt that the employer did terminate the contract of employment on an anti-union ground.*
55. *The Committee further notes from the CEACR comments that: (i) the functioning and the composition of the Tripartite Social Partnership Commission (TSPC) were revised by the amended Labour Code and Resolution No. 258 of 7 October 2013; (ii) the new TSPC met for the first time on 1 May 2014 and its discussions included the mediation system of collective labour disputes in general as well as the existing conflicts in the education and other sectors; (iii) with the support of the ILO project on improved compliance with labour laws in Georgia, a selection process and training of candidates' mediators were carried out; and (iv) the new Labour and Employment Policy Department of the Ministry of Labour operates as a moderator along with the social partners for the regulation of collective labour disputes. Welcoming the initiative taken to institutionalize social dialogue through the establishment of the TSPC, the Committee trusts that the TSPC will prove to be the body where allegations of violation of trade union rights will be examined and solutions found on*

the basis of tripartite discussions. The Committee expects that any outstanding issues in this case will be brought to the attention of the TSPC.

Case No. 2807 (Islamic Republic of Iran)

- 56.** The Committee last examined this case at its March 2014 meeting [see 371st Report, paras 570–579]. On that occasion it expressed the expectation that the legislation and the accompanying regulations be effectively amended without delay so as to bring them into full conformity with the principles of freedom of association and to allow for trade union pluralism at all levels. The Committee also requested the Government to keep it informed of the status of the labour law reform.
- 57.** In a communication dated 18 March 2014 and 26 October 2015, the Government recalled its explanations provided in response to the 368th Report of the Committee, reiterated its request that the ILO and the Committee provide their proposals on the current labour law amendment within the context of technical cooperation and emphasized that these views would positively assist the Government in adapting the rules and regulations according to international labour standards and freedom of association principles.
- 58.** In a communication dated 30 June 2015, the International Trade Union Confederation (ITUC) indicated that in the context of this case, among others, petitioners have raised a number of concerns regarding the failure of the Government to allow workers to form and join unions of their own choosing, in law and in practice. The complainant further indicated that numerous workers were precluded from forming or joining a union of their choosing and those who tried to organize independent unions were subjected to acts of violence, arrest and detention. In this respect the ITUC raises specific examples relative to Case No. 2508. The ITUC adds that it is unaware of any reforms to the labour law addressing the issues raised.
- 59.** *The Committee notes the information provided by the Government and the complainant. It welcomes the Government's indicated readiness to embrace its views in adapting the applicable rules and regulations to freedom of association principles and recalls that in its previous examination of this case it provided its views on the draft Labour Law amendments submitted by the Government, notably with regard to the fact that according to the proposed wording of section 135, the establishment of Islamic labour councils comprising representatives of workers and the management is mandatory in work units with more than 35 employees, but it is not clear how such councils will interact with workers' trade unions active at the same unit. The Committee further noted that several sections of the proposed amendments refer to regulations which would be prepared by the High Labour Council and approved by the Minister of Cooperatives, Labour and Social Welfare or the Council of Ministers, and concluded that it was not thus clear to what extent the Labour Law and the accompanying regulations would guarantee, in law and in practice, the right of workers to come together and form organizations of their own choosing, independently and with structures that permit their members to elect their own officers, draw up and adopt their by-laws, organize their administration and activities and formulate their programmes in the defence of workers' interests without interference from the public authorities. [See 371st Report, paras 575–577]. The Committee observes that the Government has not provided any clarification on the abovementioned points or any information on the subsequent developments of the labour law reform process and requests the Government to keep it informed in this regard.*
- 60.** *The Committee is bound to recall that, as no progress in legislative reform has been reported, the framework established by the Labour Law of 1990 for the formation and activities of workers' and employers' organizations and the relevant regulations remains in force and recalls that it has urged the Government on numerous occasions to amend this*

legal framework as a matter of urgency as it does not allow for trade union pluralism and as such is not in conformity with the principles of freedom of association [see 346th Report, Case No. 2508, para. 1191 and 350th Report, Case No. 2567, para. 1116]. The Committee notes with concern the information provided by the complainant as to the practical consequences of the continued application of this legal framework. In view of the foregoing, the Committee once again urges the Government to take all the necessary measures to effectively and rapidly move forward the labour law reform process with a view to bringing the law and practice into conformity with the principles of freedom of association, in particular to allow for trade union pluralism at enterprise, sector and national levels and invites the Government to avail itself of the technical assistance of the Office in this respect.

Case No. 2952 (Lebanon)

61. The Committee last examined this case concerning denial of trade union rights to public sector employees, obstacles raised to the establishment of independent trade unions in the private sector, and the Government's refusal to promote an inclusive and constructive social dialogue at its June 2015 session [see 375th Report, paras 46–55]. On that occasion, the Committee: (i) requested the Government to keep it informed of progress in the ratification process of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); (ii) expected that the legislative amendments to sections 86, 87, 89 and 105 of the Labour Code and the provisions of the Staff Regulations prohibiting public sector employees from establishing and joining trade union organizations would be carried out in the near future, to bring them into full conformity with the principles of freedom of association; (iii) requested the Government to indicate the specific legislative provisions in force guaranteeing domestic workers their union rights, in particular the right to establish and join organizations of their own choosing; (iv) requested the Government to take the necessary measures to ensure that, in case of union elections requiring external supervision, such supervision would be undertaken by the competent authorities; and (v) requested the Government to specify which objective pre-established criteria enabled it to determine which organization was the most representative, and, if no such criteria existed, to take the necessary measures to define them, in full consultation with the social partners concerned.
62. In a communication dated 5 October 2015, the Government recalls that: (i) the Lebanese Labour Code allows employers and workers in every category of occupation to establish a trade union with its own legal personality and the right to take court action; (ii) article 13 of the Lebanese Constitution establishes the right to freedom of assembly and association and the Associations Act of 3 August 1909 establishes the right to form associations by virtue of a final receipt of the public notification, known as *ilm wa khabar*; (iii) Lebanon's adherence to the Universal Declaration of Human Rights gives any person the right to form or join a trade union to defend their interests; (iv) trade unions are established completely independently of the persons concerned and without any interference or instructions from the authorities, whose role is limited to granting authorization; (v) the authorities endeavour to avoid having multiple trade unions within a particular category, in order to rule out any potentially adverse competition or conflict between them and any attempt to switch one acronym for another with a view to establishing trade unions whose proliferation may be detrimental to the stakeholders; and (vi) the Government has never refused to promote and encourage social dialogue, as it believes in participation and tripartite representation in labour arbitration councils and the administrative boards of several organizations.
63. Moreover, the Government indicates that Convention No. 87 has been transmitted to the National Assembly and that this item is on the agenda of the joint committees, but that the current circumstances, under which Lebanon has no President, mean that the legislative and the executive are, at present, completely paralysed.

- 64.** The Government adds that following the ratification of Convention No. 87, the laws will be amended in accordance with the Convention to allow public officials to form trade unions and exercise their trade union rights, but that in the meantime, these workers engage in trade union activity, even if it goes by a slightly different name. Moreover, the Government states that members of an organization that does not obtain authorization from the Ministry of Labour to establish a trade union can defend their interests through an association or a group on the basis of a final receipt in respect of their public notification, issued by the Ministry of Interior and Municipalities, under the Associations Act of 3 August 1909 (the Association of Public Officials, the Association of Secondary School Teachers and the Association of Teachers, for example, were established in this manner). With regard to the amendment of sections 86, 87, 89 and 105 of the Labour Code, which grant the Government the power to authorize or refuse the establishment of a trade union, to approve the internal rules of trade unions and to dissolve any trade union committee that has failed to take account of the obligations imposed on it, the Government states that there have been no new developments.
- 65.** In respect of domestic and agricultural workers and contract workers in the public sector, the Government indicates that if they have been excluded from the scope of the Labour Code under section 7 thereof, that provision is considered to be virtually repealed. Further, the Government states that the court actions to which section 624(1) of the Obligations and Contracts Code applies come under the jurisdiction of the labour arbitration boards. The Obligations and Contracts Code, therefore, applies to domestic workers just as it does to agricultural workers employed in non-industrial or non-commercial agricultural establishments (contract workers in the public sector can turn to the Council of State and to the labour courts for a portion of their indemnities, depending on their jurisdiction). The Government also indicates that while there are many workers' and employers' unions in agriculture, the Ministry of Labour has so far not received a single application to establish a trade union for Lebanese domestic workers, given that the establishment of an association by foreigners requires the approval of the Council of Ministers and that foreigners do not have the right to establish a union, to stand for election or to vote but may join a trade union, pending amendments to the Labour Code that take into account the comments in this regard.
- 66.** With regard to the most representative trade union, the Government reiterates that Decree No. 2390 of 25 April 1992 (determining the most representative organizations of employers and salaried workers) is currently in force and that no communication from a trade union or federation proving its own representativeness in a given sector has been received. However, the Government states that it has no objection to strengthening consultations with the federations and unions in order to demonstrate the extent to which they are representative.
- 67.** *The Committee notes the information provided by the Government. With regard to the ratification of Convention No. 87, the Committee takes note of the current political situation in Lebanon, requests the Government to keep it informed of the progress of the ratification process and reminds it that, in order to bring national legislation, in particular sections 86, 87, 89 et 105 of the Labour Code and the Staff Regulations, into line with the provisions of the Convention, the Government may avail itself of technical assistance from the Office.*
- 68.** *Noting the Government's indication that the authorities endeavour to avoid having multiple unions within a particular employment category, in order to rule out any potentially adverse competition or conflict between them and any attempt to switch one acronym of a trade union for another, the Committee reminds the Government that: while it is generally to the advantage of workers and employers to avoid the proliferation of competing organizations, a monopoly situation imposed by law is at variance with the principle of*

*free choice of workers' and employers' organizations; that the existence of an organization in a specific occupation should not constitute an obstacle to the establishment of another organization, if the workers so wish; and that a provision authorizing the refusal of an application for registration if another union, already registered, is sufficiently representative of the interests which the union seeking registration proposes to defend, means that, in certain cases, workers may be denied the right to join the organization of their own choosing, contrary to the principles of freedom of association [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 313, 320 and 328.] In this regard, the Committee invites the Government to take the necessary measures to allow workers and employers – if they so wish – to establish more than one organization in the same establishment or occupation.*

- 69.** *Concerning the labour rights of domestic workers, the Committee notes that the Government states that the law establishing the jurisdiction of labour arbitration councils under Decree No. 3572 of 21 October 1980 considers section 7 of the Labour Code, which excludes domestic workers from its scope, as being virtually repealed. The Committee observes that, even if the law grants jurisdiction to the labour arbitration councils to rule on court actions coming under section 624(1) of the Obligations and Contracts Code, which applies to domestic workers, that does not confer on this category of workers the trade union rights guaranteed by the Labour Code. Consequently, the Committee requests the Government to take the necessary measures to ensure the right of domestic workers to establish and join organizations of their choosing. In this regard, the Committee observes that the Government indicates that the establishment of an association by foreigners requires the approval of the Council of Ministers and that a foreign person does not have the right to form a trade union, stand as a candidate for office in a trade union or vote, but may join a union, pending amendments to the Labour Code. The Committee recalls that Article 2 of Convention No. 87 is designed to give expression to the principle of non-discrimination in trade union matters, and the words “without distinction whatsoever” used in this Article mean that freedom of association should be guaranteed without discrimination of any kind based on occupation, sex, colour, race, beliefs, nationality, political opinion, etc., not only to workers in the private sector of the economy, but also to civil servants and public service employees in general [see **Digest**, op. cit., para. 209]. Thus, the Committee considers that the right of workers, without distinction whatsoever, to establish and join organizations of their choosing without prior authorization implies that all persons residing in the country enjoy trade union rights, including the right to vote, without any discrimination based on nationality. Recalling also that legislation should be made flexible so as to permit the organizations to elect their leaders freely and without hindrance, and to permit foreign workers access to trade union posts, at least after a reasonable period of residence in the host country [see **Digest**, op. cit., para. 420], the Committee requests the Government to take the necessary measures to allow foreign workers to benefit from trade union rights on the same basis as Lebanese nationals and to keep it informed of any developments in this regard.*

Case No. 3031 (Panama)

- 70.** The Committee last examined this case at its March 2014 meeting. On that occasion the Committee trusted that the necessary steps would be taken to draw up specific draft provisions to bring the Public Administration Careers Act into full conformity with the principles of freedom of association and collective bargaining laid down in the relevant Conventions so as to guarantee public servants who do not work in the administration of the State adequate protection against anti-union discrimination and interference, as well as the right to collective bargaining, and to ensure that the complainant (the National Union of Education Workers – SINTE) may obtain legal personality and be registered as a trade union [see 371st Report, paras 627–639].

71. *The Committee notes with satisfaction that, in its communications of 17 and 18 May 2016, the Government informs that, pursuant to Resolution No. 2 of 15 April 2016, the complainant was registered and granted legal personality. The Committee also notes with interest that the Government further informs about the preparation of a draft bill on collective relations in the public sector to address the observations of the ILO supervisory bodies in relation to the application of Conventions Nos 87 and 98, and observes that these legislative matters are being followed up by the Committee of Experts on the Application of Conventions and Recommendations.*

Case No. 2096 (Pakistan)

72. The Committee last examined this case at its March 2011 meeting [see 359th Report, paras 117–121]. This longstanding case concerns restrictions to the trade union and collective bargaining rights of banking sector employees pursuant to the enactment of Section 27-B of the Banking Companies (Amendment) Act, 1997 (Act No. XIV of 1997). Section 27-B entitled “disruptive union activities” prohibits in its first subsection acts including being an officer or member of a trade union in a banking company without being an employee thereof; it further provides in its second subsection that any person violating any of the provisions of subsection (1) shall be guilty of an offence punishable with imprisonment that may extend to three years or with fine or with both. Since its first examination of the case in November 2001 [see 326th Report, paras 419–431], the Committee has repeatedly urged the Government to amend Section 27-B so as to ensure that trade unions can carry out their activities in the banking sector, including the right to elect their representatives in full freedom and the right to collective bargaining. With regard to the alleged anti-union dismissals in 1999 of over 500 trade union leaders and members in the banking sector, the Committee requested the Government on several occasions to transmit a copy of the report of the inquiry which had found that they were not dismissed for anti-union motives [see 359th Report, para. 121; 357th Report, para. 53; 355th Report, para. 105 and 353rd Report, para. 169].
73. The Government provided follow-up information in communications dated 7 June 2011 and 31 March and 20 August 2015. In its 2011 communication, the Government indicated that petitions regarding the case are pending in the courts of law of Pakistan and the latest position in this regard would be provided as soon as the decision is handed down. In its 2015 communications the Government stated that Section 27-B of the Banking Companies Ordinance is not in contravention of the provisions of Conventions Nos 87 and 98. In particular, the Government reiterates its initial view in the examination of this case that the prohibition on carrying on trade union activities during office hours and the barring of persons who are not employees of the Banking Company from being members of the trade union does not contravene the provisions of the Conventions. According to the Government, this occupational requirement just restrains entry of irrelevant workers as office-bearers of the trade union operative in a banking company.
74. The complainant, United Bank Limited (UBL) Employees Union transmitted numerous communications since the last examination of the case. In its communication dated 30 May 2011, the complainant alleges that on 6 October 2010, Mr Nasir Qayyum, a junior bank officer in Faisalabad was dismissed without any notice due to trade union activities in the UBL. The complainant further indicates that no trade union leaders have yet been reinstated due to the length of the judicial process in Pakistan. With regard to the case of dismissal of the former president of the union, Mr Maqsood Ahmad Farooqui, who died on 7 December 2009 while his case was pending before the Labour Court, Multan, the complainant indicates that on 26 January 2011, the Punjab Labour Appellate Tribunal in Lahore decided in his favour, however, the UBL Head Office Karachi had not implemented the judgment till date. In a communication dated 24 August 2012, the complainant alleges that Mr Abdulwahab Bloch of UBL Bomby Bazar, Karachi, has been dismissed due to trade union activities.

Attached to its 20 January 2014 communication, the complainant transmits a copy of a document with the letterheads of the State Bank of Pakistan, Banking Policy and Regulations Department. This document, dated 20 September 2011 and entitled “Case No. 2096 pending before the Committee of Freedom of Association”, is addressed to the Ministry of Finance. It is indicated therein that the demand of deletion of Section 27-B is to seek permission to carry weapons in banks, misuse bank’s resources, abuse bank officials and appoint outsiders in trade unions of the banks. The document states that Section 27-B is not inconsistent with the labour/trade union laws of the country and further indicates that the State Bank of Pakistan has been receiving frequent requests for repeal/amendment of Section 27-B from different trade unions of the banking industry in the past. The document emphasizes the continuing stance of the State Bank which had been conveyed to the Government on many occasions to the effect that it is necessary to retain the said Section in its present form. The complainant emphasizes a general lack of progress in the implementation of the previous recommendation of the Committee with regard to the repealing of Section 27-B and judicial examination of the dismissal cases of trade unionists in the banking sector since its adoption.

75. *The Committee notes the information provided by the Government with great concern, as 16 years after the opening of this case, and after having affirmed on several occasions that a legislative process that aimed at the repealing of Section 27-B was engaged and would soon reach conclusion, including a bill for its repeal being submitted to the Senate in 2009, [see 355th Report, para. 104; 357th Report, para. 52 and 359th Report, para. 119], the Government now denies that any legislative issues exist. While the Committee observes that Section 27-B addresses certain legitimate concerns by prohibiting acts such as carrying weapons into work premises without authorization and subjecting bank officials to physical harassment or abuse, it has to once again draw the attention of the Government to the imposition of an occupational requirement on all trade union members and officers is incompatible with the principles of freedom of association. In particular, the Committee is bound to recall once again that the requirement of membership of an occupation or establishment as a condition of eligibility for union office is not consistent with the right of workers to elect their representatives in full freedom. Such a requirement is also in contradiction with the workers’ organizations freedom of action, and even encourages acts of interference by employers, as in such cases, the laying off of a worker who is a trade union official can as well make her/him forfeit her/his position as a trade union official [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 407 and 408]. The allegedly anti-union dismissal of more than 500 banking sector trade union members and leaders after the adoption of Section 27-B, the judicial fate of whose complaints remains inconclusive to date, and the fact that the Government has still not provided the reports from the inquiries carried out in this regard are cause for deep concern. In view of the foregoing, the Committee firmly expects the Government to promptly take all the necessary measures to ensure that this legislation is brought into conformity with the principles of freedom of association, by at least making it more flexible through admitting, as candidates, persons who have previously been employed in the banking company concerned and by exempting, from the occupational requirement, a reasonable proportion of the officers of an organization [see **Digest**, op. cit., para. 409]. In this regard, the Committee notes that the 2012 Industrial Relations Act (Act No. X of 2012), which is applicable to all persons employed in any establishment or industry in the Islamabad Capital Territory or carrying on business in more than one province provides in its Article 8(d) that 25 per cent of trade union officers are exempted from the occupational requirement. The Committee encourages the Government to bring Section 27-B of the Banking Companies (Amendment) Act, 1997 in line with this legislation, so that banking sector workers employed by companies operating within a single province can benefit from an equal right to freely elect their representatives.*

- 76.** *The Committee further regrets that the Government has not provided any response to the indications of the complainant on the total absence of progress in the resolution of the issues raised in this case. In particular, the Committee notes with great concern that the banking sector workers dismissed allegedly on anti-union grounds following the enactment of Section 27-B are now aging and ailing and have yet to have a final judgment on the execution of previous orders. The Committee is bound to note that the cases of these dismissed workers is a striking example of the principle “justice delayed is justice denied” given that many of them have been pending for over 15 years. It firmly urges the Government to take all the necessary measures to ensure that all pending cases are resolved without delay and to provide full information on the judgments rendered. The Committee further regrets that the Government has not provided any reply to the allegations of anti-union dismissals of Mr Assad Shahbaz Bhatti, Mr Arshad Mehmood, Mr Zulfiqar Awan and Mr Mazhar Iqbal Sial submitted by the complainant in 2010 and once again urges the Government to provide its observations in this regard.*
- 77.** *With regard to the case of the deceased former president of the union, Mr Maqsood Ahmad Farooqui, in view of the information provided by the complainant that on 26 January 2011 the Punjab Labour Appellate Tribunal in Lahore decided in his favour, the Committee urges the Government, in line with its previous recommendation [see 359th Report, para. 121], to ensure that his heirs receive the relevant compensation and to keep it informed of the measures taken.*
- 78.** *With regard to the communication shared by the complainant – letter of the State Bank of Pakistan, Banking Policy and Regulations Department to the Ministry of Finance – the Committee expresses its concern at the discriminatory nature of that communication and invites the Government to bring the Bank and the complainant union together with a view to creating a more harmonious labour relations climate and ensure respect for freedom of association in the banking sector.*

Case No. 3084 (Turkey)

- 79.** The Committee last examined this case at its March 2015 meeting [see 374th Report, paras 855–873], when it noted with regret that a strike had been once again suspended and compulsory arbitration imposed in the glass industry. On that occasion the Committee requested the Government to ensure in the future that such restrictions may only be imposed in cases of essential services in the strict sense of the term, public servants exercising authority in the name of the State or an acute national crisis. It further requested the Government to take the necessary measures for the amendment of section 63 of Act No. 6356 so as to ensure that the final decision on whether to suspend a strike rests with an independent and impartial body and requested the Government to keep it informed of the progress made in this respect.
- 80.** In a communication dated 17 June 2015, the Government submitted follow-up information indicating that the complainant union, Kristal-İş, filed a claim with the Tenth Department of the Council of State requesting the cancellation of the decision of the Council of Ministers to postpone the strike and the stopping of its execution. This request was rejected by the decision dated 16 July 2014, where the Council of State concluded that the decision of postponement of the strike in the enterprises where 90 per cent of glass production was realized did not call for stopping execution. The Government further provides general indications about the rules governing the Council of Ministers’ decisions to suspend strikes and the recourses available against those decisions and indicates that since suspension is an administrative process, parties have the right to recourse to judicial review pursuant to article 125 of the Constitution.

81. *The Committee notes the information provided by the Government. It further notes that in its 2015 observation concerning the application of Convention No. 87 in Turkey, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) refers to subsequent information transmitted by the Government indicating that on 2 July 2015 the Constitutional Court of Turkey ruled that the decision of the Council of State to postpone the strike called for by the complainant was in breach of the trade union rights guaranteed by article 51 of the Constitution. The Committee notes with interest this information and welcomes the fact that, as the Government has indicated in its communication and as the ruling of the Constitutional Court demonstrates, the Council of Ministers' decisions to suspend strikes are susceptible of judicial review. The Committee expects that, in the future, the Council of Ministers, when it comes to decide on the application of section 63 of Act No. 6356, will do so with full consideration given to trade union rights guaranteed by article 51 of the Constitution, and to the principle that suspension of strikes and imposition of compulsory arbitration can only apply to cases of essential services in the strict sense of the term, public servants exercising authority in the name of the State or an acute national crisis.*

* * *

82. Finally, the Committee requests the governments and/or complainants concerned to keep it informed of any developments relating to the following cases.

Case	Last examination on the merits	Last follow-up examination
1787 (Colombia)	March 2010	June 2014
1865 (Republic of Korea)	March 2009	March 2014
2400 (Peru)	November 2007	November 2015
2512 (India)	November 2007	November 2015
2528 (Philippines)	June 2012	November 2015
2637 (Malaysia)	March 2009	November 2015
2652 (Philippines)	November 2003	November 2015
2684 (Ecuador)	June 2014	–
2715 (Democratic Republic of the Congo)	June 2014	–
2743 (Argentina)	November 2015	–
2750 (France)	November 2011	March 2016
2755 (Ecuador)	June 2010	March 2011
2758 (Russian Federation)	November 2012	June 2015
2780 (Ireland)	March 2012	–
2786 (Dominican Republic)	November 2015	–
2797 (Democratic Republic of the Congo)	March 2014	–
2815 (Philippines)	November 2012	November 2015
2837 (Argentina)	March 2012	November 2015
2844 (Japan)	June 2012	November 2015
2850 (Malaysia)	March 2012	June 2015
2872 (Guatemala)	November 2011	–
2892 (Turkey)	March 2014	November 2015
2896 (El Salvador)	June 2015	–
2925 (Democratic Republic of the Congo)	March 2014	–

Case	Last examination on the merits	Last follow-up examination
2934 (Peru)	November 2012	–
2966 (Peru)	November 2013	November 2015
2976 (Turkey)	June 2013	March 2016
2977 (Jordan)	March 2013	November 2015
2987 (Argentina)	March 2016	–
2988 (Qatar)	March 2014	November 2015
2998 (Peru)	March 2015	–
3011 (Turkey)	June 2014	November 2015
3022 (Thailand)	June 2014	–
3024 (Morocco)	March 2015	March 2016
3041 (Cameroon)	November 2014	–
3046 (Argentina)	November 2015	–
3051 (Japan)	November 2015	–
3055 (Panama)	November 2015	–
3072 (Portugal)	November 2015	–
3075 (Argentina)	November 2015	–
3083 (Argentina)	November 2015	–
3087 (Colombia)	November 2015	–
3101 (Paraguay)	November 2015	–
3102 (Chile)	November 2015	–
3105 (Togo)	June 2015	–

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

84. In addition, the Committee has received information concerning the follow-up of Cases Nos 1962 (Colombia), 2086 (Paraguay), 2153 (Algeria), 2341 (Guatemala), 2362 (Colombia), 2434 (Colombia), 2488 (Philippines), 2540 (Guatemala), 2566 (Islamic Republic of Iran), 2583 (Colombia), 2595 (Colombia), 2603 (Argentina), 2654 (Canada), 2656 (Brazil), 2667 (Peru), 2679 (Mexico), 2699 (Uruguay), 2706 (Panama), 2708 (Guatemala), 2710 (Colombia), 2716 (Philippines), 2719 (Colombia), 2725 (Argentina), 2745 (Philippines), 2746 (Costa Rica), 2751 (Panama), 2752 (Montenegro), 2756 (Mali), 2763 (Bolivarian Republic of Venezuela), 2768 (Guatemala), 2788 (Argentina), 2789 (Turkey), 2793 (Colombia), 2816 (Peru), 2827 (Bolivarian Republic of Venezuela), 2833 (Peru), 2840 (Guatemala), 2852 (Colombia), 2854 (Peru), 2856 (Peru), 2860 (Sri Lanka), 2871 (El Salvador), 2883 (Peru), 2895 (Colombia), 2900 (Peru), 2915 (Peru), 2916 (Nicaragua), 2917 (Bolivarian Republic of Venezuela), 2924 (Colombia), 2929 (Costa Rica), 2937 (Paraguay), 2944 (Algeria), 2946 (Colombia), 2953 (Italy), 2954 (Colombia), 2960 (Colombia), 2962 (India), 2973 (Mexico), 2979 (Argentina), 2980 (El Salvador), 2985 (El Salvador), 2991 (India), 2992 (Costa Rica), 2995 (Colombia), 2998 (Peru), 2999 (Peru), 3002 (Plurinational State of Bolivia), 3006 (Bolivarian Republic of Venezuela), 3013 (El Salvador), 3020 (Colombia), 3021 (Turkey), 3026 (Peru), 3030 (Mali), 3033 (Peru), 3036 (Bolivarian Republic of Venezuela), 3040 (Guatemala), 3043 (Peru), 3054 (El Salvador), 3057 (Canada), 3058 (Djibouti), 3063 (Colombia), 3064 (Cambodia), 3070 (Benin), 3077 (Honduras), 3085 (Algeria) and 3096 (Peru), which it will examine at its next meeting.

CASE NO. 3155

DEFINITIVE REPORT

**Complaint against the Government of Bosnia and Herzegovina
presented by
the Confederation of Independent Trade Unions of Bosnia and Herzegovina
(SSSBIH)**

Allegations: The complainant organization alleges violation of social dialogue by the Federation of Bosnia and Herzegovina Government and marginalization of trade unions, including the complainant, in the negotiation and adoption process of the new Labour Act

- 85.** The complaint is contained in a communication from the Confederation of Independent Trade Unions of Bosnia and Herzegovina (SSSBIH) dated 18 August 2015.
- 86.** The Government sent its observations in a communication dated 1 December 2015.
- 87.** Bosnia and Herzegovina 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 Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

- 88.** In its communication dated 18 August 2015, the complainant alleges violation of social dialogue and marginalization of trade unions by the Federation of Bosnia and Herzegovina (FBiH) Government in the negotiation and adoption process of the new Labour Act, its intervention in collective bargaining, as well as decreased protection of labour rights as a result of the adoption of the Labour Act. In particular, the complainant indicates that: (i) the preparatory activities related to the drafting of the new Labour Act intensively began in mid-April 2015, when representatives of the Ministry of Labour and Social Policy (MLSP), trade unions and employers defined the initial version of the Labour Act based on which further negotiations were to be conducted and which was submitted to the negotiating parties for comments and suggestions; (ii) the complainant submitted its recommendations to the competent ministry within the agreed timeframe; (iii) on two occasions in June 2015, the Government, in agreement with the International Monetary Fund and the World Bank, unilaterally amended individual provisions of the draft Labour Act and delivered the new wording in the form of a working document to the complainant; (iv) on 1 July 2015, during a session of the Economic and Social Council for the territory of the FBiH (ESC) it was clarified that the latest wording of the draft Labour Act as delivered to the social partners by the competent ministry on 24 June 2015 would be the basis for further negotiation; (v) it was agreed that the complete working document should be read at the first hearing before the social partners discussed provisions on which there was no agreement; (vi) the discussion on the working document began on 2 July 2015 while the Government and representatives of employers exerted pressure on trade union representatives to accept negotiating on a daily basis from 4 p.m. To 8 p.m. So that the negotiations could be completed speedily; (vii) although trade union representatives cautioned that the draft Labour Act was a very sensitive matter, the Government responded that the law had to be

negotiated “in whatever form” by the end of July 2015; (viii) due to other obligations towards its members, the SSSBIH delegation to the ESC could not and did not succumb to the pressure exerted, after which the Government and the representatives of employers scheduled some sessions and Colleges of the ESC without prior consultation with trade unions, in violation of the ESC Rules of Procedure and the Agreement on the operation of the ESC (for instance, a College session was scheduled for 16 July 2015 and despite the ESC speaker having been notified in writing that the Chair of the SSSBIH delegation would not be able to attend, the session was held without the presence of trade union representatives, however, due to the lack of a quorum, the College session was rescheduled); (ix) after inquiries made by the complainant at the continuation of the ESC session on 15 July 2015, it was clarified that the Government would adopt the document as the draft Labour Act, which suggests that it would be in the form of a proposal and as such would be forwarded to the parliamentary procedure for adoption; (x) on 21 July 2015, the directors of public institutions, companies and institutions, which were, in majority, owned by the State submitted proposals and suggestions to the draft Labour Act, which were not subject to any discussion at the ESC; and (xi) the Government, at its session of 23 July 2015, changed some provisions that had previously been agreed upon in the ESC and unanimously adopted the proposed Labour Act without the consent of the ESC to its wording. The complainant thus alleges that the Government breached Articles 7 and 8 of Convention No. 154 and that trade unions were practically excluded from the social dialogue, even though a discussion between the three social partners was held on 15 July 2015; however, by that date not even the first reading of all legal provisions was completed.

89. The complainant states that as a result of the unacceptable manner in which the Labour Act was adopted by the FBiH Government, on 30 July 2015 it organized protests in front of the Parliament building which, according to the assessment of trade unions, assembled around 12,000 workers. The complainant further specifies that with the aim of preventing the adoption of the proposed Labour Act in the FBiH Parliament House of Peoples, it invited representatives of political parties to sign the Joint Declaration and condemn the Government decision to submit the Labour Act to parliamentary procedure since it was not agreed upon by the ESC. The Joint Declaration also expressed the need to draft a series of other relevant laws prior to the adoption of the Labour Act, such as Act on Amendments to the Act on Strikes. According to the complainant, the appeals of the gathered workers who asked for additional time to harmonize the legal provisions were disregarded and the House of Peoples adopted the proposed Labour Act in a tight majority and in violation of the Parliament Rules of Procedure and the constitutional rights of the delegates (the proposed Labour Act was on the agenda two days before the House of Peoples session, and since section 177(3) of the House of Peoples Rules of Procedure provides that the amendments are to be submitted in the period which cannot be shorter than three days from the scheduled House of Peoples session, the House of Peoples delegates were prevented from submitting amendments to the proposed Labour Act). The complainant further indicates that on the following day, in an urgent procedure, the FBiH Parliament House of Representatives, in a tight majority, adopted the proposed Labour Act, in violation of the House of Representatives Rules of Procedure (according to section 192(2) the proponent has to clarify in writing the reasons for adoption of an act in an urgent procedure, which was not done in this case, and in line with section 191(2) urgent procedure can only be used if the adoption in regular procedure could have detrimental consequences for the Federation). The complainant also claims that at the session of the House of Representatives, the FBiH Government rejected all 45 amendments to the proposed Labour Act just for the reason that in case of the acceptance of any of them, the act would be adopted in two different wordings in the House of Peoples and the House of Representatives and would have to be harmonized, which would be an additional “waste” of time.

90. In addition, the complainant alleges that the Government intervened in collective bargaining as the Prime Minister (Chair of the Government FBiH delegation in the ESC)

stated that the amendments of the representatives of two smaller political parties in the House of Representatives would be incorporated in the collective agreements in exchange for their support for the adoption of the Labour Act, by which a simple majority was secured. According to the complainant, this intervention violates Conventions Nos 87 and 98 and causes a prejudice towards the outcome of collective bargaining, which has not even begun, and is a total disregarding and marginalization of the role of trade unions in the process, given that the Government is not a party to the General Collective Agreement.

- 91.** Furthermore, the complainant insists that the new Labour Act reduces certain rights and protection of workers and jeopardizes free collective bargaining. The complainant provides a summary of 26 problematic issues in an annex to the complaint, suggesting in relation to freedom of association that:
- collective agreements for an indefinite period of time cannot be concluded while fixed term collective agreements may be concluded for a maximum period of three years (section 140);
 - employers decide on the representativeness of trade unions with the employer (section 129(1));
 - public companies may not conclude collective agreements (section 138);
 - applicable collective agreements have to be harmonized with the Labour Act within 120 days from its coming into force otherwise they cease to apply (section 182).

For this reason the complainant addressed a letter to the ITUC requesting assistance and explaining that the SSSBIH was excluded from negotiations of the Act and that it became obvious that there would be no social dialogue in relation to the Labour Act. The complainant indicates that the ITUC Secretary-General addressed a communication to the Prime Minister of the FBiH in which she expressed her deep concerns over the marginalization of trade unions in the process of negotiation, and called on the Government to bring the policy and legislative process back to a responsible and efficient social dialogue on the basis of full respect for all social partners.

B. The Government's reply

- 92.** In a communication dated 1 December 2015, the Government of Bosnia and Herzegovina provides the response from the FBiH Government which contests the statements made by the complainant on neglecting it as a social partner and denies any violation of Convention No. 154 in the elaboration process of the new Labour Act. It claims that the workers' representatives were involved in all stages preceding the drafting of specific versions of the Labour Act in the period until its final adoption, both through their participation in working groups and in the work of the ESC, which constitutes an institutionalized form of social dialogue. The Government also indicates that it did not interfere in the social dialogue between the social partners but encouraged their cooperation in order to reach agreement through consultations based on mutual respect and affirms that it will continue to promote and give full support to the freedom of association of workers and employers and to conducting social dialogue.
- 93.** With regard to the elaboration and adoption process of the Labour Act, the Government indicates that: (i) the drafting process of the new Labour Act started in 2008–09, and in November 2012, after a broad and comprehensive public debate which lasted 60 days, the Government prepared the Labour Act proposal and communicated it to the ESC for reconsideration and to allow the social partners to agree on certain controversial points; (ii) a meeting of delegations of the Government, the Association of Employers and the

SSSBIH was held, during which the complainant demanded to first address the text of section 182 of the proposed Act, which the complainant considered unacceptable, and which regulates the harmonization of collective agreements with the provisions of the new Labour Act and the cessation of their application if it is not done within the time limits established by the Act; (iii) consultations were held with the Prime Minister of the FBiH with the aim of finding a compromise solution for draft section 182 and a new text was proposed to the social partners who requested to hold additional consultations on the proposed text within their bodies but failed to provide any opinion on it despite written requests from the MLSP; (iv) all further negotiations and work on drafting a final text of the Labour Act were interrupted and the proposed Act was not submitted to Parliament; (v) although workers' representatives were involved in all stages of the negotiating and drafting process they made public statements alleging that the new Act would reduce workers' rights, thus creating an atmosphere of distrust and disregard; (vi) in April 2015, the newly appointed Government relaunched negotiations with the social partners on the previously established draft Labour Act, which was considered as a key step on the path to reforms; (vii) an active social dialogue was agreed upon between the representatives of the social partners and the ESC met four times in July 2015 when sections of the new Labour Act were individually analysed; (viii) at a meeting on 15 July 2015, the trade unions' delegation questioned the form of the proposed legal solution, even though the document was submitted to it several times with clear indications that the Act was in the form of a draft; (ix) in addition to the public debate conducted in 2012 with the participation of representatives of trade unions, employers, chambers of commerce, banks, public institutions, non-government organizations (NGOs) and inspection authorities, the examination of the text at the sessions of the ESC is considered as a form of public debate; and (x) during the sessions of the ESC, the complainant repeatedly stated that it did not provide support for adopting the new Labour Act, it led a media campaign to misinform the public on matters relating to the basic principles of the Labour Act in order to prevent its adoption, and continued to oppose section 182 of the new Act.

94. The Government further explains that since 2012, the social partners were given enough time, methods and mechanisms for harmonization of contentious provisions and the draft Labour Act was thus put on its agenda in July 2015 in order to establish its final version and submit it to Parliament. The Government points out that while preparing the Act, the relevant ministry as a drafting authority and the Government as the Act proposer had to take account of the objectivity of the requests made by trade unions, employers and other stakeholders of the public and private sectors, horizontal alignment with other regulations, the law system in force, commitments in international instruments as well as the obligations arising from European Union legislation. All proposed initiatives were considered and the drafting authority ultimately decided what was acceptable and what would be incorporated into the text. Denying the allegation that it wanted to negotiate the Act by the end of July 2015 whatever the outcome, the Government suggests that the need to implement labour market reforms in line with the Reform Agenda 2015–2018 and the Work Programme of the Government 2015–18, impelled it to submit the new Labour Act to Parliament. The Government also contests the allegation that it did not address the demands of workers for additional time for harmonization, as after the establishment of the Labour Act proposal on 23 July 2015, another meeting was held with workers' representatives during which the complainant was offered an additional seven days for negotiations and agreement but this offer was not accepted by the workers' representatives. Concerning the allegation relating to the irregularities in the adoption process of the Labour Act, the Government states that the Act was considered and adopted in both Parliament Houses on 30 and 31 July 2015 and that the allegations are irrelevant as the process of adopting laws cannot be the subject of discussion before the Committee.

95. With regard to the allegation of interference in collective bargaining by promising to members of two small political parties in FBiH Parliament to include their proposals in

collective agreements in exchange for their support for the draft, the Government claims that this allegation is ungrounded since the conclusion of collective agreements is exclusively subject to bipartite social dialogue between workers' and employers' representatives and the role of the Government is restricted to the provision of the necessary legal framework for the negotiating process and improvement of voluntary collective bargaining.

96. Concerning the allegation that the provisions of the new Labour Act reduce the rights of workers, the Government states that these allegations are unfounded and inaccurate and provides a list of 18 areas in which the Labour Act improves the position of workers, including in relation to freedom of association and collective bargaining:

- The requirement to obtain the consent of the competent Ministry of Labour for the protection of a trade union representative is applicable not only against dismissal but also against unfavourable transfers.
- The Act regulates the representativeness of workers' and employers' organizations, the criteria and procedure to determine representativeness.
- The Act defines collective bargaining participants, the procedure for concluding collective agreements, form, duration and content of collective agreements.

The Government further clarifies that while under the previous Labour Act collective agreements were generally concluded for indefinite duration without conditions prescribed for their termination and amendment (termination of a collective agreement without the consent of the social partners was thus prevented), under the new Act, collective agreements would be concluded for a definite duration and would be harmonized with the provisions of the Act. The Government emphasizes that the amendment of section 182 was required by broader economic interests, budget burdened due to the multi-million lawsuits of workers, as well as numerous requests and initiatives expressed both during the public debate and addressed to the relevant Ministry individually. According to the Government, the complainant's refusal to accept the need for concluding collective agreements for a definite duration and their harmonization with the Labour Act showed that the complainant was refusing any negotiations and sought to maintain the existing situation, which was classified as unsustainable according to the Government's assessment.

C. The Committee's conclusions

97. *The Committee notes that this case concerns allegations of violation of social dialogue and marginalization of trade unions by the F BiH Government in the negotiation and adoption process of the new Labour Act, Government intervention in collective bargaining, as well as decreased protection of labour rights as a result of the adoption of the new Labour Act.*

98. *In relation to the allegation of violation of social dialogue and marginalization of trade unions, the Committee notes the following relevant information as provided by the complainant: (i) the preparatory activities relating to the drafting of the new Labour Act intensively began in April 2015 when representatives of the MLSP, trade unions and employers defined the initial version of the Labour Act based on which further negotiation was to take place and on which the complainant submitted comments and recommendations to the competent ministry; (ii) on two occasions in June 2015, the F BiH Government, in agreement with the International Monetary Fund and the World Bank, unilaterally modified individual provisions of the draft Labour Act and delivered the new wording in a form of a working document to the complainant; (iii) the discussion on the working document began on 2 July 2015 while the Government and the representatives of employers exerted pressure on trade union representatives to accept negotiating on a daily basis from*

4 p.m. to 8 p.m. so that the negotiations could be completed speedily and even though the trade unions cautioned that the Labour Act was a very sensitive matter, the Government responded that the law had to be negotiated “in whatever form” by the end of July 2015; (iv) the complainant did not succumb to the pressure exerted, after which the Government and the representatives of employers scheduled some sessions and Colleges of the ESC without prior consultation with trade unions, in violation of the ESC Rules of Procedure and the Agreement on the Operation of ESC; (v) following the complainant’s enquiries at the continuation of the ESC session on 15 July 2015, it was clarified that the Government would adopt the document as the draft Labour Act, which suggests that it would be in the form of a proposal and as such would be forwarded to the parliamentary procedure for adoption; (vi) proposals and suggestions submitted by public institutions, companies and institutions, which were in majority owned by the State were not discussed in the ESC; (vii) at its session of 23 July 2015, the Government changed some provisions of the text that had previously been agreed upon in the ESC and unanimously adopted the proposed Labour Act without the consent of the ESC to its wording; and (viii) the trade unions were thus practically excluded from the social dialogue, even though a discussion between the three social partners was held on 15 July 2015, however, by that date not even the first reading of all legal provisions was completed.

99. The Committee further notes that the complainant indicates that as a result of the unacceptable manner in which the Labour Act was adopted by the FBiH Government, it organized protests in front of the FBiH Parliament building, which assembled around 12,000 workers. The Committee notes the complainant’s statement that in order to prevent the adoption of the proposed Labour Act in the House of Peoples, it invited political parties to sign the Joint Declaration and condemn the Government decision to submit the Labour Act to the parliamentary procedure since it was not agreed upon in the ESC. The Committee also observes the complainant’s claim that despite the appeal of the gathered workers for additional time to harmonize legal provisions, both the House of Peoples and the House of Representatives adopted the proposed Labour Act in a tight majority and in violation of the House of Peoples and the House of Representatives Rules of Procedure. The Committee further notes that the complainant alleges that at the session of the House of Representatives, the Government rejected all 45 amendments to the proposed Labour Act in order to avoid that the Act would be adopted in two different wordings in the House of Peoples and the House of Representatives and would have to be harmonized, which would be an additional “waste” of time.
100. The Committee notes that the Government contests the allegations of violation of social dialogue and claims that the workers’ representatives were involved in all stages preceding the drafting of specific versions of the Labour Act in the period until its final adoption, both through their participation in working groups and in the work of the ESC. The Committee notes the Government’s indication that: (i) the drafting process of the new Labour Act started in 2008-09, and in 2012, following a comprehensive public debate, the Labour Act Proposal was communicated to the ESC for reconsideration and to allow the social partners to agree on certain controversial points; (ii) the complainant demanded to first address the text of section 182 which it considered unacceptable and which regulates the harmonization of collective agreements with the provisions of the new Labour Act and the cessation of their application if it is not done within the time limits established by the Act; (iii) after consultations with the Prime Minister, a new text of section 182 was proposed to the social partners who requested to hold additional consultations on the wording within their bodies but failed to provide any opinion on the proposal despite written requests from the MLSP and as a result, all negotiations and work on drafting a final text of the Labour Act were interrupted and the proposed Act was not submitted to Parliament; (iv) in April 2015, the newly appointed FBiH Government relaunched negotiations with the social partners on the previously established draft Labour Act and an active social dialogue was agreed upon; (v) the ESC met four times in July 2015 when sections of the new Labour Act

were analysed; (vi) at a meeting on 15 July 2015, the trade unions delegation questioned the form of the proposed legal solution even though the draft Labour Act was submitted to it several times with clear indications that the Act was submitted as a draft; (vii) in addition to the public debate conducted in 2012 with the participation of representatives of trade unions, employers, chambers of commerce, banks, public institutions, NGOs and inspection authorities, the examination of the text at the sessions of the ESC is considered as a form of public debate; and (viii) during the sessions of the ESC, the complainant repeatedly stated that it did not support the adoption of the new Labour Act and led a media campaign to misinform the public on matters relating to the basic principles of the Labour Act in order to prevent its adoption. According to the Government, the complainant continued to oppose section 182 of the new Act, thus refusing to negotiate.

- 101.** *The Committee further notes the Government's opinion that since 2012, the social partners were given enough time, methods and mechanisms for harmonization of contentious provisions and that the draft Labour Act was thus put on its agenda in July 2015 in order to establish its final version and submit it to the FBiH Parliament, taking into account the objectivity of the requests made by trade unions, employers and other stakeholders of the public and private sectors, as well as other national regulations, laws and international commitments. The Committee notes that, denying the allegation that it wanted to negotiate the Act by the end of July 2015 whatever the outcome, the Government suggests that the need to implement labour market reforms in line with the Reform Agenda 2015–18 and the Work Programme of the Government 2015–18, impelled it to submit the new Labour Act to the FBiH Parliament. The Committee observes that the Government also contests the allegation that it did not address the demands of workers for additional time for harmonization, as after the establishment of the Labour Act Proposal on 23 July 2015, another meeting was held with workers' representatives during which the complainant was offered an additional seven days for negotiations and agreement but this offer was not accepted by the workers' representatives. Concerning the allegation relating to the irregularities in the adoption process of the Labour Act, the Committee notes that the Government states that the Act was considered and adopted in both Parliament Houses on 30 and 31 July 2015 and that the allegations are irrelevant as the process of adopting laws cannot be the subject of discussion before the Committee.*
- 102.** *With respect to the allegation of violation of social dialogue and marginalization of trade unions, the Committee welcomes the detailed information provided by both the complainant and the Government on the negotiation, drafting and adoption process of the new Labour Act. In this regard, the Committee notes that the initial debate on the draft Labour Act began in 2008-09 and that in 2012 a public debate was conducted with the participation of representatives of trade unions, employers, chambers of commerce, banks, public institutions, NGOs and inspection authorities. The Committee further notes that the debate was interrupted in 2012 due to the need to further harmonize contested provisions, after which more intensive negotiations between the social partners within the ESC resumed in July 2015 during which the social partners, including the complainant, were consulted and offered an opportunity to discuss and harmonize the text of the draft Labour Act on several occasions. Despite the opposition of the complainant, the Labour Act was adopted by both Parliament Houses at the end of July 2015. The Committee observes that there is a disagreement between the complainant and the Government on the level of inclusion of trade union representatives in the social dialogue preceding the adoption of the Labour Act. While the complainant argues that trade unions were marginalized and practically excluded from the social dialogue due to the pressure exerted upon them by the Government and representatives of employers and the Government's unilateral modifications to the wording of the draft Labour Act which had been previously agreed upon in the ESC, the Government claims that workers' representatives were involved in all stages of the negotiation and drafting process until the final adoption of the Labour Act,*

both through their participation in working groups and in the work of the ESC and were given enough time, methods and mechanisms for harmonization of contentious provisions.

- 103.** *The Committee also notes that the complainant insists on the hasty nature of the negotiations but that the Government explains that the need to implement labour market reforms in line with the national work and reform programme impelled it to submit the new Labour Act to Parliament. While noting with interest the indications that public debate and social dialogue were established in relation to the draft Labour Act and that trade unions, including the complainant were given the opportunity to harmonize the legal provisions, the Committee notes with concern the specific allegations made by the complainant according to which the Government unilaterally modified the text of the draft Labour Act, exerted pressure on the representatives of trade unions to negotiate on a daily basis from 4 p.m. to 8 p.m. in order to speed up the negotiations, scheduled some Colleges and sessions of the ESC without prior consultation of representatives of trade unions, modified individual provisions of the draft Labour Act which had been previously agreed upon by the social partners and submitted the draft Labour Act for adoption in a wording that had not been approved by the ESC.*
- 104.** *The Committee has considered it useful to refer to the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), Paragraph 1 of which provides that measures should be taken to promote effective consultation and cooperation between public authorities and employers' and workers' organizations without discrimination of any kind against these organizations. In accordance with Paragraph 5 of the Recommendation, such consultation should aim at ensuring that the public authorities seek the views, advice and assistance of these organizations, particularly in the preparation and implementation of laws and regulations affecting their interests [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 1068]. Tripartite consultation should take place before the Government submits a draft to the Legislative Assembly or establishes a labour, social or economic policy [see **Digest**, op. cit., para. 1070]. It is important that consultations take place in good faith, confidence and mutual 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. The Government must also ensure that it attaches the necessary importance to agreements reached between workers' and employers' organizations [see **Digest**, op. cit., para. 1071]. The Committee does not consider that the adoption process of the new Labour Act was in violation of the principles of freedom of association. Nevertheless, the Committee encourages the Government to promote the continuation of tripartite social dialogue in the FBiH to assure the follow-up of the implementation of the legislative provisions mentioned.*
- 105.** *Concerning collective bargaining, the Committee notes the complainant's allegations that the FBiH Government intervened in collective bargaining by stating that the amendments of the representatives of two smaller political parties in the House of Representatives would be incorporated in the collective agreements in exchange for their support for the adoption of the draft Labour Act, by which a simple majority was secured. The Committee observes that, according to the complainant, such intervention causes a prejudice towards the outcome of collective bargaining, which had not even begun, and totally disregarded and marginalized the role of trade unions in the process, given that the Government is not a party to the General Collective Agreement. The Committee also notes, however, the Government's assertion that this allegation is ungrounded since the conclusion of collective agreements is exclusively subject to bipartite social dialogue between workers' and employers' representatives and the role of the Government is restricted to the provision of the necessary legal framework for the negotiating process and improvement of voluntary collective bargaining. Given the contradictory nature of the complainant's allegations and the Government's reply, the Committee simply recalls the principle that state bodies should*

refrain from intervening in free collective bargaining between workers' and employers' organizations.

- 106.** *Concerning the level of protection of labour rights, the Committee notes that the complainant provides a summary of 26 problematic issues and argues that the Labour Act diminishes certain rights and protection of workers and jeopardizes free collective bargaining. The Committee notes in particular that the complainant states that collective agreements for an indefinite period of time cannot be concluded while fixed-term collective agreements may be concluded for a maximum period of three years (section 140) and that applicable collective agreements have to be harmonized with the Labour Act within 120 days from its coming into force otherwise they cease to apply (section 182). The complainant suggests that this annuls the effects of prior collective agreements, because if workers do not want to stay without collective agreements, trade unions will have to accept all changes in the Act based on "take it or leave it" basis. The Committee also notes the allegations of the complainant stating that the new Act does not allow for collective agreements to be concluded in public companies (section 138) and that the determination of representativeness of a trade union at the company level by the employer is illogical and can serve as a method of abuse (section 129(1)).*
- 107.** *The Committee observes that the Government indicates that the Labour Act improves the position of workers in 18 areas, in particular that it defines collective bargaining participants, the procedure for concluding collective agreements, form, duration and content of collective agreements as well as regulates the representativeness of workers' and employers' organizations, the criteria and the procedure to determine representativeness. In relation to the disputed section 182, the Committee observes the Government's explanation: while under the previous Labour Act, collective agreements were generally concluded for indefinite duration without conditions prescribed for their termination and amendment (termination of a collective agreement without the consent of the social partners was thus prevented), under the new Act, collective agreements are concluded for a definite duration and need to be harmonized with the provisions of the Act. The Committee also observes the Government's reasoning that the amendment of section 182 was required by broader economic interests, budget burdened due to the multi-million lawsuits of workers, as well as numerous requests and initiatives expressed both during the public debate and addressed to the relevant Ministry individually.*
- 108.** *In this regard, the Committee notes differences of opinion between the complainant who argues that the Labour Act diminishes certain rights and protection of workers and jeopardizes free collective bargaining and the Government, who asserts that these allegations are unfounded and inaccurate as the Labour Act contains a number of provisions that improve the position of workers in comparison to the previous Act. The Committee takes note of the list of issues considered as problematic by the complainant as well as the areas in which, according to the Government, the Labour Act strengthens the rights of workers.*
- 109.** *In light of the above, the Committee does not consider that the provision subjecting existing collective agreements to harmonization with the new legislation (section 182) is contrary to the principles of freedom of association and collective bargaining.*
- 110.** *As regards section 140, while recalling the general principle according to which the duration of collective agreements is primarily a matter for the parties involved, but if government action is being considered any legislation should reflect tripartite agreement [see **Digest**, *op. cit.*, para. 1047], the Committee nevertheless understands the need to have clear rules relating to the validity of collective agreements and considering that the Act provides that collective agreements may be extended by the parties, does not consider this provision to be in violation of the freedom of association principles.*

- 111.** *Regarding the representativeness of trade unions at the company level, the Committee observes that the Act provides pre-established, objective and precise criteria and that section 129(1) provides that representativeness is determined by the employer. In this regard, the Committee wishes to underline that the determination to ascertain or verify the representative character of trade unions can best be ensured when strong guarantees of secrecy and impartiality are offered. Thus, verification of the representative character of a union should be a priori carried out by an independent and impartial body [see **Digest**, op. cit., para. 351]. In light of these considerations and the concerns raised by the complainant, the Committee notes that the determination of representativeness by the employer, although subject to an appeal with the federation or a canton ministry in charge of labour, could give rise to trade union discrimination, especially if it is compulsory to provide the employer with a list of trade union members. The Committee, therefore, invites the Government to encourage the initiation of consultations with the social partners, within the framework of the ESC for the territory of the FBiH, with a view to establishing an independent and impartial mechanism for determining the representativeness of trade unions at the company level.*
- 112.** *With regard to the right to conclude collective agreements in public companies, the Committee observes that the text of section 138 does not provide that collective agreements may not be concluded in public companies, and therefore trusts that workers in public companies will be able to bargain collectively. The Committee recalls that the complainant may provide further detailed information on any remaining aspects relating to the application of Conventions Nos 87 and 98 to the Committee of Experts on the Application of Conventions and Recommendations.*

The Committee's recommendations

- 113.** *In light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee has not observed a violation of the principles of freedom of association in relation to the adoption process of the new Labour Act. Nevertheless, the Committee encourages the Government to promote the continuation of tripartite social dialogue in the FBiH to assure the follow-up of the implementation of the legislative provisions mentioned.*
 - (b) The Committee invites the Government to encourage the initiation of consultations with the social partners, within the framework of the Economic and Social Council for the territory of the FBiH, with a view to establishing an independent and impartial mechanism for determining the representativeness of trade unions at the company level.*
 - (c) The Committee recalls that the complainant may provide further detailed information on any remaining aspects relating to the application of Conventions Nos 87 and 98 to the Committee of Experts on the Application of Conventions and Recommendations.*

CASE No. 3142

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

**Complaint against the Government of Cameroon
presented by
the Cameroon United Workers Confederation (CTUC)**

Allegations: The complainant organization objects to the contents of the Ministerial Order of 9 March 2015 establishing the national classification of trade union confederations in Cameroon following elections of staff representatives held on 15 January 2014

- 114.** The complaint is contained in a communication dated 25 March 2015 made by the Cameroon United Workers Confederation (CTUC).
- 115.** The Government sent its observations in communications dated 1 December 2015 and 1 February 2016.
- 116.** Cameroon 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

- 117.** In a communication dated 25 March 2015, the CTUC objects to the contents of Ministerial Order No. 032/MINTSS/SG/DRP/SDRT of 9 March 2015 (the Ministerial Order of 9 March 2015) establishing the national classification of workers' trade union confederations in Cameroon following elections of staff representatives held on 15 January 2014. In particular, the complainant alleges that: (i) in accordance with article 20 of Act No. 92-007 of 14 August 1992 on the Labour Code (Labour Code), the representative nature of trade union organizations is established by the number of its members and that trade union elections cannot be considered an element of representativeness; (ii) the order of the Minister of Labour and Social Security (MINTSS) on the classification of workers' trade union confederations in Cameroon violates the provisions of article 20 of the Labour Code as well as Conventions Nos 87 and 98, since it ignores the numbers of their members and is confined to workers' organizations while excluding the employers' organizations which are also members; (iii) the classification of confederations established by the Ministerial Order of 9 March 2015 states neither the number of affiliated unions nor the numbers of their members; (iv) the report of the Committee for collection and analysis of the records of the social elections of 15 January 2014, supposedly a tripartite body, did not include a single employer, and of its 34 members only 12 were present during the collection and analysis of the election records (seven representatives of MINTSS and five from the trade union confederations); (v) the sole aim of the Ministerial Order of 9 March 2015, issued in haste under pressure from the ILO, was to justify accreditations to the 104th International Labour Conference, in 2015, of trade union confederations whose representative status was dubious, to the detriment of confederations, such as the complainant, which are free and independent; (vi) the results of the staff representative elections, made public 14 months after the elections, were falsified and unsubstantiated (for example, during the social elections at the National Electricity Company of Cameroon (ENEO) and the National Water Company of Cameroon (CDE), the National Federation of Workers' Unions in the Electricity and Water

Sectors of Cameroon (FENSTEEEC), an affiliate of the complainant organization, obtained 243 staff representatives, whereas the Ministerial Order of 9 March 2015 attributes only 123 representatives to the CTUC); and (vii) the MINTSS has never published the record of the elections at its ministry, at which the National Union of Contractual Workers of Cameroon (SNCC), affiliated to the complainant, presented candidates and obtained staff representatives.

- 118.** The complainant states that it initiated an appeal several times to challenge the contents of the Ministerial Order of 9 March 2015. When invited, on 23 October 2014, to sign the minutes approving the work of the tripartite committee, the complainant, in a communication to the MINTSS dated 30 October 2014, expressed its objections concerning deliberate violation of the provisions of the Labour Code, data falsification and the publication of erroneous results (according to the complainant, it obtained 637 representatives in the union elections but the Ministerial Order of 9 March 2015 wrongly attributed it 123 representatives). The complainant then lodged a preliminary internal appeal at the MINTSS dated 19 March 2015 requesting rescindment of the Ministerial Order of 9 March 2015 without delay on grounds of deliberate violation of the Labour Code and of Order No. 019/MTPS/SG/SG/CJ of 26 May 1993 as amended by Order No. 0016/CAB/MINTSS of 1 October 2013, failure to implement collection and analysis procedures at the union elections and falsification of their results. A similar communication dated 24 March 2015 was also sent to the Prime Minister. The complainant adds that the results and a comparative analysis of the documents released by the ministerial department raise suspicions of corruption and of conspiracy against it. Accordingly, on 7 April 2015 the complainant filed a complaint with the Administrative Tribunal of the Centre in Yaoundé requesting the suspension of the Ministerial Order of 9 March 2015 and, on grounds of absence of any objective criteria for determining the most representative workers' organizations, also contested in the ILO Credentials Committee the composition of the Workers' delegation of Cameroon to the 104th Session of the International Labour Conference (2015).
- 119.** The complainant emphasizes its regret that the Ministerial Order of 9 March 2015 is already published, and considered and used by the Government and certain confederations as the reference document on the representativeness of trade union organizations in Cameroon. It also avers that the Ministerial Order of 9 March 2015 seriously harms its operations and those of its affiliated bodies and denounces a deliberate policy to weaken and divide the trade unions and the inter-union platform in Cameroon. Accordingly, the complainant requests the Committee to invite the Government to rescind the disputed order and to provide accurate information on the trade union organizations representing workers in Cameroon, together with an indication of their membership numbers, in accordance with the Labour Code in force.
- 120.** The complainant also asserts that before the elections it obtained information from an affiliated organization, the SNCC, according to which ministry associates had prevented the SNCC from submitting lists of candidates for the union elections of 15 January 2014 and had declared open candidatures. The complainant addressed a communication dated 9 January 2014 to the MINTSS noting repeated interference by ministry associates and threats made to workers in the ministerial department on account of their trade union membership and because they were standing as candidates in the union elections. The complainant also requested the labour and social security representative for the Centre Region to order that lists of candidates presented by the SNCC be taken into consideration and published at the ministry and in all other jurisdictions.

B. The Government's reply

- 121.** The Government submitted its observations in communications dated 1 December 2015 and 1 February 2016. Concerning the classification of trade union confederations, the

Government states that, under national law, it has jurisdiction to establish the final results of union elections for staff representatives by Ministerial Order, on the basis of records produced by the tripartite committee for that purpose. According to the Government, the Ministerial Order of 9 March 2015 only stated the results of the elections as described in the record and ranked them according to the results achieved by each organization. Thus, the Government's responsibility cannot be discussed in relation to allegations made pursuant to the provisions of Conventions Nos 87 and 98, which stipulate respect for, and protection of, the rights of trade union organizations, as those rights were neither suspended nor transferred. Concerning trade union representativeness, the Government states that the information on membership numbers that enables trade union representativeness to be determined was not available at the time the Cameroon delegation to the 104th Session of the International Labour Conference (2015) was established, and thus in appointing it the Government made use of the classification resulting from the union elections. The Government then became aware of this deficiency and resolved to correct it. To that end, labour inspectors have been working in the field together with the National Labour Observatory to determine the actual numbers of trade union organization members and of workers employed, in accordance with article 20 of the Labour Code. The Government states that the results of this investigation will provide it with an accurate idea of the number of trade unions and their various members and enable it to identify the most representative workers' and employers' unions. The Government asserts that it will transmit these results to the Committee as soon as possible, and that it has sent the Committee a copy of the decision handed down by the Administrative Tribunal of the Centre in Yaoundé to which the complainant had appealed.

- 122.** The Government also transmits the observations made by the Cameroon National Trade Union Confederation Workers' Alliance (ENTENTE) concerning the complaint. ENTENTE states that, pursuant to article 20 of the Labour Code and in order to determine the representativeness of trade union organizations, the most objective, efficient and stable mechanism remains union elections, which allow workers freely to nominate their representatives. According to ENTENTE, this does not conflict with article 20 of the Labour Code or Convention No. 87. However, ENTENTE states that the poor performance and blatant bias of the tripartite committee for collection and analysis of the records of the union elections of 15 January 2014 led some workers' organizations to interpret the provisions of the Labour Code incorrectly. According to the trade union organization, reform of the regulations on union elections to establish more transparent collection and analysis of the results of future such elections, from the local to international level, will reduce the complaints and level of frustration. Concerning the investigation involving the National Labour Observatory, ENTENTE considers that the requested information is highly subjective, since only the unions themselves are providing it, and that the investigation is more concerned with restructuring the unions, which in no way diminishes the importance and exclusive objectivity of elections under article 20 of the Labour Code. ENTENTE states further that the investigation can only result in a random statistical estimate with no real influence on the important issue of trade union representativeness.

C. The Committee's conclusions

- 123.** *The Committee notes that this case concerns an objection to the contents of the Ministerial Order of 9 March 2015 establishing the national classification of trade union confederations in Cameroon following the elections of staff representatives held on 15 January 2014.*
- 124.** *The Committee observes that the complainant organization denounces, firstly, the use of union elections to determine the representativeness of trade union confederations and, secondly, the biased nature of the committee for collection and analysis of the records of the union elections of 15 January 2014, together with interference by the MINTSS in the union elections and threats made against workers belonging to the ministerial department because*

of their trade union membership and activities. The Committee notes the complainant's main assertions that: (i) according to article 20 of the Labour Code, the representativeness of trade union organizations is determined by the number of its members, and union elections cannot be considered an element of representativeness; (ii) the Ministerial Order of 9 March 2015 violates this law as well as Conventions Nos 87 and 98, since it does not consider the numbers of members and excludes employers' organizations; (iii) the classification of confederations set out in the Ministerial Order of 9 March 2015 does not state either the number of affiliated trade unions or the numbers of their members; (iv) the report of the committee for collection and analysis of the records of the union elections of 15 January 2014, supposedly a tripartite body, did not involve a single employer, and of the committee's 34 members only 12 were present during the collection and analysis of the election records (seven representatives of the MINTSS and five from the trade union confederations); (v) the Ministerial Order of 9 March 2015 was issued in haste to justify accreditations of trade union confederations to the 104th Session of the International Labour Conference (2015); (vi) the results of the staff representative elections were made public 14 months after the elections and were falsified and unsubstantiated (according to the complainant, it had obtained 637 representatives, whereas the Ministerial Order attributed it only 123 representatives); (vii) the MINTSS has never published the records of the elections at its ministry in which the SNCC, affiliated to the complainant, presented candidates and obtained staff representatives; and (viii) the results and comparative analysis of documents released by the ministerial department raise suspicions of corruption and conspiracy against the complainant. The Committee notes a further allegation by the complainant that, according to information from an affiliated organization, the SNCC, ministry associates prevented it from submitting lists of candidates for the union elections of 15 January 2014 and declared open candidatures, and that the complainant noted repeated interference by ministry associates and threats made against workers in the ministerial department on account of their trade union membership and because they were standing as candidates in union elections. The Committee notes that the complainant initiated an appeal several times at the national level to object to the contents of the Ministerial Order of 9 March 2015: a letter of protest was sent to the MINTSS in which the complainant objected to deliberate violation of the provisions of the Labour Code, to data falsification and the publication of erroneous results; a preliminary internal appeal was sent to the MINTSS dated 19 March 2015 aimed at rescinding the Ministerial Order of 9 March 2015 without delay on the grounds of deliberate violation of the Labour Code as well as faulty collection and analysis procedures at the union elections and falsification of their results; a similar communication dated 24 March 2015 was also sent to the Prime Minister; the complainant filed a complaint with the Administrative Tribunal of the Centre in Yaoundé requesting the suspension of the Ministerial Order of 9 March 2015; and, in the absence of any objective criteria for determining the most representative workers' organizations, it also lodged an objection with the Credentials Committee of the International Labour Conference concerning the composition of the Workers' delegation of Cameroon to the 104th Session of the Conference (2015). The Committee observes that the complainant highlights the fact that the Ministerial Order of 9 March 2015 seriously damages its operations and those of its affiliated bodies, and that it denounces a deliberate policy to weaken and divide the trade unions and the inter-union platform in Cameroon.

125. The Committee takes note of the Government's observations that it has jurisdiction to establish the final results of union elections for staff representatives by Ministerial Order, on the basis of records produced by the tripartite committee set up for that purpose. The Committee observes that the Government states that the Ministerial Order of 9 March 2015 merely established the results of the elections as described in the records and ranked them according to the results achieved by each organization, and that the Government's responsibility cannot be discussed in relation to allegations made pursuant to the provisions of Conventions Nos 87 and 98, since the rights of the trade union organizations were neither suspended nor transferred. The Committee notes that the Government states, on the subject

of trade union representativeness, that the information on membership numbers enabling trade union representativeness to be determined was not available at the time the Cameroon delegation to the 104th Session of the International Labour Conference (2015) was established, and thus the Government had used the classification resulting from the union elections to designate the most representative trade unions. The Committee also notes that the Government became aware of this deficiency and resolved to correct it, with the result that labour inspectors are now working in the field together with the National Labour Observatory to determine the actual numbers of members of trade union organizations and of workers employed, to enable the Government to gain an accurate idea of the numbers of unions and their different members and determine the most representative workers' and employers' unions in accordance with article 20 of the Labour Code. The Government will transmit this information to the Committee. The Committee notes the Government's statement that it has transmitted to the Committee the decision of the Administrative Tribunal of the Centre in Yaoundé, but observes that the decision has not been sent to the Committee.

- 126.** *The Committee also notes the comment by ENTENTE that the most objective, efficient and stable mechanism for determining the representativeness of trade union organizations remains union elections that enable workers freely to nominate their representatives, and that this is in no way contrary to article 20 of the Labour Code. However, the Committee observes that ENTENTE emphasizes certain shortcomings in the tripartite committee, including its poor performance and its blatant bias in collecting and analysing the union election results. The Committee further observes that, according to ENTENTE, reform of the regulations on union elections so as to establish more transparent conditions for the collection and analysis of future election results would help to reduce the frustrations of the trade union organizations.*
- 127.** *The Committee takes note from the complainant's allegations and the Government's reply, as well as the comments of ENTENTE, that: article 20 of the Labour Code stipulates that the representative nature of a trade union is established, as necessary, by order of the minister responsible for labour, taking into account, for workers' unions, the numbers of members; on 15 January 2014, elections of staff representatives were held across the whole country; by order of 6 January 2014 the Government set up a tripartite committee within the MINTSS comprising representatives of Government, employers and workers, which was responsible for collecting and analysing records and for drafting a record of all its operations; following analysis of the union election results sent to the tripartite committee, a national classification of trade union confederations of Cameroon was established by the Ministerial Order of 9 March 2015, which ranked the complainant in ninth place for representativeness; the classification was used as the basis for forming the Cameroon Workers' delegation to the 104th Session of the International Labour Conference (2015); and the complainant made several attempts at the national level to object to the contents of the Ministerial Order of 9 March 2015 and also addressed a communication on this subject to the Credentials Committee of the International Labour Conference. The Committee notes that the Credentials Committee took note of the complainant's communication objecting to the designation of the Workers' delegation and decided that the communication did not call for any action on its part. The Committee observes that, while the complainant objects to the use of union elections to determine the representativeness of trade union organizations and requests that the Ministerial Order of 9 March 2015 be rescinded, the Government's explanation is that, since the information on numbers of members which enables trade union representativeness to be established was unavailable at the time when it was appointing the Cameroon delegation to the 104th Session of the International Labour Conference (2015), the Government used as its basis the results of the classification that emerged from the union elections. The Committee notes with concern the complainant's allegations, supported by the comments of ENTENTE, that the collection and analysis of results from the union elections, as carried out by the tripartite committee set up for that purpose, was biased and*

partial and thereby damaging to certain trade union organizations, an allegation on which the Government does not comment. On the other hand, the Committee notes with interest the Government's statement that labour inspectors, working together with the National Labour Observatory, are recording trade unions in the field to determine their actual numbers and the numbers of their employees, so as to identify the most representative trade union organizations in accordance with article 20 of the Labour Code.

- 128.** *The Committee recalls that Conventions Nos 87 and 98 are compatible with systems which envisage union representation for the exercise of trade union rights based on the degree of actual union membership, as well as those envisaging union representation on the basis of general ballots of workers or officials, or a combination of both systems. However, the determination of the most representative trade union should always be based on pre-established criteria so as to avoid any opportunity for partiality or abuse. Recognizing the possibility of trade union pluralism does not preclude granting certain rights and advantages to the most representative organizations. However, the determination of the most representative organization must be based on objective, pre-established and precise criteria so as to avoid any possibility of bias or abuse, and the distinction should generally be limited to the recognition of certain preferential rights, for example for such purposes as collective bargaining, consultation by the authorities or the designation of delegates to international organizations [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 347, 349 and 354.] The Committee trusts that the steps taken by the Government to ascertain the numbers of trade union organizations and their members will permit it to determine the most representative workers' and employers' organizations under the current national legislation and in accordance with the abovementioned principles. The Committee requests the Government to forward the decision taken by the Administrative Tribunal of the Centre in Yaoundé concerning the Ministerial Order of 9 March 2015 to which the complainant objects.*
- 129.** *The Committee notes with concern the statements from the complainant about interference by the MINTSS in union elections and threats made to ministerial department workers on account of their trade union membership and because they were standing as candidates in union elections, and notes that the Government provides no observations on this matter. The Committee wishes to stress that workers and their organizations should have the right to elect their representatives in full freedom, and the latter should have the right to put forward claims on their behalf. Any intervention by the public authorities in trade union elections runs the risk of appearing to be arbitrary and thus constituting interference in the functioning of workers' organizations, which is incompatible with Article 3 of Convention No. 87, which recognizes their right to elect their representatives in full freedom. Furthermore, acts of harassment and intimidation carried out against workers by reason of trade union membership or legitimate trade union activities, while not necessarily prejudicing workers in their employment, may discourage them from joining organizations of their own choosing, thereby violating their right to organize [see **Digest**, op. cit., paras 389, 429 and 786]. In light of these principles, the Committee requests the Government to ensure that the public authorities do not intervene in union elections and that workers are not threatened or discriminated against because of their membership of a trade union organization or their legitimate trade union activities.*
- 130.** *In light of the issues raised by the complainant, the Committee urges the Government to take steps to deepen the social dialogue in the country and invites it to avail itself of ILO technical assistance to this end should it so desire.*

The Committee's recommendations

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

- (a) *The Committee requests the Government to send the decision handed down by the Administrative Tribunal of the Centre in Yaoundé concerning the Ministerial Order of 9 March 2015 which is contested by the complainant organization.*
- (b) *Emphasizing that interference in union elections and anti-trade union discrimination are contrary to the principles of freedom of association, the Committee requests the Government to ensure that the public authorities do not intervene in union elections and that workers are not threatened or discriminated against because of their membership of a trade union organization or their legitimate trade union activities.*
- (c) *In light of the issues raised by the complainant, the Committee urges the Government to take steps to deepen the social dialogue in the country and invites it to avail itself of ILO technical assistance to this end should it so desire.*

CASE NO. 2824

DEFINITIVE REPORT

**Complaint against the Government of Colombia
presented by
the National Union of Agri-Food Industry Workers (SINALTRAINAL)**

Allegations: The complainant organization denounces various anti-union acts by the enterprise Kraft Foods Colombia SA, including unjustified dismissals and pressure put on workers to leave the union

- 132.** The complaint is contained in a communication dated 13 May 2010 presented by the National Union of Agri-Food Industry Workers (SINALTRAINAL).
- 133.** The Government sent its observations in communications dated August 2011 and 10 September 2015.
- 134.** 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), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

- 135.** The complainant organization alleges that the enterprise Kraft Foods Colombia SA (hereinafter: "the enterprise") is responsible for a series of anti-union acts, including unjustified dismissals, pressure to resign from employment, assaults and death threats. Firstly, the complainant denounces the endangering of the right to personal safety of a number of its members, stating that: (i) on 20 March 2004, when various SINALTRAINAL members were on hunger strike in different cities around the country, an envelope signed by the United Self-Defence Forces of Colombia, a paramilitary group, was found at the headquarters of SINALTRAINAL–Palmira, Valle del Cauca, containing death threats against members of the SINALTRAINAL–Palmira executive committee who worked for

the enterprise; (ii) a complaint about these threats was filed with the Public Prosecutor; (iii) on 18 June 2004, the President of SINALTRAINAL–Palmira, José Fraybel Melo, received similar threats by phone, which were also reported to the Public Prosecutor; (iv) on 7 October 2004, the enterprise’s chief of security verbally abused and photographed a group of SINALTRAINAL members who were holding a meeting opposite the enterprise’s Palmira site; this incident was communicated to the Public Prosecutor’s Office, with reference to the earlier complaints; and (v) on 25 November 2004, a pamphlet containing death threats against the trade union leaders was found on the enterprise’s premises; this was also communicated to the Public Prosecutor’s Office with reference to the earlier complaints.

- 136.** Secondly, the complainant organization states that by virtue of Decree No. 2351 of 1965, when a trade union has the majority of an enterprise’s employees as its members, the collective agreement signed by that union applies to all workers at the enterprise, and non-unionized workers must pay union dues in order to benefit from the agreement. The complainant alleges that, from 2002 onwards, the enterprise refused to fulfil its legal obligation to collect these dues for SINALTRAINAL and that the Ministry of Social Protection, despite having initially penalized the enterprise through a decision of 19 March 2004, subsequently decided to cancel the penalty by means of another decision of 28 September 2004.
- 137.** Thirdly, the complainant organization denounces various dismissals and instances of pressure on workers belonging to SINALTRAINAL to resign, including the following: (i) on 7 November 2003, SINALTRAINAL members Fabio Sánchez, Jorge Montoya, Jorge Bermúdez and José Luis Lozano were dismissed; (ii) on 17 February 2005, seven administrative workers were put under pressure to sign letters of resignation from their employment; (iii) the enterprise put pressure on eight women members of SINALTRAINAL, which led to their resignation and acceptance of early retirement pensions on 4 June 2005; (iv) on 11 June 2005, a total of 30 SINALTRAINAL members were put under pressure to resign from their employment and, upon their refusal to do so, a national police riot squad intervened, inflicting injuries on Raúl Andrés Ortiz, Eduardo Herrán, Brigitee Narváez, Hernando López, Diego Segura, Jhon Jairo Millán, Jhon Jairo Tascón, Orlando Medina, Marta Piedrahita, Héctor Fabio Palacios, Diego Ledesma, Amparo Cifuentes, Martha Ruiz, Sohelly Toro, Juan Carlos Castro, Edison Becerra, Jenny Murcia, Luz Myriam Ceballos and Diego Ladino, some of whom are SINALTRAINAL officials; the trade union states that in spite of the numerous complaints presented, the authorities have not prosecuted those responsible for the attacks; and (v) on 6 October 2005, union members Marta Piedrahita and Héctor Fabio Palacio were dismissed without a valid reason, following their refusal to sign resignation letters; in response to the dismissals, the interested parties initiated various legal proceedings.
- 138.** The complainant organization also alleges that, on 2 February 2007, a total of 25 temporary workers employed by the enterprise joined SINALTRAINAL. However, the enterprise refused to recognize these workers’ union membership; it dismissed 22 of them and the other three were obliged to sign letters of resignation from the union in order to obtain new employment contracts.
- 139.** The complainant organization further alleges that since 2003 the enterprise’s strategy has consisted in reducing the number of workers it employs directly in order to weaken the trade union, reducing the number of directly employed workers from 230 in 2003 (of whom 148 were SINALTRAINAL members) to 139 in 2010 (of whom 94 were SINALTRAINAL members). It adds that this reduction was accompanied by pressure from the enterprise on workers not to join the union and by its use of external workers who have had no contact with the union – facts which have been communicated on numerous occasions to the labour inspectorate and the local authorities.

140. Lastly, the complainant organization denounces the installation of video cameras throughout the enterprise premises, including in the areas where the workers have their meals. It believes that the real reason for these cameras is not to ensure the workers' physical safety but to subject them to quasi-police surveillance, which is prohibited under Colombian law.

B. The Government's reply

141. In a communication of August 2011, the Government sent its observations regarding the allegations of death threats against SINALTRAINAL union leaders. The Government states that, with the exception of the alleged threats against José Fraybel Melo, the Committee is already examining the other allegations under Cases Nos 1787 and 2761. Recalling its policy on the protection of trade union leaders and members and on combating impunity, the Government indicates that the complaint concerning the threats against José Fraybel Melo is under investigation by the Cali Special Prosecution Unit No. 83, registered as Case No. 5407. The Government indicates that it will continue providing information in this regard under Cases Nos 1787 and 2761.

142. In a communication of 10 September 2015, the Government sent the observations of the Kraft Foods Colombia SA enterprise, which was in liquidation, indicating that: (i) the enterprise in liquidation has no knowledge of the 2004 events referred to in the complaint; (ii) the enterprise in liquidation has no record of any labour-related complaints or administrative investigations relating to the reported events; and (iii) in 2011, the Ministry of Labour authorized the termination of the employment contracts on account of the permanent closure of the enterprise's plant.

143. The Government has also sent the observations of the Ministry of Labour directorate for Valle del Cauca indicating that: (i) on 31 January 2011, the enterprise requested authorization for its permanent closure and the termination of the 160 employment contracts then in force; (ii) the coordinating body of the Labour Management Group at the Ministry of Labour concluded that the authorization of collective dismissals on account of the enterprise's permanent closure was technically and economically viable; (iii) a decision of 6 May 2011 authorized the termination of the employment contracts of José Fraybel Melo Bedoya and Raúl Andrés Ortíz López, further to the expiry of their trade union immunity; (iv) Mr Ortíz López, the Vice-President of the SINALTRAINAL Palmira branch, filed an appeal for reinstatement and an appeal against the authorization of his dismissal, but in both cases the initial decision was upheld; and (v) there are currently no labour-related administrative investigations against the enterprise.

144. Lastly, the Government has provided its own observations regarding the allegations contained in the complaint. Regarding the alleged failure to deduct the union dues of non-unionized workers who benefit from the collective agreement signed by SINALTRAINAL, thus violating Colombian legislation, the Government indicates that: (i) the absence of deduction of union dues by the enterprise only affected workers "representing the employer"; (ii) in this regard, the case law of the Supreme Court of Justice excludes employers' representatives from the benefits of collective agreements; (iii) furthermore, Colombian legislation provides that non-unionized workers can opt out of collective agreements and thus be exempt from paying union dues; (iv) although the labour authorities issued an initial decision to penalize the enterprise, it was revoked on appeal; and (v) the union did not file an appeal with the courts against the aforementioned revocation.

145. Regarding the termination of the employment contracts of Ms Piedrahita and Mr Héctor Fabio Palacio, the Government indicates that: (i) both workers were indeed unfairly dismissed and they therefore received the corresponding compensation; (ii) they both brought their case before the *tutela* (legal protection) judge to seek their reinstatement; and

(iii) although Ms Piedrahita's appeal was not upheld, Mr Palacio did obtain an order for his reinstatement, which was implemented by the enterprise.

- 146.** As regards the alleged termination of the employment contracts without a valid reason of Fabio Sánchez, Jorge Montoya, Jorge Bermúdez and José Luis Lozano on 7 November 2003, the Government reports that the complainant organization did not supply any documents enabling the facts of these dismissals to be established. Furthermore, regarding the pressure that the enterprise is alleged to have exerted on seven female workers to resign on 17 February 2005, the Government points out that the complainant has not provided any proof of the allegations and that the trade union also refers to the workers' acceptance of the proposed agreements.
- 147.** Regarding the other contract terminations referred to in the complaint, the Government adds that there is no indication that they have been contested before the courts. The Government considers that, in view of the failure to make use of the remedies available in national law, it cannot be argued that the State has failed to meet its obligations to uphold freedom of association and comply with the corresponding international Conventions. The Government indicates that this reasoning also applies to the meeting held by the enterprise with 30 workers on 11 June 2005, resulting in the signature of documents by the parties, and to the alleged pressure on eight women workers to resign and accept early retirement agreements.
- 148.** Regarding the union membership of workers hired through private employment agencies, the enterprise's alleged refusal to recognize that membership, and the reported dismissal of those workers, the Government states that: (i) temporary workers have the same right as others to form trade unions; (ii) however, in this specific case, these workers' right to join the SINALTRAINAL trade union, which operates in the agri-food sector, is debatable, as the enterprise's position indicates; (iii) this point of contention should be settled by the national courts; and (iv) the complaint and its appendices contain no indication, however, that the trade union has initiated legal proceedings in this regard.
- 149.** Regarding the alleged reduction in the number of union members as a result of the enterprise's employment policy, the Government indicates that neither the figures submitted by the complainant organization (decrease in the enterprise's payroll from 230 employees in 2003 to 139 employees in 2010, and a decrease in the number of union members from 148 in 2003 to 94 in 2010) nor the appendices to the complaint indicate that the enterprise has any anti-union policy. In this regard, the Government indicates that the communications sent by the trade union to the enterprise and to the administrative authorities refer to a series of alleged problems, including obstructions against workers in general, violations of collective agreements or dissatisfaction with the failure to hire local workers, but that these do not point to a policy to reduce the number of union members in the enterprise.
- 150.** Regarding the enterprise's installation of security cameras, the Government states that: (i) the enterprise indicated that the installation of security cameras is part of the workplace security plan and is a requirement for technical certification; (ii) the installation of video cameras does not violate any regulations in Colombia; and (iii) the trade union does not indicate in what way use of the video cameras has violated freedom of association.

C. The Committee's conclusions

- 151.** *The Committee observes that the present case relates to complaints concerning a series of anti-union acts by the enterprise Kraft Foods Colombia SA, including, among others, unjustified dismissals, pressure to resign from employment, assaults and death threats.*

- 152.** *With regard to the complainant organization's allegations of death threats against union leaders, the Committee notes the information provided by the Government and its indication that it will continue to provide information on this matter in the context of Cases Nos 1787 and 2761, which deal with complaints concerning acts of violence and threats against trade union leaders and members in Colombia. Observing that the threats reported by the complainant in the present case were made between 20 March and 25 November 2004, a period of time covered by Case No. 1787, which already deals with numerous allegations of threats reported by the complainant, the Committee will examine the allegations of threats reported in the present case in the context of Case No. 1787.*
- 153.** *The Committee takes note of the enterprise's reply, which indicates that it was liquidated in 2011 and that it does not have any record of labour-related complaints or administrative investigations related to the allegations. The Committee also notes the Government's reply, communicated five years after the presentation of the complaint, which indicates in general terms that: (i) the enterprise was liquidated in 2011, and so the termination of all its employment contracts was authorized; (ii) there are no labour-related administrative complaints pending for the enterprise; (iii) a significant number of allegations are not substantiated with documentary evidence; and (iv) in relation to most of the alleged incidents, no use was made of remedies available under national law to attempt to resolve the situation; consequently, the State cannot be accused of violating the principles of freedom of association or the relevant ILO Conventions that the country has ratified.*
- 154.** *With regard to the specific allegations contained in the complaint, the Committee firstly notes the trade union's allegation that, in violation of the existing legislation, the enterprise refused to fulfil its legal obligation to collect for SINALTRAINAL the union dues of non-unionized workers who benefited from the collective agreement it had signed and that, despite having initially penalized the enterprise, the Ministry of Social Protection ultimately decided to cancel the penalty. The Committee also takes note of the information provided by the Government to the effect that: (i) non-collection of dues only applied to representatives of the employers, in accordance with the case law of the Supreme Court of Justice; (ii) furthermore, Colombian law allows non-unionized workers to opt out of collective agreements and thus be exempt from paying union dues; and (iii) no appeal was filed against the labour administration's final decision not to penalize the enterprise. Also, on the basis of the documents provided by the Government, the Committee observes that the enterprise only did not collect union dues from non-unionized workers who had expressly indicated their wish not to pay those dues, which is compatible with the principles of freedom of association. In these circumstances, the Committee will not pursue its examination of this allegation.*
- 155.** *Concerning the alleged dismissal without a valid reason, on 6 October 2005, of union members Marta Piedrahita and Héctor Fabio Palacio, the Committee notes the Government's indications that: (i) the two workers were indeed dismissed without a valid reason and they therefore received the corresponding compensation; (ii) they both brought their case before the tutela (legal protection) judge to seek their reinstatement; and (iii) although Ms Piedrahita's appeal was not upheld, Mr Palacio did obtain an order for his reinstatement, which was implemented by the enterprise. Referring to the legal rulings appended to the complaint, the Committee also observes that Mr Palacio's reinstatement was not based on the supposedly anti-union nature of his dismissal but on his position as a father and breadwinner. The Committee likewise observes that Ms Piedrahita did not contest her dismissal on the grounds that it violated her right to freedom of association but because she enjoyed extra protection against dismissal as a mother and breadwinner. In these circumstances, the Committee will not pursue its examination of this allegation.*
- 156.** *The Committee further notes that it has only limited information on the following allegations relating to terminations of employment contracts: (i) on 7 November 2003, the employment*

contracts of Fabio Sánchez, Jorge Montoya, Jorge Bermúdez and José Luiz Lozano were terminated; (ii) on 17 February 2005, seven administrative workers were put under pressure to sign letters of resignation from their employment; and (iii) eight women members of SINALTRAINAL were put under pressure by the enterprise, which led to their resignation and acceptance of early retirement pensions on 4 June 2005. The Committee observes, in particular, that the complaint does not contain any details indicating that the terminations were anti-union in nature, and that it has received no indication that the alleged contract terminations, which occurred more than ten years ago, resulted in legal actions or labour-related administrative complaints. In these circumstances, the Committee will not pursue its examination of these allegations.

- 157.** *As regards the alleged assault on 30 workers, including a number of SINALTRAINAL leaders, by a national police riot squad on 11 June 2005 – the complainant states that this was further to these workers’ refusal to sign letters of resignation from their employment – the Committee notes with deep regret that the Government did not provide in due time any observations in relation to this incident. In this regard, the Committee must firmly remind the Government 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 of the peace [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 140].*
- 158.** *As regards the enterprise’s refusal in February 2007 to recognize the SINALTRAINAL membership of 25 workers employed under contracts signed with temporary work agencies and the subsequent dismissal of 22 workers, the Committee notes the Government’s statement that: (i) although workers employed through temporary work agencies have the right to freedom of association, the right of these workers to become members of SINALTRAINAL as a sectoral trade union could be a point of contention, which should be settled by the courts; and (ii) there is no record that judicial proceedings have been initiated concerning the situation of the 25 workers referred to in the complaint. In this regard, the Committee observes that the complainant does not indicate that either the enterprise’s refusal to recognize the union membership of the abovementioned workers or the dismissal of 22 of them has been the subject of administrative or judicial proceedings. Nevertheless, the Committee wishes to recall that, as indicated in previous cases concerning Colombia (for example, Case No. 2556, 349th Report, March 2008), the legal status of the workers’ employment relationship should not have any effect on their right to join workers’ organizations and participate in their activities and that, accordingly, all workers employed in agri-food enterprises, irrespective of the type of their employment relationship with those enterprises, should have the right to join the trade union organizations representing the interests of the workers in that sector. The Committee requests the Government to ensure the application of this principle in the future.*
- 159.** *Regarding the enterprise’s alleged strategy of reducing the number of its direct employees in order to weaken SINALTRAINAL, the Committee notes the union’s statement that: (i) the reduction in the enterprise’s workforce from 230 direct employees in 2003 to 139 employees in 2010 was accompanied by a decrease in the number of union members from 148 in 2003 to 94 in 2010; and (ii) the enterprise exerted pressure on workers to stop them from joining the union and hired workers from other localities who had had little contact with the trade union. The Committee also notes the Government’s statement that these figures do not demonstrate the existence of an anti-union policy and that the many communications sent by SINALTRAINAL to the enterprise and to the labour administration from 2003 to 2010, criticizing the lack of local recruitment, make no mention of an enterprise policy aimed at*

reducing the number of unionized workers. In this regard, the Committee recalls that the Committee can examine allegations concerning economic rationalization programmes and restructuring processes, whether or not they imply redundancies or the transfer of enterprises or services from the public to the private sector, only in so far as they might have given rise to acts of discrimination or interference against trade unions. In any case, the Committee can only regret that in the rationalization and staff reduction process, the Government did not consult or try to reach an agreement with the trade union organizations [see *Digest*, op. cit., para. 1079]. In this regard, the Committee observes that the complainant organization does not refer to any specific events that would indicate that the reduction in the enterprise's workforce pursued an anti-union objective. This being the case, the Committee will not pursue its examination of this allegation.

- 160.** *As regards the installation of security cameras on the enterprise's premises, including in the areas where the workers have their meals, with the purpose, according to the complainant, of subjecting the workers to quasi-police surveillance, the Committee notes: (i) the enterprise's indication that the purpose of the video cameras is to ensure the workers' security; and (ii) the Government's indication that their installation does not violate any regulations and that the complainant organization does not indicate in what way use of the video cameras has violated freedom of association. Observing that the complainant does not allege any specific anti-union use of the video cameras or that they have been positioned specifically to monitor the workers' trade union activities, the Committee will not pursue its examination of this allegation.*

The Committee's recommendation

- 161.** *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 that all workers, regardless of the legal status of their employment relationship with the enterprise for which they provide services, are free to join trade unions that represent the interests of the workers in their sector of employment.

CASE NO. 3114

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

**Complaint against the Government of Colombia
presented by**

- the Single Confederation of Workers of Colombia (CUT) and
- the “14 June” National Union of the Sugar Industry (SINTRACATORCE)

Allegations: The complainant organizations report anti-union dismissals by the Carlos Sarmiento L. & Cia Ingenio San Carlos SA and Providencia Cosecha y Servicios Agrícolas Ltda enterprises, and also the lack of an adequate response from the Government of Colombia

162. The complaint is contained in a communication dated 4 November 2014 from the Single Confederation of Workers of Colombia (CUT) and the “14 June” National Union of the Sugar Industry (SINTRACATORCE) and also in additional communications from SINTRACATORCE dated 25 May and 11 September 2015.
163. The Government sent its observations in a communication dated 14 December 2015.
164. 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), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants’ allegations

165. After recalling that Mr Henry González López, Mr Jesús Vélez Villada and Mr Carlos Libiter Naranjo, workers of the Carlos Sarmiento L. & Cia Ingenio San Carlos SA enterprise (hereinafter: the sugar enterprise) were murdered between 2004 and February 2009 and that the former head of security of the sugar enterprise was subsequently convicted for his links with paramilitary groups, the complainant organizations allege firstly that the employment contracts of 315 unionized workers at the sugar enterprise were terminated in April 2009, an action that constituted anti-union discrimination.
166. Specifically, the complainants state that: (i) in 2009, the sugar enterprise hired the Human Transition Management consulting firm (hereinafter: the consulting firm), specializing in the termination of employment contracts; (ii) on 4 February 2009, when the collective agreement for 2008–11 signed with the Carlos Sarmiento L. & Cia Workers’ Union (SINTRASANCARLOS) was in force, the consulting firm requested permission from the Ministry of Social Protection to open negotiations and conduct settlement procedures with workers at the sugar enterprise; (iii) on 15 April 2009, in response to that request, the Ministry of Social Protection commissioned a labour inspector from Cundinamarca to intervene in the labour negotiations of the consulting firm; (iv) a few days earlier, on 7 April 2009, the employment of Mr Eufrazio Emilio Ruiz Santiago, the president of SINTRASANCARLOS at that time, was terminated by the sugar enterprise through a settlement package; (v) on 15 and 16 April 2009, the workers in the agricultural, electrical, assembly and industrial workshops, the field and general service operators and the harvesting section workers – a total of 315 unionized workers – were summoned to the auditorium of the sugar enterprise for a meeting about changes in the enterprise and their

consequences for jobs; (vi) at the meeting it was explained to the workers that their jobs would be terminated and they were required to sign pre-formulated settlement documents which already bore the signature of the delegated labour inspector; (vii) faced with this psychological pressure, some workers signed the settlement documents while those who refused to do so were dismissed immediately; (viii) despite the fact that the labour inspector's signature was on the documents, she was not present at the aforementioned meetings; (ix) the jobs of the 315 workers whose employment was terminated were outsourced through a contract signed with the IMECOL SA enterprise; (x) taking account of the fact that the employment of six SINTRASANCARLOS union leaders was terminated on 16 April 2009, a general assembly of officers was convened the following day to elect new members to the executive committee; (xi) however, on 18 April 2009, the nine newly elected union officers in turn received letters of dismissal dated 16 April 2009; and (xii) on 28 April 2009, a new union executive committee was appointed under the control of the employer.

- 167.** On the basis of the information presented above, the complainant organizations allege that the sugar enterprise launched a clear campaign of anti-union discrimination. They add that: (i) as a result of the SINTRASANCARLOS trade union coming under the control of the employer, the workers whose jobs were terminated were without protection, with no support from the confederation to which SINTRASANCARLOS is affiliated (the General Confederation of Labour (CGT)) and without the intervention that was due from the public authorities; (ii) a total of 34 judicial actions were brought before the labour courts seeking the invalidation of the settlement documents and the reinstatement of the workers; (iii) the judicial proceedings focused on the legality of the settlements and not on whether or not there was systematic anti-union discrimination; (iv) the Ministry of Social Protection (now the Ministry of Labour) committed irregularities in the supervision of the settlements; and (v) because of the comments made by the consulting firm during the termination process, to the effect that the workers had been "hostile towards the company, towards their colleagues and even towards the city authorities", none of the 315 workers have been able to find any other formal employment.
- 168.** In a communication dated 15 September 2015, the SINTRACATORCE trade union indicates that it agreed to submit the present case to mediation within the Special Committee for the Handling of Disputes referred to the ILO (CETCOIT). The complainant indicates that a meeting of CETCOIT was due to take place in Cali on 25 August 2015 but the sugar enterprise decided not to take part and so the mediation process was ended before it had even started.
- 169.** In a communication of 25 May 2015, the SINTRACATORCE trade union denounces that the Providencia Cosecha y Servicios Agrícolas Ltda enterprise (hereinafter: the agricultural services enterprise) dismissed five workers on 30 July 2014 who had just been appointed to the El Cerrito branch committee of the SINTRACATORCE trade union, and claims that the dismissals constitute anti-union discrimination.
- 170.** The complainant organization states specifically that: (i) Mr Pablo Roberto Vera Delgado, Mr José Andrés Banguera Colorado, Mr José Manuel Obregón Solís, Mr José Domingo Solís Rentería and Mr Alfaro Cañar had been working at the agricultural services enterprise since 2011; (ii) the five workers joined SINTRACATORCE on 15 July 2014; (iii) on 28 July 2014, by a democratic decision, the aforementioned workers joined the executive committee of the El Cerrito branch of SINTRACATORCE; (iv) on 30 July 2014, the five workers were dismissed by the agricultural services enterprise on the grounds of poor performance at work, even though the workers were unaware of any disciplinary proceedings against them; (v) within the five-day period prescribed by law, the competent labour inspector was notified of the changes to the branch executive committee; and (vi) a sixth worker, Mr Alfonso Criollo, who also joined the aforementioned branch, was not dismissed since he enjoyed greater job security on account of an occupational disease.

171. On the basis of the above information, the complainant maintains that the agricultural services enterprise dismissed the five workers immediately after finding out about their union leadership role, without honouring the trade union immunity to which they were entitled from the time of their appointment. The complainant also states that it brought the following actions in relation to the alleged anti-union dismissals: (i) labour administration complaint submitted to the Ministry of Labour; (ii) action brought before the Office of the Public Prosecutor; and (iii) judicial action in the competent labour courts. The complainant regrets the fact that, a year after their submission, the aforementioned legal actions have not given rise to any concrete result, despite the fact that they relate to violations of fundamental rights.

B. The Government's reply

172. In a communication dated 14 December 2015, the Government first forwarded the reply of the Carlos Sarmiento L. & Cia Ingenio San Carlos SA enterprise (hereinafter: the sugar enterprise). The sugar enterprise states that: (i) for 70 years, it has provided jobs and social services for the Department of Valle del Cauca; (ii) it maintains relations of trust and respect with SINTRASANCARLOS, as borne out by the signing of collective agreements, the existence of a labour relations committee and the granting of trade union leave; (iii) at the time of the 2009 retirement plan, the sugar enterprise had 483 workers, of whom 349 were unionized; and (iv) the sugar enterprise now has 991 workers, of whom 872 are members of SINTRASANCARLOS.

173. The sugar enterprise also expresses its concern at the fact that the complaint was presented by the SINTRACATORCE trade union, which had no members at the enterprise at the time of the reported events and provides no evidence of the number of former workers of the enterprise who are currently part of its membership. It adds that the alleged events occurred some seven years ago, under a different ownership, which makes it difficult to locate and supply information. It also indicates that it categorically rejects all allegations in the complaint of any link between the enterprise and violent factions seeking to create a climate of anti-union persecution in its midst.

174. In addition, the sugar enterprise refers to the allegations concerning the termination of the employment of 315 workers on 16 and 17 April 2009. The enterprise states that: (i) at no point do the complainants provide information demonstrating that the restructuring process that led to the termination by mutual agreement of the employment contracts was the result of the trade union membership of the workers, which was long-standing and had never given rise to discrimination on the part of the enterprise; (ii) the jobs came to an end because of the termination of the employment contracts with the free and mutual agreement of the parties; and (iii) the 25 rulings issued on this matter by the Colombian courts have upheld the validity of the settlement documents signed with the workers.

175. With regard to the alleged anti-union dismissal of members of the executive committee of SINTRASANCARLOS elected on 17 April 2009, the sugar enterprise rejects the allegation, pointing out that the union's own documents indicate that there was no general assembly of its officers on 17 April 2009 and that the enterprise did not issue any letters of dismissal on Saturday, 18 April 2009.

176. The sugar enterprise also denies that the workers whose employment was terminated were unable to find any other formal work and points out that the payments made by the enterprise in the form of settlement or compensation were considerably more than the legal minimum (33 per cent more for the workers as a whole while the president of the union received over 600 per cent more than the legally prescribed amount). Lastly, the sugar enterprise states that it did not consider it appropriate to take part in the CETCOIT meeting of August 2015

since the events covered by the complaint had been settled by the courts and the documentation supporting the complaint had been insufficient.

- 177.** The Government provides its own observations below on the allegations in the complaint concerning the sugar enterprise, opening with the statement that the alleged violent acts referred to in the first part of the complaint should be examined in the context of Case No. 2761, which is before the Committee on Freedom of Association.
- 178.** With regard to the termination of the employment of 315 workers at the sugar enterprise on 15 and 16 April 2009, the Government states that: (i) the regional office of the Ministry of Labour in Valle del Cauca reported that in 2009, a total of 98 settlement documents were signed with the sugar enterprise workers; (ii) a representative of the workers submitted a labour administration complaint calling for the settlement documents to be invalidated, whereupon the regional office ruled that the request came within the competence of the courts; (iii) even though CETCOIT made every possible effort to listen to the parties to the dispute with a view to reaching an agreement, the conciliation proceedings scheduled for 25 August 2015 could not go ahead because of the absence of the enterprise, which claimed that the complaint was not accompanied by the necessary appendices to enable a clear analysis; and (iv) CETCOIT remains fully at the disposal of the parties with a view to achieving a positive outcome.
- 179.** With regard to the allegedly illegal nature of the settlement documents signed on 15 and 16 April 2009, the Government states that: (i) the workers filed a complaint against the labour inspector who approved the settlement documents, on the grounds that the aforementioned official who was based in Cundinamarca did not have competence outside her area of jurisdiction; (ii) at first instance, the labour inspector was found guilty of serious disciplinary misconduct and was suspended from duty for three months; (iii) at second instance, it was considered that the official had been empowered to perform her duties on an exceptional basis in a different location from her usual workplace, and hence the penalty imposed was rescinded; (iv) the workers who signed settlement documents applied to the judicial authorities to have the documents declared illegal on the grounds of lack of consent; and (v) in the various rulings at first and second instance issued so far (totalling 14 and 11, respectively), the courts upheld the validity of the settlement documents.
- 180.** The Government adds that in the case of Mr Luis Ignacio Beltrán Viera, who argued in court that his dismissal was contrary to the collective agreement in force and that it had been due to his trade union activity, the courts: (i) considered that there was no clause in the enterprise's collective labour agreement that limited the employer's legal capacity to terminate unilaterally an employment contract with compensation; and (ii) using the criteria established by the Constitutional Court in this respect, they found no evidence to support the claim that the worker's trade union activity had been the cause of his dismissal. The Government also indicates that on this occasion the courts specifically considered that: (i) at the time of the termination of employment, no evidence had been supplied to indicate the total number of workers dismissed or who were union members and who were not; (ii) at the time of the events, there was no collective dispute with the union or renegotiation of the collective agreement; (iii) the union president and several officers opted for reaching a settlement further to the termination of their employment contracts; (iv) the dismissals did not threaten the existence of the union; and (v) throughout the process, it was clear that the enterprise explained that the terminations corresponded to the need for restructuring of the entity to tackle economic problems.
- 181.** The Government concludes that the workers had had the opportunity to bring judicial actions to defend their rights and that in all the rulings issued so far the courts had upheld the legality of the termination of the employment contracts and hence there had been no violation of Conventions Nos 87 and 98 ratified by Colombia.

- 182.** With regard to the allegations of anti-union dismissals at the Providencia Cosecha y Servicios Agrícolas Ltda enterprise (hereinafter: the agricultural services enterprise), the Government firstly forwarded the reply of the agricultural services enterprise, which states as follows: (i) although there is a union presence at the enterprise, no worker at the enterprise is a member of the SINTRACATORCE union, contrary to the claim made by the complainant; (ii) the agricultural services enterprise respects its workers' right to organize and to engage in collective bargaining, as borne out by the fact that 84.3 per cent of the workers are members of the National Union of Agricultural Industry Workers (SINTRAINAGRO) and collective agreements have been signed with the enterprise covering all its workers; (iii) the dismissal of the four workers who are the subject of the complaint occurred because of their poor performance and without the enterprise having been informed that a branch of SINTRACATORCE had been formed; (iv) despite the abovementioned legitimate grounds for dismissal, the enterprise decided to terminate the employment contracts with compensation; (v) the two labour administration complaints filed by SINTRACATORCE were settled in favour of the enterprise; (vi) a judicial action brought by the five workers is still before the courts; and (vii) all of the above demonstrates the enterprise's respect for the law.
- 183.** The Government presents its own observations below with respect to the allegations in the complaint concerning the agricultural services enterprise. The Government states that the documentation supplied by both the complainants and the enterprise reveals that: (i) Mr Pablo Roberto Vera Delgado, Mr José Andrés Banguera Colorado, Mr José Manuel Obregón Solís, Mr José Domingo Solís Rentería and Mr Alfaro Cañar were dismissed with the payment of compensation, which looks like a case of dismissal without just cause, despite the enterprise's statement that the decision was due to the employees' poor performance; (ii) according to the trade union, the dismissals occurred on 28 July 2014 without there being documentary confirmation of that date; (iii) on 31 July 2014, the changes made to the executive committee of the El Cerrito branch of SINTRACATORCE, with the five abovementioned workers joining that executive committee, were registered with the Ministry of Labour; and (iv) the same day, the Ministry of Labour forwarded to the enterprise the registration of the abovementioned changes.
- 184.** On the basis of the above, the Government states that: (i) the time, manner and place relating to the reported events are insufficiently clear and precise to be able to state beyond doubt that there has been a violation of freedom of association and of Conventions Nos 87 and 98; (ii) recalling that section 371 of the Labour Code provides that changes to an executive committee shall take effect once they have been communicated to the authorities and to the employer, it is unclear why the trade union failed to notify the employer immediately (namely, on 28 July 2014) of the appointment of the five workers to the union's executive committee; (iii) on the basis of the information received, it is not proven that on the day of the dismissals the employer was aware of the appointment of the five workers to the executive committee and hence there is no proof that their dismissal was on anti-union grounds; (iv) the labour administration complaint for violation of trade union immunity filed by SINTRACATORCE in August 2014 was the subject of a preliminary investigation and then shelved on 14 October 2015 by the regional office of the Ministry of Labour in Valle del Cauca; the appeal filed by SINTRACATORCE against this decision is still pending; and (v) the administrative labour complaint filed by Mr Alejandro López Maya with regard to the abovementioned events was shelved on 5 May 2015 on the grounds that the complaint sought to specify rights and define disputes, something which comes within the competence of the national courts.

C. The Committee's conclusions

- 185.** *The Committee observes that the present case refers to allegations of anti-union termination of employment contracts by the Carlos Sarmiento L. & Cia Ingenio San Carlos SA enterprise*

(hereinafter: the sugar enterprise) and by the *Providencia Cosecha y Servicios Agrícolas Ltda* enterprise (hereinafter: the agricultural services enterprise), and also with the lack of an adequate response to the reported events by the Government of Colombia.

- 186.** *With regard to the part of the complaint concerning the sugar enterprise, the Committee notes that the complainant organizations, after establishing a context by referring to the murders between 2004 and February 2009 of Mr Henry González López, Mr Jesús Vélez Villada and Mr Carlos Libiter Naranjo, who were workers at the enterprise, and also to the connection of a former head of security of the enterprise with paramilitary groups, focus their allegations and demands on the termination of the employment of 315 workers on 15 and 16 April 2009 through the signing of settlement documents and the dismissal of the workers who refused to sign them. This being the case, the Committee will focus its attention on these allegations, transferring the details provided by the complainants in relation to alleged acts of violence to Cases Nos 1787 and 2761.*
- 187.** *With regard to the termination of the employment of 315 workers on 15 and 16 April 2009 through the signing of settlement documents and dismissals, the Committee notes the complainants' specific allegations that: (i) the labour inspectorate committed irregularities in supervising the conclusion of the settlement documents; (ii) the workers were put under pressure to sign the settlement documents; (iii) the 315 workers whose employment was terminated on those dates were all members of the SINTRASANCARLOS enterprise union, which was affiliated to the General Confederation of Labour (CGT); (iv) further to the termination of the employment of several members of the SINTRASANCARLOS executive committee on the previous days, the union membership elected six new executive committee members on 17 April 2009; (v) the following day, the six aforementioned workers received letters of dismissal; (vi) in the days that followed, the enterprise took control of SINTRASANCARLOS, thereby leaving the workers without support from the union; (vii) the courts which ruled on the termination of the employment contracts merely analysed the legality of the settlement documents without considering whether or not the whole termination process was of an anti-union nature; (viii) as a result of being described as "hostile" during the termination of their contracts, none of the 315 workers were able to find any other formal employment; and (ix) the sugar enterprise declined to take part in the conciliation meeting organized by CETCOIT in August 2015.*
- 188.** *The Committee also notes the replies from the sugar enterprise forwarded by the Government, to the effect that: (i) SINTRASANCARLOS always had a strong presence at the enterprise, with over 72 per cent of the workers among its membership at the time of the events (349 workers) and 88 per cent of the workers at present (872 workers); (ii) the enterprise has always maintained relations of trust with SINTRASANCARLOS, as borne out by the successive collective agreements between the parties up to the present time; (iii) on the other hand, the SINTRACATORCE trade union was not represented at the enterprise at the time of the events; (iv) the termination of the employment contracts in April 2009 arose from the need to restructure the enterprise for economic reasons; (v) the settlement documents were freely signed by the workers, who therefore received financial compensation far greater than the legal minimum; (vi) the fact that all the workers whose employment was terminated were union members is solely due to the high rate of unionization in the enterprise; (vii) the official documentation of SINTRASANCARLOS shows that no new members were elected to the union executive committee on 17 April 2009; (viii) the absence of anti-union discrimination is also demonstrated by the signing of a settlement document by the union president, without that being subsequently called into question by the individual concerned; (ix) the statement that none of the workers whose employment was terminated on 15 and 16 April 2009 was able to find any other formal employment is completely untrue; and (x) the enterprise did not consider it appropriate to take part in the CETCOIT meeting in August 2015 because the events covered by the*

complaint had been resolved by the courts and there had been insufficient supporting documentation for the complaint.

- 189.** *The Committee also notes the Government's reply, which states that: (i) the accusations of irregularities in the action of the labour inspectorate with respect to the signing of the settlement documents gave rise to disciplinary proceedings; (ii) although the labour inspector who signed the settlement documents was penalized at first instance for lacking the territorial competence to do so, it was considered at second instance that the inspector did have that capacity, and so the penalty concerned was rescinded; (iii) as regards the 34 judicial proceedings initiated by workers whose employment was terminated on 15 and 16 April 2009, all the rulings issued to date upheld the termination of the employment contracts, irrespective of whether settlement documents or dismissals were involved; (iv) in the specific case of Mr Luis Ignacio Beltrán Viera, whose judicial action included the allegation that his dismissal was due to his trade union activity, the courts, on the basis of the criteria established by the Constitutional Court, considered at first and second instance that there was no evidence of anti-union discrimination; and (v) consequently, the events which are the subject of the present allegation do not indicate any violation of Conventions Nos 87 and 98.*
- 190.** *In the light of the above and recalling that the Committee 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], the Committee observes that: (i) the complainants and the sugar enterprise agree that the employment contracts of the 315 workers were terminated on 15 and 16 April 2009; and (ii) whereas the complainants assert that the aforementioned terminations are invalid and anti-union in nature, the enterprise and the Government maintain that the terminations formed part of a restructuring process aimed at tackling economic problems. The Committee also notes that although the different parties indicate that all the judicial rulings issued to date (25) have upheld the validity of the contract terminations, the complainants emphasize that the courts have focused on the legality of the settlement documents signed and not on whether or not there has been systematic anti-union discrimination.*
- 191.** *The Committee observes that the information supplied by the different parties shows that the actions brought at the national level challenging the validity of the employment contract terminations focused on supposed irregularities committed by the labour inspectorate and on the absence of free consent from the workers who signed settlement documents. The Committee notes in particular that: (i) there is no record of the complaints to the Ministry of Labour alleging the existence of anti-union discrimination or the violation of the trade union immunity of the members of the executive committee of the SINTRASANCARLOS trade union; (ii) there is no record of specific judicial actions challenging the anti-union character of the alleged dismissal on 18 April 2009 of six workers who, according to the complainants, had just been appointed members of the SINTRASANCARLOS executive committee; and (iii) of the 34 judicial actions referred to in the complaint, the Committee is only aware of one case – the judicial action brought by Mr Luis Ignacio Beltrán Viera – in which it was alleged, among other things, that the termination of the employment contract was an act of anti-union retaliation.*
- 192.** *The Committee also observes that, in the case of Mr Luis Ignacio Beltrán Viera, after the first- and second-instance courts closely applied the criteria established by the Constitutional Court of Colombia for determining anti-union discrimination, they found that there was no evidence to show that the dismissal had been on anti-union grounds. In these circumstances, the Committee will not pursue its examination of the dismissal of Mr Luis Ignacio Beltrán Viera.*

- 193.** *In relation to the other termination of the employment contracts which occurred in April 2009, the Committee observes that the administrative and judicial actions undertaken did not focus on their anti-union character. The Committee takes note of the Government's indication that, while the conciliation proceedings scheduled for 25 August 2015 before the CETCOIT could not go ahead because of the absence of the enterprise, the CETCOIT remains fully at the disposal of the parties with a view to achieving a positive outcome. In these circumstances, the Committee invites the Government to facilitate the holding of conciliation proceedings before the CETCOIT, assuming this is legally possible, and to keep it informed in this respect.*
- 194.** *With regard to the part of the complaint relating to alleged anti-union dismissals within an agricultural services enterprise, the Committee notes the complainants' allegation that: (i) Mr Pablo Roberto Vera Delgado, Mr José Andrés Banguera Colorado, Mr José Manuel Obregón Solís, Mr José Domingo Solís Rentería and Mr Alfaro Cañar, who were workers at the enterprise, joined the SINTRACATORCE trade union on 14 July 2014; (ii) on 28 July 2014, the five workers were appointed members of the El Cerrito branch committee of SINTRACATORCE, an appointment which was communicated to the labour authorities on 31 July 2014, within the legal deadline; (iii) on 30 July 2014, when they were already entitled to trade union immunity, the five workers were dismissed without a valid reason in retaliation for their union leadership role; and (iv) a year after the trade union brought actions before the labour inspectorate, the Public Prosecutor's Office and the labour courts, the recourse to these bodies has still not given rise to any concrete result.*
- 195.** *The Committee also notes the reply from the agricultural services enterprise forwarded by the Government, in which the enterprise states that: (i) 84.3 per cent of its workers are members of the SINTRAINAGRO trade union but none of its workers is a member of SINTRACATORCE; and (ii) the dismissal of the five workers who are the subject of the complaint was for poor performance and without the enterprise having been notified of the establishment of the SINTRACATORCE branch committee. Lastly, the Committee notes the Government's statement that: (i) on 31 July 2014, the changes made to the El Cerrito branch committee of SINTRACATORCE, which now included Mr Pablo Roberto Vera Delgado, Mr José Andrés Banguera Colorado, Mr José Manuel Obregón Solís, Mr José Domingo Solís Rentería and Mr Alfaro Cañar, were registered with the Ministry of Labour; (ii) it is unclear why the trade union failed to notify the employer immediately (namely, on 28 July 2014) of the appointment of the five workers to the union's executive committee; (iii) on the basis of the information received, it is not proven that on 28 July 2014 (reportedly the day of the dismissals) the employer was aware of the appointment of the five workers to the executive committee and hence there is no proof that their dismissal was on anti-union grounds; (iv) the administrative labour complaint for violation of trade union immunity, filed in August 2014 by SINTRACATORCE, was the subject of a preliminary investigation and then shelved on 14 October 2015 by the regional office of the Ministry of Labour in Valle del Cauca; the appeal filed by SINTRACATORCE against this decision is still pending; and (v) the administrative labour complaint filed by Mr Alejandro López Maya with regard to the abovementioned events was shelved on 5 May 2015 on the grounds that the complaint sought to specify rights and define disputes, something which comes within the competence of the national courts.*
- 196.** *On the basis of the above information, the Committee observes that the complainant organizations and the Government agree that: (i) Mr Pablo Roberto Vera Delgado, Mr José Andrés Banguera Colorado, Mr José Manuel Obregón Solís, Mr José Domingo Solís Rentería and Mr Alfaro Cañar were dismissed with compensation at the end of July 2014; and (ii) on 31 July 2014, the changes made to the El Cerrito branch committee of SINTRACATORCE, which now included the aforementioned workers as members, were registered with the Ministry of Labour. The Committee also notes that: (i) the complainants maintain that the dismissals constitute a clear act of retaliation in the wake of the election*

of the workers as trade union officers and that, a year after the filing of several legal actions, the State has still not provided the union officers with due protection; (ii) the enterprise, for its part, claims that the workers were dismissed for poor performance and without it having been informed of their appointment as trade union officers; (iii) the Government considers that it is not possible to determine clearly from the reported facts whether or not there was anti-union discrimination; and (iv) the Government also indicates that an initial labour administrative complaint for violation of trade union immunity was shelved on 5 May 2015 and referred to the labour courts and that a second complaint was shelved on 14 October 2015 after a preliminary investigation, with the appeal filed against the decision to shelve the complaint still pending.

197. *In the light of the above, the Committee wishes firstly to recall that cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly, so that the necessary remedies can be really effective. An excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders dismissed by the enterprise, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned [see **Digest**, op. cit., para. 826]. In this regard, one-and-a-half years after the events, the Committee observes that it has not received any information on the action taken by the Office of the Public Prosecutor or by the labour courts with respect to the legal actions which the complainant states that it filed. Moreover, the Committee notes that the Government's information shows that the decision by the Ministry of Labour to shelve, for lack of competence, one of the labour administrative complaints filed in relation to the dismissals was issued ten months after the events, and that more than one-and-a-half years after the events the second labour administrative complaint alleging the violation of trade union immunity is still awaiting a definitive settlement. On the basis of these observations, the Committee trusts that the pending actions and appeals will be processed as quickly as possible and in accordance with the principles of freedom of association. The Committee requests the Government to keep it informed in this respect. Recalling that in certain other cases [see Case No. 2960, 374th Report, paras 267 and 268, and Case No. 2946, 374th Report, para. 251] it has already called for such action from the Government, the Committee requests the Government once again to take the necessary measures to expedite the processing by the Ministry of Labour of the labour administrative complaints relating to trade union rights. The Committee requests the Government to keep it informed in this respect.*

The Committee's recommendations

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

- (a) In relation to the termination of employment contracts of the workers of the sugar enterprise which occurred in April 2009, the Committee invites the Government to facilitate the holding of conciliation proceedings before the CETCOIT, assuming this is legally possible, and to keep it informed in this respect.*
- (b) In relation to the dismissals which occurred in the agricultural services enterprise, the Committee requests the Government to keep it informed of the results of the legal actions still pending before the Ministry of Labour, the Office of the Public Prosecutor and the labour courts in relation to the dismissal of Mr Pablo Roberto Vera Delgado, Mr José Andrés Banguera Colorado, Mr José Manuel Obregón Solís, Mr José Domingo Solís Rentería and Mr Alfaro Cañar.*

- (c) *The Committee requests the Government to take the necessary measures to expedite substantially the processing by the Ministry of Labour of the labour administrative complaints relating to trade union rights. The Committee requests the Government to keep it informed in this respect.*

CASE NO. 3122

DEFINITIVE REPORT

**Complaint against the Government of Costa Rica
presented by**

- **the National Educators' Association (ANDE)**
- **the Secondary School Teachers' Association (APSE)**
- **the National Federation of Employees of the Social Security and Fund (UNDECA)**
- **the Independent Union of Public Sector Workers (SITECO) and**
- **the General Confederation of Workers (CGT)**

Allegations: The authorities refused to suspend the Public Sector Salary Negotiation Committee for some days to allow for internal consultations, and concluded the corresponding salary agreement without the participation of the complainant organizations

- 199.** The complaint is contained in a communication of 16 February 2015, signed by the National Educators' Association (ANDE), the Secondary School Teachers' Association (APSE), the National Federation of Employees of the Social Security System and Fund (UNDECA), the Independent Union of Public Sector Workers (SITECO) and the General Confederation of Workers (CGT).
- 200.** The Government sent its observations in a communication of 13 November 2015.
- 201.** Costa Rica 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 organizations' allegations

- 202.** In their communication of 16 February 2015, the complainant organizations denounce the authorities' refusal to grant their request for the temporary suspension of the session of the Public Sector Salary Negotiation Committee in order to allow for consultations. They allege that this led to the imposition of a decision without consideration for representativeness, and that, consequently, faith in negotiation procedures has been lost.
- 203.** The complainant organizations indicate that, starting in January 2015, they attended various meetings of the Public Sector Salary Negotiation Committee (which is responsible for the review and negotiation of public sector salaries and includes representatives of each of the trade union confederations, a representative of ANDE, a representative of APSE and a representative elected by the five most representative public sector workers' organizations

not incorporated into federations) in order to discuss the salary adjustment for the first half of the year. They indicate that the purpose of their participation was to obtain a salary adjustment that reflected the increase in the cost of living, but that from the beginning of the series of meetings the Government was determined not to increase salaries by more than 0.94 per cent (the inflation accumulated over the previous six months). As a counterproposal, the complainant organizations called for a 1.94 per cent increase for professionals (0.94 per cent to account for inflation plus 1 per cent, equal to half the inflation forecast for the first half of 2015), and an extraordinary adjustment of 2.06 per cent for non-professionals, whose salary increment would increase to 4 per cent, with a view to reducing the gap between the salaries of the two categories (in both cases it was necessary to add the 0.14 per cent due as a result of the salary negotiations of the second half of 2014). Weeks after the complainant organizations made public their rejection of the Government's proposal and presented this counterproposal, the Government convened another meeting of the Public Sector Salary Negotiation Committee, for 4 February.

- 204.** The complainant organizations indicate that at the meeting of 4 February: (i) the Government presented a proposed adjustment that maintained the 0.94 per cent increase, with the only addition being a 0.5 per cent increase for non-professional posts, to be granted gradually and in phases (it did not provide the details of this additional adjustment curve); (ii) the complainant organizations requested a suspension of the session for a few days, to allow their respective boards of directors time to familiarize themselves with the expanded proposal, and with a technical report with details of the proposed additional 0.5 per cent adjustment curve (the fact that the Government's new proposal did not contain any additional increase for professionals was a sensitive issue for some of the complainants, such as ANDE and APSE – the largest Costa Rican public sector trade unions, and therefore the only ones with seats in their names on the Public Sector Salary Negotiation Committee, and the majority of whose members are professional educators); (iii) in response to the request for a suspension of the session, the other group of trade union organizations, comprising various confederations and federations, indicated their intention to proceed with the session, with the Government; (iv) the Government representatives took a unilateral decision not to suspend the session, without a vote or consideration of the criterion concerning the most representative organizations, thus denying the complainants the opportunity to hold the necessary internal consultations and failing to enable genuine negotiations which might lead to an increase for the professional category; (v) as a result of the Government's authoritative stance and its failure to recognize the complainants' legitimate position as the most representative organizations, the complainants withdrew from the session, expressly indicating that they would wait until the next meeting when they would have a clear position on the proposal; and (vi) in spite of this, the Government continued the meeting with the other organizations and proceeded, with them, to sign a salary adjustment agreement that maintained only a 0.94 per cent increase for the professional category (as well as the pending 0.14 per cent owed) and established an additional increase of up to 0.66 per cent for non-professionals (the complainants consider that there was consequently no substantial improvement made to the Government's initial proposal that would justify the new agreement concluded with certain trade unions).
- 205.** The complainant organizations allege that the Conventions ratified by Costa Rica demand transparency and good faith in negotiations, as well as a need to establish objective criteria for joint decision-making. The complainants consider that, by unilaterally refusing the request of the various most representative organizations to suspend discussions for a few days for internal consultation purposes, the Government denied them their right to collective bargaining and trade union representation, which precluded their participation in the negotiation of the salary adjustment agreement.

B. The Government's reply

206. In its communication of 13 November 2015, the Government indicates that the actions its representatives were in conformity with Costa Rican law, and the principles of good faith and free and voluntary negotiation promoted by the ILO, and therefore requests that the complaint be dismissed.
207. The Government indicates that three meetings of the Public Sector Salary Negotiation Committee were held (on 15 and 20 January and 4 February 2014), and that at the last meeting, on 4 February: (i) the Government presented its salary proposal and discussions began; (ii) subsequently, the complainant organizations proposed suspending the session with a view to submitting the initiative to their executive bodies for consideration; (iii) the other trade union organizations present, which represent the trade union confederations (except for the CGT) agreed to continue negotiating; (iv) to respect the wishes of the trade union delegations which wanted to proceed with the session, the Government representatives decided to keep the space open for dialogue and the session therefore continued; and (v) at the close of the meeting the Government and trade union representatives who were present agreed on a salary adjustment proposal for the first half of 2015, which improved on the Government's initial proposal, with the proposed 0.5 per cent increasing to 0.66 per cent for the first-level salary group.
208. The Government regrets that, despite its willingness and that of the other trade unions, the complainant organizations left the session of the Public Sector Salary Negotiation Committee. While it recognizes that these situations can occur in forums for dialogue, the Government indicates that it always maintains the hope that there will be a willingness to conclude negotiations, in order to find common ground which may support the executive in its decision-making. The Government emphasizes that it never intended to exclude any trade union representatives from the salary discussion; on the contrary, it responded to the willingness to negotiate of the trade union representatives who remained for the entire session. The Government recalls that social dialogue must be voluntary and that representatives cannot be prevented from leaving or obligated to take part in a discussion, and that, when no agreement is reached or there are delays in reaching agreement it is not appropriate to speak of a failure of social dialogue. The Government states that since 2009 a total of 13 salary adjustments have been made and that agreement between trade unions and the Government was possible on only three occasions (23 per cent).
209. The Government recalls that setting the policy on public sector salaries is a constitutional responsibility of the executive and that, as the Constitutional Chamber has ruled, the Public Sector Salary Negotiation Committee, as a joint body, is consultative in nature and is a forum for dialogue that is not authorized to set salary increases definitively. However, the Government emphasizes that this body provides a space for social dialogue in which the representatives of public sector workers can debate, exchange ideas on and analyse matters of salary adjustments.

C. The Committee's conclusions

210. *The Committee observes that the complaint concerns the refusal of the authorities to suspend a session of the Public Sector Salary Negotiation Committee for some days to allow the complainant organizations – which include a trade union confederation and the only two trade unions to hold their own seats on the Committee, owing to their significant public sector representativeness – to hold internal consultations. In response to the salary adjustment proposal presented by the Government at the meeting of 4 February 2015, the complainant organizations requested that the session be suspended to allow them to consult their respective boards of directors, in the light of an additional technical report requested from the Government. The other organizations present – comprising various federations and*

confederations – indicated that they preferred to continue with the meeting. In these circumstances, the Government did not agree to the request for suspension, the complainant organizations withdrew from the meeting (indicating that they would await a future meeting, to which they would come prepared with a clear position), and the other organizations present and the Government continued with the meeting and reached agreement on a salary adjustment without the participation of the complainant organizations.

- 211.** *In the context of voluntary collective bargaining and a spirit of good faith, the Committee does not consider unreasonable the complainant organizations' request to suspend the work of the Public Sector Salary Negotiation Committee for some days, to allow for internal consultations on a proposal which the Government submitted during that meeting and about which – according to the complainants, and not denied by the Government – further technical details were needed. As the Government did not indicate why it was not possible or advisable to agree to this request for a brief suspension of the proceedings of the Public Sector Salary Negotiation Committee (beyond the alleged willingness of the other organizations present to continue with the meeting), the Committee encourages the Government and the social partners to take appropriate measures in the future to foster the continued participation in the work of the Public Sector Salary Negotiation Committee of the different organizations which comprise it, with a view to promoting, to the extent possible, social dialogue and agreements supported by all the organizations concerned.*

The Committee's recommendation

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

The Committee encourages the Government and the social partners to take appropriate measures in the future to foster the continued participation in the work of the Public Sector Salary Negotiation Committee of the different organizations which comprise it, with a view to promoting, to the extent possible, social dialogue and agreements supported by all the organizations concerned.

CASE NO. 2753

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

**Complaint against the Government of Djibouti
presented by
the Djibouti Labour Union (UDT)**

Allegations: The complainant denounces the closure of its premises and the confiscation of the key to its letter box by order of the authorities, the intervention of the police at a trade union meeting, the arrest and questioning of trade union officials and the general ban on trade unions from holding any meetings

- 213.** The Committee last examined this case at its June 2015 meeting [see 375th Report, paras 171–181, approved by the Governing Body at its 324th Session].
- 214.** The Government sent its observations in a communication of 25 August 2015.
- 215.** Djibouti 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

- 216.** At its June 2015 meeting, the Committee made the following recommendations [see 375th Report, para. 181]:
- (a) The Committee urges the Government to conduct an investigation into the three-month detention of the protesting dockworkers in 2011 and to inform it of the outcome.
 - (b) The Committee expects the Djibouti Labour Union (UDT) to be able to participate effectively in the work of all national and international advisory bodies, together with all the other organizations representing employers and workers in the country.
 - (c) The Committee expects the Government to give priority to promoting and defending freedom of association by allowing the development of free and independent trade unionism and maintaining a social climate free of acts of anti-union interference and harassment, in particular against the UDT.
 - (d) The Committee requests the Government to provide detailed information on the outstanding issues for examination at its next meeting in October/November 2015 and expects significant progress in this regard.

B. The Government's reply

- 217.** In a communication of 25 August 2015, the Government reiterates its previous replies concerning the allegations of the Djibouti Labour Union (UDT) in relation to the arrest and detention of dockworkers in 2011, following a peaceful demonstration. The Government considers that the allegations have no grounds in that, despite its research, it has not been able to find any information regarding these events. To support its statement, the Government transmits an exchange of correspondence in August 2015 between the Ministry

of Labour and the management of the Dockworkers' Office (BMOD) regarding the allegations in question. In its reply, the management of the BMOD indicates that it does not have any information concerning the arrest of dockworkers in January 2011, or of their three-month detention. The BMOD adds that the arrest of 62 dockworkers would not have gone unnoticed and would have had an impact on the effective functioning of the port.

- 218.** As regards the activities of the UDT, the Government states that its annual participation in the International Labour Conference is funded by the Government. Furthermore, at the national level, the UDT participates, together with all the other representative organizations of workers and employers, in consultations set up on the Government's initiative.
- 219.** Lastly, the Government is committed to guaranteeing free and independent elections in national trade unions and indicates that it wishes to determine, together with the representatives thus elected, objective and transparent criteria for the appointment of worker representatives in national tripartite bodies and at the International Labour Conference.

C. The Committee's conclusions

- 220.** *The Committee recalls that this case concerns allegations of interference by the authorities in trade union activities and acts of intimidation against the trade union officials of the UDT and that its latest recommendations concerned, generally, the need to allow the UDT to participate effectively in the work of all national and international advisory bodies, together with all the other organizations representing employers and workers in the country and, more specifically, the need for the Government to provide further information on allegations of acts of violence by the authorities against dockworker union members who were holding a peaceful demonstration.*
- 221.** *The Committee recalls that, according to the allegations of the UDT, presented for the first time in August 2011, 62 dockworkers, members of the dockworker union, were arrested during a demonstration held on 2 January 2011 in front of the Parliament and were kept in detention for three months. In its previous examination of the case, the Committee had noted with concern that the Government had taken almost three years to declare, in a communication of February 2014, that it had not received any complaint and that it had no information in that regard. The Committee observes that, to support its statement, in its last reply, the Government transmits an exchange of correspondence in August 2015 between the Ministry of Labour and the management of the BMOD, where it transpires that the BMOD does not have any other information regarding the arrests in January 2011, which, according to the BMOD, would have had consequences on the effective functioning of the port, given the number of dockworkers concerned.*
- 222.** *The Committee recalls that in cases where the complainants alleged that trade union leaders or workers had been arrested for trade union activities, and the governments' replies amounted to general denials of the allegation or were simply to the effect that the arrests were made for subversive activities, for reasons of internal security or for common law crimes, the Committee has always followed the rule that the governments concerned should be requested to submit further and as precise information as possible concerning the arrests, particularly in connection with the legal or judicial proceedings instituted as a result thereof and the result of such proceedings, in order to be able to make a proper examination of the allegations [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 111]. Given that these arrests can entail serious violations of trade union rights, it is important that governments cooperate promptly. In the present case, the Committee deeply regrets the lack of diligence by the Government. Therefore, the Committee regrets not having sufficient information which would allow it to pursue its examination of this matter, unless the complainant organization provides detailed information regarding its allegations without delay.*

- 223.** *As regards the guarantees provided by the Government regarding the participation of the UDT in national consultations and in the International Labour Conference, the Committee observes with concern that the issue of the Workers' delegation of Djibouti to the International Labour Conference is still the subject of a complaint before the Credentials Committee of the International Labour Conference, which decided at the June 2015 session of the Conference to keep the situation under reinforced monitoring, requesting the Government to report on the situation [see Provisional Record No. 5C, para. 12, International Labour Conference, 104th Session, June 2015]. The Committee notes that, in its conclusions, the Credentials Committee observed that the information that was provided to it orally by the Government was both imprecise and contradictory. Lastly, the Committee said that it was very concerned by the confusion that continues to reign over the Djiboutian trade union movement [see Provisional Record, op. cit., para. 31]. Therefore, while hoping that the abovementioned difficulties will not reoccur before the Credentials Committee, the Committee can only deplore the fact that it is still not possible to talk about an independent Djiboutian trade union movement that is free to operate, or of harmonious industrial relations in Djibouti, despite the background to the case and the Office's many actions to provide country-level assistance in relation to trade union affairs.*
- 224.** *In view of the above, the Committee is bound to reiterate its previous recommendations urging the Government once again to maintain a social climate free of acts of anti-union interference and harassment, in particular against the UDT, and to guarantee this organization the possibility of participating effectively in the work of all national and international advisory bodies, together with all the other organizations representing employers and workers in the country.*

The Committee's recommendations

- 225.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee regrets not having sufficient information which would allow it to pursue its examination of the allegations relating to the arrest of the dockworkers in January 2011 and their three-month detention, unless the complainant organization provides detailed information regarding its allegations without delay.*
 - (b) The Committee urges the Government to guarantee the Djibouti Labour Union (UDT) the possibility of participating effectively in the work of all national and international advisory bodies, together with all the other organizations representing employers and workers in the country.*
 - (c) The Committee hopes that the difficulties concerning the nomination of the Workers' delegation of Djibouti will not reoccur before the Credentials Committee of the International Labour Conference.*
 - (d) The Committee urges the Government to give priority to promoting and defending freedom of association by allowing the development of free and independent trade unionism and maintaining a social climate free of acts of anti-union interference and harassment, in particular against the UDT.*

CASE NO. 2897

DEFINITIVE REPORT

**Complaint against the Government of El Salvador
presented by**

- **the Association of Judiciary Workers (ASTOJ)**
- **the “30 June” Judiciary Employees’ Union of El Salvador (SEJE 30 de junio)**
- and
- **the Union of Judiciary Workers (SUTOJ)**

Allegations: Obstacles to negotiations for a salary increase for judiciary workers and unjustified pay deductions for strike days

- 226.** The complaint is contained in a communication dated 5 July 2011 from the Association of Judiciary Workers (ASTOJ), the “30 June” Judiciary Employees’ Union of El Salvador (SEJE 30 de junio) and the Union of Judiciary Workers (SUTOJ).
- 227.** The Government sent its observations in communications dated 21 August and 16 November 2015 and 11 April 2016.
- 228.** El Salvador 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

- 229.** In their communication of 5 July 2011, the complainant organizations allege obstacles to negotiations for a salary increase for judiciary workers and unjustified pay deductions for strike days.

Allegations of obstacles to negotiations for a salary increase

- 230.** The complainant organizations allege that in January 2010 they submitted a claim for a salary increase for 2011 and that the competent authorities responded with delays and obstacles to negotiations in good faith, as follows: (i) they were silent for nine months, failing to respond to the initial claim for the pay rise; (ii) a copy of the draft budget, which was requested within the labour relations committee (the body for dialogue between representatives of the judiciary workers and the judiciary), was not made available even though the judges representing the Supreme Court of Justice in the committee had pledged to supply it; (iii) the representatives of the workers were informed that the budget did not contain a salary increase once the budget had been sent to the Ministry of Finance; and (iv) the competent authorities informed the trade union representatives in November 2010 that there were funds in the 2011 budget to cover the pay rise for all public employees announced by the President of the Republic, but then told them at the beginning of 2011 that there were no resources to grant the salary increase.
- 231.** The complainants indicate that they subsequently submitted a claim for a salary increase of US\$200 for all judiciary workers. On 10 January 2011, the complainants were called to a meeting of the labour relations committee, at which the pay increase was not initially on the

agenda but it was agreed to include this item and a judge undertook to forward the claim to the plenary of the Supreme Court. The complainants state that, after once again receiving no reply, all the trade unions agreed to stop work from 17 to 24 January 2011. The complainants add that, in response to this pressure, the competent authorities convened meetings with representatives of the labour relations committee on 17 and 21 January 2011 with a view to reaching a settlement, requesting that the work stoppage at the Institute of Forensic Medicine be discontinued, to which the unions agreed. The judges then undertook to refer the unions' proposal to the plenary of the Supreme Court, confident that they would be able to announce a successful outcome that evening. However, the complainants claim that they were informed a few hours later that the President of the Supreme Court had broken off the negotiations, and the national police, through the Public Order Maintenance Unit, removed the workers from the premises of the Supreme Court and the Institute of Forensic Medicine. On 22 January 2011, the complainants requested the intervention of the Human Rights Ombudsman to reconvene the negotiations, and this had a positive outcome: the Supreme Court established a high-level advisory board and the trade unions were invited to a meeting on 11 February 2011 to launch the negotiations. However, the pay increase did not materialize on that occasion, further to the Supreme Court president's statement that no funds were available. At this refusal, the complainants submitted another proposal for a salary increase which was again rejected supposedly for lack of funds, despite the fact that the trade unions had demonstrated through a financial study that the Supreme Court did have the funds to cover the proposal. The complainants add that an agreement was subsequently reached with the authorities, namely to award a US\$200 bonus in March and the same amount again in September 2011 to more than 8,960 workers.

Allegations of unjustified pay deductions for strike days

232. The complainants report that in February 2011 the competent authorities requested all members of the trade union executive committees to provide evidence that they duly provided services during the period of the work stoppage, otherwise pay would be deducted, in accordance with section 99 of the general budgetary provisions. The complainants allege that, after they were denied their right to a hearing and due process as provided for in the national Constitution was violated, five double daily salary equivalents were deducted for absence from work. They add that this measure affected only the officers of the trade unions referred to above. The complainants consider that the salary deductions constituted intimidation to prevent the exercise of their rights and an abuse of power on the part of the authorities concerned, since the union officers in question had attended the meetings to which they had been invited and so the authorities had witnessed the fact that the officers had been present in the workplace.

B. The Government's reply

233. In its communications of 21 August and 16 November 2015 and 11 April 2016, the Government declares that the complainant organizations' rights to freedom of association have not been violated. It states that the Supreme Court of Justice has given considerable support to the trade unions at the Court, recognizing duly registered organizations and allowing them to participate in the labour relations committee to launch negotiations and settle any labour disputes.

Allegations of obstacles to negotiations for a salary increase

234. With regard to the allegations of obstacles to negotiations for a salary increase, the Government states that an impasse occurred which has been resolved inasmuch as the

Supreme Court indicates that the trade unions have participated actively since 2012 in the meetings of the labour relations committee bringing together the Supreme Court authorities and members of the trade union executive committees, at which any labour disputes have been settled. As an example of the agreements reached, the Government refers to the adoption on 4 September 2014 of an additional salary increase of US\$150 for all employees and civil servants except judges and magistrates, which took effect as from January 2015.

Allegations of unjustified pay deductions for strike days

235. With regard to the allegations of unjustified pay deductions for strike days, the Government states that representatives of the trade unions filed complaints for blatant injustice against the competent authorities and that the Civil Service Tribunal dismissed the complaints, ruling that the pay deductions imposed for not working during the period of the work stoppage were lawful.
236. The Government explains that the deductions are justified by the Civil Service Act, the general budgetary provisions and the case law of the Supreme Court; due process was honoured and the deductions represented a payment or return of salaries to the state coffers for work not performed.
237. The Government denies that the deductions were imposed in discriminatory fashion only on members of the trade union executive committees, indicating that they were also imposed on other Supreme Court employees who had failed to perform their duties. As an illustration of this, the Government refers to the proceedings initiated within the Civil Service Tribunal by the other employees who incurred the deductions, and attaches the relevant ruling of the Civil Service Tribunal of 7 May 2012, which records the other deductions made.
238. The Government adds that the employees who provided evidence that they actually worked on the dates concerned were repaid the salary amounts that had been deducted.
239. With regard to the strike ban imposed on public and municipal workers under article 221 of the national Constitution, the Government indicates that El Salvador has taken note of the observations of the ILO supervisory bodies so that the aforementioned article can be revised by the competent authorities in accordance with Convention No. 87.

C. The Committee's conclusions

240. *The Committee observes that the complainant alleges obstacles to negotiations for a salary increase for judiciary workers and unjustified pay deductions for strike days.*
241. *As regards reported obstacles to negotiations for a salary increase, the Committee notes the Government's statement that an impasse occurred which has been resolved, as borne out by the subsequent agreements on salaries concluded with the trade unions. Since it has not received any information to the contrary from the complainant organizations, the Committee acknowledges the efforts made by the competent authorities and encourages them to continue promoting social dialogue and voluntary collective bargaining conducted in good faith with the judiciary workers.*
242. *As regards the allegation of unjustified pay deductions for strike days, the Committee notes the Government's indications that the deductions were made without distinction from all employees (not just the trade union officers) who were absent from work without good reason, in accordance with the legislation, due process and the applicable case law; that the competent courts dismissed the related appeals filed by the complainant organizations; and*

*that the deducted salary amounts were repaid to workers who provided evidence that they had actually worked. The Committee wishes to recall that salary deductions for days of strike give rise to no objection from the point of view of freedom of association principles, however, in a case in which the deductions of pay were higher than the amount corresponding to the period of the strike, the Committee recalled that the imposition of sanctions for strike action was not conducive to harmonious labour relations [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 654 and 655].*

The Committee's recommendation

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

The Committee encourages the competent authorities to continue promoting social dialogue and voluntary collective bargaining conducted in good faith with the judiciary workers.

CASE NO. 2723

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

Complaint against the Government of Fiji presented by

- **the Fiji Trades Union Congress (FTUC)**
- **the Fiji Islands Council of Trade Unions (FICTU)**
- **the Fijian Teachers' Association (FTA)**
- **the Fiji Bank and Finance Sector Employees Union (FBFSEU)**
- **Education International (EI)**
- **the International Trade Union Confederation (ITUC) and**
- **the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)**

Allegations: Acts of assault, harassment, intimidation and arrest and detention of trade union leaders and members, ongoing interference with internal trade union affairs, undue restrictions on trade union meetings and other legitimate trade union activities, the issuance of several decrees curtailing trade union rights, and the dismissal of a trade union leader in the public service education sector

244. The Committee last examined this case at its October 2013 meeting, when it presented an interim report to the Governing Body [370th Report, paras 426–444, approved by the Governing Body at its 319th Session (October 2013)].

245. The Fiji Trades Union Congress (FTUC) submitted, in the framework of the article 26 complaint, two implementation reports dated 2 June and 15 October 2015 in relation to the matters raised in the present case for the consideration of the Governing Body at its

324th and 325th Sessions. The Fiji Islands Council of Trade Unions (FICTU) submitted new allegations in communications dated 21 October 2015 and 19 February 2016. The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) submitted new allegations in a communication dated 28 February 2014. The International Trade Union Confederation (ITUC) submitted new allegations in a communication dated 19 December 2013.

- 246.** The Government submitted, in the framework of the article 26 complaint, two implementation reports dated 2 June and 15 October 2015 (the first co-signed by the Fiji Commerce and Employers' Federation (FCEF) and the second co-signed by the FCEF and a bargaining unit) and a joint implementation report dated 1 February 2016 co-signed by the FTUC and the FCEF, in relation to the matters raised in the present case, for the consideration of the Governing Body at its 324th, 325th and 326th Sessions.
- 247.** Fiji 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

- 248.** In its previous examination of the case in October 2013, the Committee made the following recommendations [see 370th Report, para. 444]:

- (a) Reiterating its deep concern at the numerous acts of assault, harassment and intimidation of trade union leaders and members for their exercise of the right to freedom of association previously alleged by the complainants, the Committee once again urges the Government, even if the victims have lodged a complaint in the meantime, to conduct ex officio an independent investigation without delay into the alleged acts of assault, harassment and intimidation against: Mr Felix Anthony, National Secretary of the FTUC and General Secretary of the FSGWU; Mr Mohammed Khalil, President of the FGSWU – Ba Branch; Mr Attar Singh, General Secretary of the FICTU; Mr Taniela Tabu, General Secretary of the Viti National Union of Taukei Workers; and Mr Anand Singh, lawyer. The Committee requests the Government to transmit detailed information with regard to the outcome of such inquiry and the action taken as a result. With particular regard to the allegation that an act of assault against a trade union leader was perpetrated in retaliation for statements made by the FTUC National Secretary at the ILC, the Committee urges the Government to ensure that no trade unionist suffers retaliation for the exercise of freedom of expression. The Committee generally urges the Government to take full account in the future of the relevant principles enounced in its previous conclusions.
- (b) The Committee once again urges the Government to take the necessary measures to ensure that all criminal charges of unlawful assembly brought against Mr Daniel Urai, the FTUC President and General Secretary of the National Union of Hospitality, Catering and Tourism Industries Employees (NUHCTIE), and Mr Nitendra Goundar, a NUHCTIE member, on the grounds of failure to observe the terms of the Public Emergency Regulations (PER), are immediately dropped, and to keep it informed of any developments in this regard without delay, including the outcome of the case hearing that the Committee understands was deferred.
- (c) While noting the lifting of the emergency legislation in the form of the PER on 7 January 2012, and the decision to temporarily suspend the application of section 8 of the Public Order Act as amended by the Public Order (Amendment) Decree No. 1 of 2012 (POAD) that placed important restrictions on freedom of assembly, the Committee again requests the Government to consider abrogation or amendment of the POAD. Stressing that freedom of assembly and freedom of opinion and expression are a sine qua non for the exercise of freedom of association, the Committee once again urges the Government to ensure full respect for these principles. It also requests the Government to reinstate Mr Rajeshwar Singh, FTUC Assistant National Secretary, in his position representing workers' interests on the Air Terminal Services (ATS) Board without delay.

- (d) As regards the ENID, the Committee urges the Government to take the necessary steps without delay, in full consultation with the social partners and in accordance with the measures agreed by the tripartite ERAB subcommittee in 2012, to amend or delete the specific provisions of the ENID previously identified by the Committee as giving rise to serious violations of the principles on freedom of association and collective bargaining, so as to bring the Decree into conformity with Conventions Nos 87 and 98, ratified by Fiji, and requests the Government to keep it informed of the progress made in this regard without delay.
- (e) The Committee requests the Government to take all necessary measures to ensure that public servants have genuine and effective recourse to judicial review of any decisions or actions of government entities, and to provide practical information on the recourse had by public servants to administrative and judicial review (for example, use, length and outcome of proceedings). Moreover, the Committee once again requests the Government to provide information on the mechanisms available to public servants to address collective grievances, and to indicate the results of the review by the ERAB subcommittee of all government decrees relating to the public service in terms of their conformity with the ILO fundamental Conventions.
- (f) The Committee urges the Government to take the necessary measures to ensure that arrangements are made between the parties to ensure the full reactivation of the check-off facility in the public sector and the relevant sectors considered as “essential national industries”.
- (g) While it understands that Mr Koroi has left the country, the Committee expects that this case will be deliberated by the ERAB without further delay, and that, in the framework of this exercise, the conclusions that the Committee made in this regard when examining this case at its meeting in November 2010 [see 358th Report, paras 550–553] will be duly taken into account, with a view to rehabilitating Mr Koroi and considering his reinstatement should he return to Fiji.
- (h) The Committee urges the Government to provide its observations to the complainants’ new allegations without delay.
- (i) Strongly regretting that it is still obliged to observe that the ILO direct contacts mission that visited Fiji in September 2012 has still not been allowed to return to the country in line with the previous recommendation of the Committee and the decisions adopted by the Governing Body, the Committee firmly urges the Government to accept the return of the direct contacts mission without further delay, within the framework of the mandate bestowed upon it by the Governing Body based on the Committee’s conclusions and recommendations.
- (j) The Committee draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.
- (k) 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.

B. The complainants’ new allegations

249. In a communication dated 19 December 2013, the ITUC alleged that: (i) on 18 December 2013, the industries covered by the Essential National Industries (Employment) Decree 2011 (ENID) were extended to cover the Pine and the Mahogany Industries, Fire Prevention (including the National Fire Authority), local government (including all municipal councils) and Airports Fiji Ltd; and (ii) on 19 December 2013, an ongoing secret ballot for industrial action at Tropik Wood was stopped by the Ministry of Labour, and the enterprise, which recently obtained Forestry Certification (FSC) that includes fair labour practices and respect for workers’ rights, issued a memo stating that there was no longer a union in the company; the Government announced a 10 per cent wage increase to the workers in the pine industry stating that the inclusion in the ENID would enable them to negotiate directly with the employer rather than via outside trade unions.

- 250.** In a communication dated 28 February 2014, the IUF alleges that, on 9 January 2014, six union leaders from the National Union of Hospitality Catering Tourism Industries Employees (NUHCTIE), including its General Secretary and at the same time FTUC President Daniel Urai, were arrested and charged for what the Government declared to be an “unlawful strike” and released a few days later on harsh bail conditions.
- 251.** In its implementation reports submitted to the Governing Body, the FTUC recalled the Tripartite Agreement signed by the Government of the Republic of Fiji, the FTUC and the Fiji Commerce and Employers’ Federation (FCEF) on 25 March 2015. The FTUC expressed concerns about the process of adoption of the Employment Relations (Amendment) Act 2015 stating that, after the Employment Relations Advisory Board (ERAB) agreed on the repeal of the ENID on 12 May 2015, a draft government bill was circulated to ERAB members on 20 May 2015, referred back to Government one day later without attempting to resolve substantial disagreements and tabled in Parliament on 22 May 2015. The FTUC also alleged that, on 12 October 2015, the Government convened a meeting of a reconstituted expanded ERAB at very short notice. The new Board appointed by the Government comprised many participants that have no status or were not party to the Tripartite Agreement, including representatives of two bargaining units. The FTUC immediately advised that it would not be a party to the ERAB meetings and would not be in a position to sign a joint report. With respect to the Employment Relations (Amendment) Act 2015, the FTUC raised the following concerns: (i) lack of remedy for trade unions that were deregistered and collective agreements that were abrogated under the ENID; (ii) promotion of non-union “bargaining units” as an alternative to trade unions; (iii) lack of reinstatement of disputes pending before the Arbitration Tribunal and courts that were discontinued by the ENID; (iv) expansion of the list of essential industries to include, in addition to the activities previously covered by the ENID, all government-owned commercial enterprises including the sugar industry and the fishing industry; (v) near impossibility of exercising the right to strike; and (vi) non-existence of the institutions established under the amended ERP, such as the Arbitration Court to which disputes of interest are to be reported. Moreover, the FTUC denounces: (i) the non-existence in practice of collective bargaining in the public sector and in the private sector where the industry or company is classified as “essential services”; (ii) the failure to restore check-off in government-owned enterprises; (iii) the denial of trade union access to the workplace in government-owned enterprises coupled with acts of harassment and intimidation of union members; and (iv) the failure to address other issues raised by the ILO supervisory bodies (for example, relating to assaults against trade union leaders, Public Order Amendment Decree, Fiji Political Parties Decree).
- 252.** In its communication dated 21 October 2015, the FICTU alleges that, at its October 2015 meeting, the ERAB: (i) noted with concern that the Employment Relations (Amendment) Act 2015 failed to address the following issues: the right to strike; the option for workers to remain part of bargaining units; the scope of essential services and industries; the reactivation of collective agreements invalidated by the ENID; the reinstatement of disputes which were discontinued by the ENID; the exclusion of prison officers; the re-registration of trade unions where registration was cancelled by the ENID; and the immediate restoration of check-off facilities ceased following the ENID; (ii) also noted other remaining issues relating to the civil liberties of union leaders, the Political Parties Decree, the Electoral Decree and the Public Order Amendment Decree, which are to be addressed according to ILO recommendations at the next ERAB meeting.
- 253.** In its communication dated 19 February 2016, the FICTU denounces that: (i) the Joint Implementation Report signed on 29 January 2016 was not referred to ERAB for prior review nor was FICTU consulted on it; (ii) the amendments to the ERP made following the Joint Implementation Report (JIR) on 15 February 2016 make no changes to the expanded list of essential services and industries and no reference to a future review of the list as provided in the JIR; (iii) neither the JIR nor the 2016 amendment to the ERP address the

unresolved issues relating to the Political Parties Decree, the restrictions on freedom of association in the 2013 Constitution, the reactivation of collective agreements invalidated by the ENID, or the reinstatement of collective disputes (e.g., log of claims) suspended by the ENID or other Decrees; (iv) the JIR and the 2016 amendment to the ERP address the following issues only partly or inadequately: reinstatement of terminated grievances (referral to Arbitration Court will overburden it and require new trial), dismissals during ENID operation (access to justice denied to aggrieved public servants, remedies to dismissals limited to compensation of a maximum amount, timeframe of 28 days too short, exclusion of grievances other than dismissal), re-registration of trade unions where registration was cancelled by the ENID (timeframe of seven days too short); replacement of bargaining units with enterprise unions (will lead to fragmentation of trade union movement); and (v) the 2016 amendment to the ERP includes a new never-discussed provision requiring the registration of trade union and employer federations in violation of freedom of association principles.

C. The Government's reply

- 254.** In its implementation reports submitted to the Governing Body on 2 June and 15 October 2015, the Government reports on the latest developments as follows. The ERAB held three meetings in May 2015, at which it endorsed the repeal of the ENID thus bringing all workers and employers as well as the Government within the ambit of the Employment Relations Promulgation (ERP), and discussed the draft Employment Relations (Amendment) Bill prepared by the Government. The worker representatives disagreed with a number of aspects of the draft bill, and the ERAB decided to record the matters of disagreement and to submit the draft bill to the Minister on 21 May 2015. The bill was tabled in Parliament on 22 May 2015, the Parliamentary Standing Committee heard submissions from all stakeholders including the ILO, and the Bill was approved by Parliament and enacted on 14 July 2015 as the Employment Relations (Amendment) Act 2015. Upon entry into force of the Act on 11 September 2015, the President appointed the Chairperson of the Arbitration Court, and nominations would soon be sought from employers and unions for their list of members on the Arbitration Court. In October 2015, the Government appointed 18 additional members to the ERAB (six to each group), to ensure that all sectors of the social partners are widely represented on the ERAB and following the request of a number of workers' and employers' representatives. The expanded ERAB held three meetings on 12, 13 and 14 October 2015, at which it reconsidered the following matters of disagreement: (i) check-off – the ERAB agreed that check-off has been fully restored in the Government, and would be restored in entities previously under the ENI Decree after seeking from workers confirmation as to their trade union membership and their agreement to have dues deducted directly from their wages; (ii) the scope of essential industries – the ERAB agreed to recommend the reduction of the notice period and to reconsider the list of essential industries with ILO assistance; and (iii) resolution of disputes discontinued by the ENID – the ERAB agreed to recommend the reinstatement of individual grievances that had been pending before the Employment Tribunal so that the cases could be heard and adjudicated on. The ERAB decided to reconvene on a monthly basis to consider the remaining matters of disagreement and all other recommendations made by its subcommittee.
- 255.** The Government also submitted on 1 February 2016 the JIR signed by all three parties to the Tripartite Agreement of 25 March 2015 (the Government of Fiji, the FTUC and the FCEF), which is reflected in the Committee's conclusions.

D. The Committee's conclusions

- 256.** *The Committee notes that, in the present case, the complainants have alleged several acts of assault, harassment, intimidation and arrest and detention of trade union leaders and members, ongoing interference with internal trade union affairs, undue restrictions on trade union meetings and other legitimate trade union activities, the issuance of several decrees curtailing trade union rights, and the dismissal of a trade union leader in the public service education sector.*
- 257.** *The Committee recalls that a complaint under article 26 of the ILO Constitution alleging the non-observance of Convention No. 87 by Fiji, had been submitted by a number of Workers' delegates at the 2013 International Labour Conference, and was declared receivable. The Committee notes that the Fijian Constitution came into effect in September 2013 and that Fiji held democratic general elections in September 2014. The Committee takes note of the report of the ILO direct contacts mission that visited Fiji from 6 to 11 October 2014, as well as of the Memorandum of Understanding (MoU) on the future of labour relations in Fiji signed by the social partners on 11 October 2014. Furthermore, the Committee notes the Tripartite Agreement signed on 25 March 2015 by the Government, the FTUC and the FCEF acknowledging the review of labour laws including the Employment Relations Promulgation (ERP) to be conducted under the Employment Relations Advisory Board (ERAB) to ensure compliance with ILO core Conventions, and committing to the submission of a Joint Implementation Report (JIR) to the Governing Body at its next session. The Committee notes that the Governing Body regretted, at its 325th Session (October–November 2015), the continuing failure to submit a JIR in accordance with the Tripartite Agreement, and called on the Government of Fiji to accept a tripartite mission to review the ongoing obstacles to the submission of a JIR and consider all matters pending in the article 26 complaint.*
- 258.** *The Committee takes note of the report of the ILO tripartite mission that visited Fiji from 25 to 28 January 2016 and warmly welcomes the signature by all three parties on 29 January 2016 of the JIR as well as the adoption on 10 February 2016 of the Employment Relations (Amendment) Act of 2016 introducing the changes agreed to in the JIR. The Committee is pleased to note the progress which has given rise to the Governing Body decision that the article 26 complaint would not be referred to a commission of inquiry, and that the procedure be closed. The Committee requests the Government to keep it informed of the developments in relation to the follow-up given to the JIR and the 2016 ERP amendment.*

Legislative issues

- 259.** *With reference to the conclusions and recommendations previously made in this case concerning the Essential National Industries Decree (ENID), the Committee welcomes the repeal of the ENID by the 2015 amendment of the ERP, while observing that section 191BW provides that the ENID is repealed except to the extent saved by new Part 19 of the ERP. Noting the issues relating to the creation of bargaining units that had been raised by the complainants during the ILO direct contacts mission in 2014, as well as the concerns expressed by the complainants in their allegations and during the ILO tripartite mission in 2016 that the 2015 amendment to the ERP perpetuated a number of elements of the ENID, particularly as regards the continued existence of bargaining units, the Committee warmly welcomes that, in line with the JIR signed on 29 January 2016, the Employment Relations (Amendment) Act 2016 eliminates the concept of bargaining units from the ERP and allows workers to freely form or join a trade union (including an enterprise union) under the ERP. With respect to public service, the Committee equally welcomes that section 191BW stipulates that both the Employment Relations (Amendment) Decree No. 21 of 2011 and the Public Service (Amendment) Decree No. 36 of 2011 are repealed, which the Committee understands brings the public service workers back under ERP coverage.*

260. Furthermore, observing that, pursuant to section 185 of the ERP as amended in 2015, the list of industries considered as essential services now includes the services listed in Schedule 7 of the ERP, the essential national industries declared under the former ENID and the corresponding designated companies, as well as the Government, statutory authorities, local authorities and government commercial companies, the Committee also welcomes that, according to the JIR, the tripartite partners agreed to invite the ILO to provide technical assistance and expertise to assist the ERAB to consider, gauge and determine the list of essential services and industries. The Committee asks the Office to provide the requested technical assistance as soon as possible and requests the Government to keep it informed of developments in this regard.
261. Lastly, noting the concerns expressed by the complainants during the ILO direct contacts mission in 2014 about the effects of the ENID on the trade union movement in the country and the need highlighted by the complainants in their allegations and during the 2016 tripartite mission to remedy the persisting negative impact of the ENID after its repeal, the Committee warmly welcomes that, in line with the JIR signed on 29 January 2016, the Employment Relations (Amendment) Act 2016 provides for: (i) the reinstatement of individual grievances discontinued under the ENID or the Employment Relations (Amendment) Decree No. 21 of 2011; (ii) the application for compensation for termination of employment under the ENID; and (iii) the entitlement to apply for registration without registration fee, of trade unions deregistered as a result of the ENID.
262. Recalling its previous conclusions that the abrogation by the ENID of the collective agreements in force is contrary to Article 4 of Convention No. 98 concerning the encouragement and promotion of collective bargaining, the Committee requests the Government to devise ways as to how to address the issue, taking into account that, according to the report of the ILO tripartite mission, there was awareness of the difficulty of revalidating the collective agreements in extenso in view of the passage of time and readiness of the complainants to envisage the possibility to reactivate the collective agreements negotiated prior to the ENID solely as base documents, with variations in terms and conditions to be renegotiated. The Committee requests the Government to keep it informed in this respect.
263. Noting also from the FTUC allegations and the report of the ILO tripartite mission that check-off was effectively restored in the public service but not in Government-owned enterprises and that there were divergences between workers and employers as to the modalities, the Committee welcomes that in the JIR the parties have reached agreement on the restoration of check-off facilities, and once again urges the Government to ensure that swift arrangements are made between the parties to ensure the full reactivation of the check-off facility in the public sector and the relevant sectors considered as “essential national industries”. The Committee also requests the Government to respond to the latest allegations from the FICTU relating to the JIR and the ERP amendment adopted on 10 February 2016.
264. With respect to the Public Order (Amendment) Decree No. 1 of 2012 (POAD), the Committee notes that, according to the Fiji Constitutional Process (Amendment) Decree No. 80 of 2012, the suspension of the application of section 8 of the Public Order Act as amended by the POAD is no longer valid. The Committee also notes that, according to the report of the ILO tripartite mission, the FTUC criticized the adverse effects of the POAD on legitimate union activities, including meetings, whereas the Solicitor-General considered that the POAD only applied to public meetings and did not normally concern trade union meetings. The Committee wishes to recall that permission to hold public meetings and demonstrations, which is an important trade union right, should not be arbitrarily refused [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, para. 142]. Recalling the conclusions that the Committee made in this regard when

examining this case at its meeting in November 2012 [see 365th Report, paras 772–775], the Committee once again requests the Government to consider abrogation or amendment of the POAD so as not to place unjustified restrictions on freedom of assembly. Furthermore, it again requests the Government to reinstate Mr Rajeshwar Singh, FTUC Assistant National Secretary, in his position representing workers' interests on the ATS Board without delay, should this not yet be the case.

265. *With regard to the 2013 Political Parties Decree, the Committee notes that, under its section 14, persons holding an office in any workers' or employers' organization are banned from membership or office in any political party and from any political activity, including merely expressing support or opposition to a political party. The Committee observes that, according to the report of the ILO tripartite mission, the Solicitor-General stated that the Political Parties Decree prohibited political functions and activities that compromised not only union office, but all public offices. The Committee notes the Government's indication to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) that the same rules apply to other tripartite partners and affiliates of employers' organizations, the public service and the judiciary; and that the purpose was to provide a fair political participation process and prevent the use of undue influence to gain advantage in the political arena. The Committee recalls that a general prohibition on trade unions from engaging in any political activities would not only be incompatible with the principles of freedom of association, but also unrealistic in practice. Trade union organizations may wish, for example, to express publicly their opinion regarding the government's economic and social policy. However, trade union organizations should not engage in political activities in an abusive manner and go beyond their true functions by promoting essentially political interests [see *Digest*, op. cit., paras 502 and 503]. The Committee requests the Government to take measures to review section 14 of the Political Parties Decree in consultation with the representative national workers' and employers' organizations with a view to its amendment so as to ensure respect for these principles.*

266. *The Committee draws the legislative aspects of this case to the attention of the CEACR.*

Trade union rights and civil liberties in practice

267. *With respect to the alleged acts of assault, harassment and intimidation of trade union leaders and members for their exercise of the right to freedom of association, the Committee notes that the CEACR had previously noted with interest that the investigation into the assault of Felix Anthony, National Secretary of the FTUC and General Secretary of the Fiji Sugar and General Workers' Union (FSGWU), had been reactivated by the Police Commissioner, and recently noted that the relevant investigation file had been forwarded to the Office of the Director of Prosecutions on 25 February 2015 and that Mr Anthony failed to provide a formal statement indicating his willingness to pursue the case and to submit the outstanding medical reports. The Committee requests the FTUC to provide information in this respect, failing which it will no longer pursue the examination of this allegation with respect to Mr Anthony. Similarly, the Committee also requests the complainants to furnish further information on the alleged acts of assault, harassment and intimidation against Mr Attar Singh (General Secretary of the FICTU), Mr Mohammed Khalil (President of the FSGWU – Ba Branch General), Mr Taniela Tabu (Secretary of the Viti National Union of Taukei Workers) and Mr Anand Singh (lawyer), should there be pending issues in this regard.*

268. *With respect to the criminal charges related to his exercise of trade union activity brought against Mr Daniel Urai, the FTUC President and General Secretary of the National Union of Hospitality, Catering and Tourism Industries Employees (NUHCTIE), the Committee is pleased to note that, as reported by the CEACR, the sedition charges brought against Mr Urai and another person four years ago had been dropped, which entailed the passport*

return and the lifting of a travel ban. As regards the remaining criminal charges of unlawful assembly on the grounds of failure to observe the terms of the Public Emergency Regulations (PER), the Committee once again urges the Government to take the necessary measures to ensure that these are also immediately dropped, and requests the Government once again to indicate whether there are any charges still pending against Mr Nitendra Goundar, a NUHCTIE member.

- 269.** *While it understands that Tevita Koroi, former school principal and ex-President of the Fijian Teachers' Association (FTA), has left the country, the Committee reiterates its expectation that, after seven years, his case will be deliberated by the ERAB without further delay, and that, in the framework of this exercise, the conclusions that the Committee made in this regard when examining this case at its meeting in November 2010 [see 358th Report, paras 550–553] will be duly taken into account, with a view to rehabilitating Mr Koroi.*
- 270.** *The Committee requests the Government to provide without delay its observations to the following allegations of the complainants for which no further information has been provided, and invites the complainants to furnish further information on the status of these matters: (i) members of the FSGWU have been threatened and intimidated by military and the management of the government-owned Fiji Sugar Corporation (FSC) before and during the holding of the strike ballot end of July 2013 and continued to be intimidated following the successful strike vote; (ii) the management dispatched former military officers and prohibited a union meeting end of August 2013 upon arrival of Felix Anthony, although the meeting was scheduled during lunch hour and outside the premises of the mill; (iii) on 6 September 2013, over 30 protestors, including political party and trade union leaders, who had assembled to denounce the entry into force of the new constitution, were arrested; (iv) on 9 January 2014, six union leaders from the NUHCTIE, including its General Secretary and at the same time FTUC President Daniel Urai, were arrested and charged for what the Government declared to be an “unlawful strike” and released a few days later on harsh bail conditions; (v) the denial of trade union access to the workplace in government-owned enterprises coupled with acts of harassment and intimidation of union members; and (vi) non-existence in practice of collective bargaining in the public sector and in the private sector where the industry or company is classified as “essential services”.*

The Committee's recommendations

- 271.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *Warmly welcoming the signature of the Joint Implementation Report (JIR) of 29 January 2016 signed in the wake of the ILO tripartite mission, as well as the adoption on 10 February 2016 of the Employment Relations (Amendment) Act of 2016 introducing the changes agreed to in the JIR, the Committee is pleased to note the progress which has given rise to the Governing Body decision that the article 26 complaint would not be referred to a commission of inquiry, and that the procedure be closed. The Committee requests the Government to keep it informed of the developments in relation to the follow-up given to the JIR and the 2016 ERP amendment.*
- (b) *Welcoming that in the JIR the parties have reached agreement on the restoration of check-off facilities, the Committee also urges the Government once again to ensure that swift arrangements are made between the parties to ensure the full reactivation of the check-off facility in the public sector and the relevant sectors considered as “essential national industries”.*

- (c) *The Committee asks the Office to provide as soon as possible the requested technical assistance in respect of the list of essential services and industries, and requests the Government to keep it informed of any developments in this regard.*
- (d) *With respect to the alleged acts of assault, harassment and intimidation of trade union leaders and members for their exercise of the right to freedom of association, the Committee requests the FTUC to provide information on the developments reported by the Government, failing which it will no longer pursue the examination of these allegations with respect to Mr Anthony. The Committee also requests the complainants to furnish further information on the alleged acts of assault, harassment and intimidation against Mr Attar Singh (General Secretary of the FICTU), Mr Mohammed Khalil (President of the Fiji Sugar and General Workers' Union (FSGWU) – Ba Branch General), Mr Taniela Tabu (Secretary of the Viti National Union of Taukei Workers) and Mr Anand Singh (lawyer), should there be pending issues in this regard.*
- (e) *With respect to the criminal charges related to the exercise of trade union activity brought against Mr Daniel Urai, FTUC President and General Secretary of the National Union of Hospitality, Catering and Tourism Industries Employees (NUHCTIE), the Committee, pleased to note that the sedition charges brought against him and another person four years ago had been dropped, once again urges the Government, as regards the remaining criminal charges of unlawful assembly on the grounds of failure to observe the terms of the PER, to take the necessary measures to ensure that these charges are also immediately dropped, and requests the Government once again to indicate whether there are any charges still pending against Mr Nitendra Goundar, a NUHCTIE member.*
- (f) *Welcoming the repeal of the ENID by the 2015 amendment of the ERP and highlighting the need to remedy the persisting negative impact of the ENID after its repeal, the Committee recalls its previous conclusions that the abrogation by the ENID of the collective agreements in force is contrary to Article 4 of Convention No. 98 concerning the encouragement and promotion of collective bargaining, and requests the Government to devise ways as to how to address the issue, and to keep it informed in this respect.*
- (g) *The Committee once again requests the Government to consider abrogation or amendment of the POAD so as not to place unjustified restrictions on freedom of assembly. Furthermore, it again requests the Government to reinstate Mr Rajeshwar Singh, FTUC Assistant National Secretary, in his position representing workers' interests on the ATS Board without delay, should this not yet be the case.*
- (h) *The Committee requests the Government to take measures to review section 14 of the Political Parties Decree in consultation with the representative national workers' and employers' organizations with a view to its amendment so as to ensure respect for the principles enunciated in its conclusions.*

- (i) *The Committee reiterates its expectation that, after seven years, the case of Tevita Koroi will be deliberated by the ERAB without further delay, and that, in the framework of this exercise, the conclusions that the Committee made in this regard when examining this case at its meeting in November 2010 [see 358th Report, paras 550–553] will be duly taken into account, with a view to rehabilitating Mr Koroi.*
- (j) *The Committee requests the Government to provide without delay its observations to the remaining allegations of the complainants, specified in its conclusions, and invites the complainants to furnish further information on the status of these matters.*
- (k) *The Committee draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

CASE No. 2609

INTERIM REPORT

**Complaints against the Government of Guatemala
presented by**

- **the Indigenous and Rural Workers’ Trade Union Movement of Guatemala (MSICG)**
- **the Trade Union Confederation of Guatemala (CUSG)**
- **the General Confederation of Workers of Guatemala (CGTG)**
- **the Trade Union of Workers of Guatemala (UNSITRAGUA) and**
- **the Movement of Rural Workers of San Marcos (MTC)**

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 trade unions and system failures leading to impunity with regard to criminal and labour matters

272. The Committee last examined this case at its June 2013 meeting, when it submitted an interim report to the Governing Body [see 363rd Report approved by the Governing Body at its 318th Session (June 2013), paras 425–496].

273. The Indigenous and Rural Workers’ Trade Union Movement of Guatemala (MSICG) sent further allegations in a communication of 30 May 2014. The Trade Union Confederation of Guatemala (CUSG), the General Confederation of Workers of Guatemala (CGTG), the Trade Union of Workers of Guatemala (UNSITRAGUA) and the Movement of Rural Workers of San Marcos (MTC), under the umbrella of the Autonomous Popular Trade Union

Movement of Guatemala, sent new allegations in a communication dated 13 September 2014.

274. The Government sent its observations in communications dated 1 October 2013, 7 and 25 May 2014, 7 November 2014, 3 June 2015 and 22 February 2016.

275. Guatemala 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 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the case

276. At its meeting in June 2013, the Committee made the following recommendations (see 368th Report, paragraph 496):

- (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 Gálvez, 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 [and] 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 Union of Workers of the Petén Distribution Company (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, adviser 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 trade union member 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 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 measures 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 all actions taken by the Public Prosecutor's Office and the criminal courts. 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 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 Rio 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 Zapaca, 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.

B. Additional information and new allegations from the complainant organizations

277. In a communication dated 30 May 2014, the MSICG complained that death threats have been made against Mr Jorge Byron Valencia Martinez, Secretary-General of the Union of Administrative and Educational Service Workers of Guatemala (STAYSEG). The complainant organization states that: (i) on 16 and 17 December 2013, after speaking on television in favour of the signing of the aforementioned collective agreement, the Secretary-General of STAYSEG was twice subjected to death threats from armed men claiming to represent the Minister of Education; (ii) the case is being investigated by the Special Investigation Unit for Crimes against Trade Unionists (hereinafter, the Special Unit), which has proved totally ineffective in its handling of the complaint; (iii) Mr Jorge Byron Valencia Martinez seized the Inter-American Commission of Human Rights of the matter, following which the national civil police considered his life to be at high risk; (iv) notwithstanding the foregoing, he was given only a non-motorized escort, the basic cost of which had to be borne in part by the trade union leader.

278. In a communication dated 13 September 2014, the Autonomous Popular Trade Union Movement of Guatemala conveyed reports of 16 other murders of trade union members committed in 2013 and 2014, listed below. The complainant organizations allege that the total impunity that has prevailed in respect of the dozens of murders previously reported to the Committee also exists with regard to the 16 new murders.

Name	Organization	Date of murder
Mayro Rodolfo JUÁREZ GALDAMEZ	Taxi Drivers Union of Izabal (SIGTADI), UNSITRAGUA	2 January 2013
Joel GONZÁLEZ PÉREZ	UNSITRAGUA	13 February 2013
Juan MARTÍNEZ MATUTE	Union of Public Service Transport Workers of Ciudad Pedro de Alvarado (SITRASEPUCPA)	16 February 2013
Carlos Antonio HERNÁNDEZ MENDOZA	Focal Point of Eastern Community, Indigenous, Church, Trade Union and Rural Organizations–National Fighting Front	8 March 2013
Jerónimo SOL AJCOT	National Indigenous and Rural Focal Point (CONIC)	12 March 2013
Santa ALVARADO	National Union of Health Workers of Guatemala (SNTSG)	21 March 2013
Kira Zulueta ENRÍQUEZ MENA	Union of Workers of the Municipality of Nueva Concepción, Escuintla	22 March 2013
Jorge Ricardo BARRERA BARCO	SPASG	23 May 2013
Gerardo de Jesús CARRILLO NAVAS	CUSG	25 March 2014
William RETANA CARIAS	CUSG	7 April 2014
Manuel de Jesús ORTIZ JIMÉNEZ	CUSG	8 April 2014
Genar Efrén ESTRADA NAVAS	CUSG	13 May 2014
Edwin Giovanni DE LA CRUZ AGUILAR	CUSG	14 May 2014
Luis Arnoldo LÓPEZ ESTEBAN	CGTG	11 May 2014
Marlon VELÁZQUEZ	National Building and Timber Union (SINCG)	6 January 2014
Eduardo MARTÍNEZ BARRIOS	SINCG	20 August 2014

279. The complainants refer to the report prepared by the International Commission against Impunity in Guatemala (CICIG), entitled “Status of investigations into the deaths of trade union leaders in Guatemala”, submitted to the Tripartite Commission for International Labour Affairs on 31 July 2014. They note that the investigation was undertaken following a request for support to the CICIG from the Public Prosecutor’s Office for the review of a number of cases of killings of trade union leaders, which led to the conclusion, on 24 September 2013, of an agreement on collaboration between the two institutions aimed at building the capacity of local authorities to analyse and investigate cases of violence against trade union leaders and members. The complainants state that the CICIG report confirms the impunity existing in Guatemala, given that, in only one of the 38 cases studied, is a judicial decision said to have been handed down against one of those responsible for the murder; and that the report further notes that in the vast majority of cases the investigations were marked by considerable inefficiency.

280. The complainants go on to express a number of reservations regarding the aforementioned CICIG report, due to the fact that it is based on an analysis of the files of the Public Prosecutor’s Office, without any effort being made to obtain the necessary information from the complainant trade union organizations. According to the complainants, in a context marked by numerous murders and other acts of violence against trade union leaders and members and a 98 per cent rate of impunity through lack of political will on the part of the Government, it is surprising that the CICIG centred its analysis on a hypothesis never raised by the complainants or relatives of the victims. The hypothesis in question is said to be that there had been systematic, premeditated criminal actions to impair or eliminate the right of trade union association in general or the right to freedom of association of particular

organizations. The complainants state that there can be no common standards to reveal the existence of systematic, premeditated criminal actions in respect of cases that occurred between 2004 and 2013 under different circumstances and governments in a country where anti-union actions take multiple forms.

- 281.** In addition, the complainants express doubts concerning the conclusions of the CICIG report as to the motives behind the murders. The complainants note that, while the CICIG considers only six of the 32 cases considered by it to be related to the victim's trade union membership, its report clearly establishes that the vast majority of cases are still under investigation without any responsibility being assigned for the murders, and furthermore that there were considerable inefficiencies in the investigations; and that those two facts make it impossible to state with any certainty that the murders were not linked to the trade union activity of the victims.
- 282.** The complainants state lastly that in the "only six cases" where the victim's trade union affiliation is said to be linked to the murder, the investigation has not been completed, no guilty parties have been identified and there have been no prosecutions, therefore reaching the conclusion that, even considering the signal shortcomings of the CICIG report, the State is not adequately investigating or punishing the perpetrators of murders of trade union members.
- 283.** The complainants then refer to the response of the Public Prosecutor's Office to the acts of violence committed against members of the trade union movement. They state that the new Chief Public Prosecutor, who took up office in May 2014, has not taken any concrete action to suggest that protection of freedom of association is one of his institutional priorities. The complainants further note that, despite the commitment made by the Government in point 4 of the roadmap to promote the direct participation of victims and trade union organizations throughout the criminal investigation and proceedings, the former level of participation of the victims' relatives has been maintained, limited to the initial complaint and one routine interview. Similarly, trade union organizations have not been called on at any stage in the proceedings nor have they been allowed to act as the complainant parties.
- 284.** The complainants allege lastly that the Ministry of the Interior has not fulfilled its commitments to preventing, protecting from and reacting to threats and attacks against trade union leaders and members. They note in particular that: (i) the permanent trade union panel on comprehensive protection set up in 2013 by the Ministry of the Interior did not meet even once between 12 March and 18 August 2014; and (ii) at its last meeting, the Ministry of the Interior introduced a protocol on the implementation of immediate and preventive security measures for human rights defenders in Guatemala, which is, however, no more than a copy of an existing generic protocol, without any adjustment for its concrete application to trade unionists.

C. The Government's reply

Murders

- 285.** In the course of regularly forwarding information on investigations and proceedings relating to cases of murders of trade union leaders and members covered by this complaint, the Government provided, in February 2016, information regarding 70 killings reported by trade union organizations of Guatemala. On that occasion, the Government stated that: (i) as at 31 December 2015, 14 judicial sentences had been handed down, including 11 convictions; and (ii) of the 14 judicial sentences, six had been delivered between 2007 and 2013, six in 2014 and two in 2015. The Government also transmitted specific information provided by

the Public Prosecutor's Office concerning each of the investigations into the murders of trade union leaders and members on which no judicial sentence has yet been handed down.

- 286.** The Government also reports a seventy-first murder, that of Mr Mynor Rolando Castillo Ramos, a member of the Union of Workers of the Municipality of Jalapa, which occurred in the municipality and department of Jalapa on 24 September 2015. The Government notes that the necessary investigations were carried out immediately, thereby enabling the Public Prosecutor's Office to bring formal charges and institute proceedings against the perpetrator of the crime.
- 287.** In its various communications, the Government also reports a series of steps to enhance the efficiency of criminal investigations and proceedings relating to the murders of trade union leaders and members. The Government refers firstly to the strengthening of the Special Investigation Unit for Crimes against Trade Unionists, to which nine new members were appointed (from five members in 2011, it was increased to 12 members in 2014). Furthermore, it ordered that all cases of crimes against trade union members under investigation in the country be referred to that Special Unit. In addition, the Public Prosecutor's Office, in coordination with the representative of the Director-General of the ILO in Guatemala, held a series of training courses aimed, in particular, at the personnel of the Special Unit.
- 288.** The Government also reports the conclusion in September 2014 of an outline agreement on cooperation between the judiciary, the Public Prosecutor's Office, the Ministry of the Interior and the Ministry of Labour and Social Welfare, which provides for the establishment of an inter-agency coordination group whose function is to facilitate and exchange information on crimes committed against unionized workers.
- 289.** The Government reports a strengthening of the trade union panel of the Public Prosecutor's Office set up in 2013, in which are represented the Public Prosecutor's Office and the main trade union confederations in the country. The Government states that: (i) the Public Prosecutor's Office held 15 meetings of the trade union panel in 2015, with at least one meeting every month; and (ii) such meetings provide a good means for trade union organizations to be informed about the progress of investigations into killings of trade union leaders and members and also for trade union organizations to provide any additional information relevant to the investigations.
- 290.** The Government also reports that the Public Prosecutor's Office, after consulting the social partners, adopted in February 2015 general directive No. 1-2015 on the investigation and effective criminal prosecution of crimes committed against members of trade unions and workers' organizations and other defenders of labour and trade union rights. The Government indicates that general directive No. 1-2015 is being implemented and that the investigation procedures set out therein were particularly useful in the case of the death of Mr Mynor Rolando Castillo Ramos, a member of the Union of Workers of the Municipality of Jalapa, which occurred on 24 September 2015.
- 291.** The Government also refers to the collaboration established since 2013 between the Public Prosecutor's Office and the CICIG, stating that: (a) on 24 September 2013, both institutions signed an agreement on collaboration whereby the CICIG undertakes to provide support in reviewing the investigation of cases of violent deaths of trade union members; (b) the CICIG department of investigations and litigation was tasked with reviewing the cases in order to determine how the investigation had been handled, the motive behind each murder and future follow-up action; (c) 56 cases were submitted for review (two were not reviewed as the corresponding files were not forwarded); (d) the review was confined to 37 cases, namely: 32 cases in which it was certain that the victims were registered members of a trade union organization, four cases in which it was not certain that the victims were registered members

of such an organization and one case in which the victim was not a trade union member but, in his capacity as a lawyer, acted in the defence of trade union organizations; the investigations in the other cases were not reviewed, given that the victims were found not to be registered members of trade unions; (e) with regard to the motive behind the various murders, it emerged from the review of the files that six cases had originated in the trade union activity of the victims (in two of them, it was confirmed that their trade union membership was the direct motive for the murder and in the four remaining cases a probable link was established; they are under investigation); (f) the violent deaths reported concern several trade union organizations and only in nine cases were the victims members of the same organization, namely, the Union of Banana Workers of Izabal; (g) in its analysis of the proceedings, the CICIG noted the following negative factors having a significant bearing on the course of the investigations: (i) attributable to the Public Prosecutor's Office: the absence of methodological plans; transfer of files between public prosecution services and lack of continuity in the prosecution officers assigned to cases; delayed arrival at the scene of the crime and procedural errors; widespread delays in the conduct of criminal investigations; and (ii) imputable to other participants in the process: a lack of collaboration by citizens and witnesses' fear of testifying; shortcomings in police efforts to clarify cases; and shortcomings in forensic reports; (h) in the investigations assigned to the Special Investigation Unit for Crimes against Trade Unionists, more detailed investigation plans and better founded investigations were noted; (i) it could be inferred from the geographical location of the deaths, that the majority of them occurred in places where violence is most rife in the country; (k) the number of judgments handed down in these cases is conspicuously low – only two –, which reflects a lack of action by the bodies responsible for administering justice. The representatives of the Ministry of Labour emphasized that, according to the CICIG report, the reviews of the cases carried out afford no ground for the hypothesis that, at least in respect of the sample of cases considered, there has been a practice of eliminating or exterminating members of the trade union movement in Guatemala.

292. The Government indicates that the agreement on collaboration between the Special Investigation Unit of the Public Prosecutor's Office for Crimes against Trade Unionists and the CICIG continues to be implemented. Under that agreement, the CICIG issues recommendations on the handling of the investigations relating to the 12 murder cases identified by the trade union movement in Guatemala. Six joint working meetings have been held in this connection between the CICIG and the Special Unit since June 2015.

Other acts of violence and threats against trade union members

293. With regard to the death threats against the trade union member Ms Lesvia Morales, concerning which the Committee had urged the Government and the complainant organization to work together in good faith so that they can finally identify the relevant file, the Government communicates the following information provided by the Public Prosecutor's Office: (i) in the databases of the Public Prosecutor's Office no trace has been found of that name and surname; (ii) however, within that system, searches are carried out using complete names and surnames (two names and two surnames), consequently the search would need to be refined in case "Lesvia Morales" is in fact one name and one surname.
294. With regard to the murder attempt and death threats against Mr Leocadio Juracán, in October 2013 the Government communicated the information provided by the Public Prosecutor's Office, indicating that: (i) Mr Leocadio Juracán's complaint was reported to the Office of the Human Rights Ombudsperson, which transmitted it to the Public Prosecutor's Office; (ii) the victim was summoned to appear several times in order to clarify and attest to the circumstances of the crime; (iii) however, Mr Leocadio Juracán never appeared; (iv) contact was made with acquaintances of Mr Juracán who delivered to him a new summons for

24 September 2013, but again he failed to appear; (v) to the extent that the crime of making threats is an offence that is liable to public prosecution upon application by the party concerned, it is not possible for the Public Prosecutor's Office to pursue the corresponding investigation.

- 295.** With regard to the Committee's recommendation that the Government take all necessary measures to ensure that the forces of order fully implement the principles of freedom of association when maintaining public order during demonstrations, the Government reports: (i) the adoption in 2012 of the protocol on police conduct in evictions, No. 01–2012, issued by the Directorate of the National Civil Police of the Ministry of the Interior; and (ii) the inclusion of three paragraphs on the use of force for the maintenance of public order in the manual on referendums and consultation, under police procedures core assignment 5, of the Academy of the National Civil Police.

D. The Committee's conclusions

- 296.** *The Committee recalls that, in this case, the complainant organizations reported numerous murders and acts of violence against trade union leaders and members, as well as the related situation of impunity, acts of anti-union discrimination, denial of legal status to several trade unions and failures in the system of labour justice.*
- 297.** *Considering the high number of murders and acts of violence reported in connection with this case and the existence of several ongoing cases presented by one of the complainant organizations, the MSICG, relating to the aforementioned other allegations, the Committee has decided that from now on it will limit itself in this case to examining the allegations of murders, other acts of anti-union violence and the related situation of impunity. In light of the nature of the allegations and the identity of the complainant organization, the acts of anti-union discrimination, the denial of legal status to several trade unions and the failures in the system of labour justice reported in this case will be dealt with, respectively, in Cases Nos 2948, 3042 and 3089.*
- 298.** *The Committee observes that, since its last examination of this case in June 2013, the Governing Body of the ILO has examined on seven occasions the complaint concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), made by delegates to the 101st Session (2012) of the International Labour Conference under article 26 of the ILO Constitution. The Committee recalls that the complaint relates, inter alia, to the murders of trade union leaders and members and the prevailing impunity in that regard. The Committee notes in particular that: (i) as a follow-up to the complaint made under article 26 of the ILO Constitution, a representative of the Director-General of the ILO has been present in Guatemala since July 2013; (ii) following the visit of a high-level tripartite mission to the country in September 2013, the Government, in October 2013, adopted, in consultation with the social partners, a roadmap whereby it undertakes to ensure the timely trial and conviction of the perpetrators and instigators of the crimes against trade union officials and members and to strengthen the prevention and protection mechanisms in respect of threats and attacks against trade union officials and members; and (iii) the Governing Body decided, at its 326th Session (March 2016), to defer to its November 2016 session consideration of the possible appointment of a Commission of Inquiry.*
- 299.** *The Committee also observes that, as a follow-up to the complaint made under article 26 of the ILO Constitution, both the complainant organizations in this case and the Government have regularly submitted extensive information to the Governing Body of the ILO. The Committee will refer to the content of the information when it is relevant to its examination of the allegations in this case.*

300. *For the sixth time, the Committee deeply deplores the numerous acts of violence denounced in the complaint and expresses its deep concern about the high number of murdered trade union leaders and members. The Committee expresses its deep and utmost concern about the report by the complainant organizations of 16 additional murders of members of the trade union movement in 2013 and 2014 and the indication, in the follow-up to the complaint made under article 26 of the ILO Constitution, both by the complainant organizations and by the Government, of the murder of Mr Mynor Ramos, member of the Union of Workers of the Municipality of Jalapa in September 2015. 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].*

Allegations of murders already examined

- 301.** *With regard to the investigation and prosecution of murders of trade union leaders and members, the Committee takes note first of the points made by the complainant organizations, both in this complaint and in the follow-up to the complaint made under article 26 of the ILO Constitution. The Committee notes that the CUSG, the CGTG and UNSITRAGUA, under the umbrella of the Autonomous Popular Trade Union Movement of Guatemala, state that: (i) no further progress has been made in respect of the investigation of murders of trade union leaders and members; (ii) the very few murder cases that the Public Prosecutor's Office has managed to bring before the courts do not reveal, according to that institution's investigations, anti-union characteristics; (iii) as is publicly admitted by the Public Prosecutor's Office, that institution has neither the budget nor the human and material resources needed to perform its work effectively; (iv) the 2014 CICIG report on investigations into a series of murders of trade union members highlighted significant failings on the part of the Public Prosecutor's Office and the courts; (v) however, the aforementioned report suffered from a number of shortcomings in that it was based mainly if not exclusively on the files of the Public Prosecutor's Office; (vi) the witness protection system has neither effective mechanisms nor sufficient resources to ensure the safety of witnesses; (vii) general directive No. 1–2015 has not been properly implemented.*
- 302.** *Similarly, the Committee notes that the MSCIG has stated that: (i) 100 per cent of the instigators of murders of trade union leaders and members are free and unpunished; (ii) more than 97 per cent of perpetrators of such acts are free and unpunished; (iii) 100 per cent of acts of anti-union violence are totally unpunished; (iv) the Government's position, which consists of disregarding the anti-union motive behind a considerable number of murders of trade union members, is not acceptable so long as no final judgments have been delivered against the perpetrators and instigators of these acts and so long as it has therefore not been proved that the crime was motivated by circumstances unconnected with the victim's trade union activities.*
- 303.** *The Committee takes note of the overall information provided by the Government on the progress of the investigations and criminal proceedings in respect of 70 killings reported by various trade union organizations of Guatemala. The Committee takes note of the Government's indications, according to which: (i) as at 31 December 2015, 14 judicial sentences had been handed down, including 11 convictions; and (ii) of the 14 judicial sentences, six were delivered between 2007 and 2013, six in 2014 and two in 2015.*
- 304.** *The Committee also takes note of the information provided by the Government on the investigations in respect of murders of trade union leaders and members on which no judicial sentence has yet been handed down. The Committee notes that this information derives from 56 cases awaiting sentencing: 40 cases are at the investigation stage; one case*

is awaiting criminal prosecution; in 11 cases, arrest warrants have been issued that have not yet been enforced; one case is disputed; one case has given rise to a stay of proceedings; and, in two cases, criminal prosecution has been abated by the death of the accused persons.

- 305.** *The Committee also takes note of the Government's indications concerning the steps to strengthen the effectiveness of investigations and criminal procedures in respect of the murders of trade union leaders and members taken in pursuance of the roadmap adopted in October 2013 in consultation with social partners in the country, as part of the follow-up to the complaint made under article 26 of the ILO Constitution. The Committee notes in particular that the Government, both in the observations on this case and in the material provided as part of the follow-up to the complaint made under article 26, reports that: (i) the Special Unit of the Public Prosecutor's Office for Crimes against Trade Unionists has been strengthened and is now responsible for investigating virtually all the cases of murders of trade union leaders and members; (ii) a trade union panel has been set up and consolidated and holds monthly meetings bringing together representatives of the Public Prosecutor's Office and the main trade unions in the country in order to facilitate the exchange of information regarding the investigations; (iii) after consulting the social partners, the Public Prosecutor's Office adopted, in February 2015, general directive No. 1–2015 for the investigation and effective criminal prosecution of crimes committed against members of trade unions and workers' organizations and other defenders of labour and trade union rights; (iv) under the agreement on collaboration between the Special Unit and the CICIG, concluded in September 2013, in 2014 the CICIG delivered a report on investigations carried out in respect of 37 murders highlighting a number of failings in the investigations and considering that it could not be deduced from the elements available that there existed a predetermined plan to eliminate the trade union movement; (v) under the agreement on collaboration between the Special Unit and the CICIG, 12 files on murder investigations identified by the trade union movement in Guatemala were delivered to the CICIG on 15 June 2015 in order for it to make recommendations on the handling of the aforementioned investigations.*
- 306.** *On the basis of these elements and of the documentation provided on the investigation and criminal prosecution of 70 murders identified by the Government, the Committee first notes with interest that the vast majority of the investigations fall under the responsibility of the Special Unit. The Committee considers that provided that the said Unit has sufficient human and material resources to perform its tasks, centralizing investigations to the Unit may contribute to the development and implementation of a specific methodology that takes fully into account the trade union characteristics of the victims in determining the motives behind the murders and identifying the guilty parties. The Committee considers that this is illustrated by the adoption of the aforementioned general directive No. 1–2015. The Committee also emphasizes that regular meetings of the trade union panel can be expected to facilitate the exchange of information between trade union organizations and the Public Prosecutor's Office.*
- 307.** *The Committee also notes with interest the cooperation extended to the Public Prosecutor's Office by the CICIG. Concerning the report prepared by the CICIG in 2014, the Committee takes note of document GB.322/INS/8, presented as follow-up to the complaint made under article 26. In that report, an ILO mission provided the following information:*

The mission met with a representative of the CICIG who indicated that: (1) the CICIG only reviewed the investigations carried out by the Public Prosecutor's Office on the basis of the information available, and did not carry out any investigations of its own; (2) it only checked whether the victims were union members but did not examine the phenomenon of anti-union violence; (3) it found that the investigations are carried out in isolation and that the families of the victims feel frustrated at seeing time go by without effective results; (4) the report has a limited scope and the criteria for investigation should be reviewed in order to determine whether the murders in question are linked to the trade union activities of the victims; and (5) the 58 cases

should be reviewed again, on the basis of a new methodology. The Chief Public Prosecutor also indicated that the report of the CICIG is not final and that it is just another instrument of use to the investigators of the Public Prosecutor's Office.

- 308.** *The Committee encourages the continuing development of collaboration between the Public Prosecutor's Office and the CICIG and stresses the importance of concerned trade union organizations being consulted when that institution is examining murder cases. In this connection, the Committee requests the Government to keep it informed of the results of such collaboration in regard to the 12 murder cases selected in June 2015.*
- 309.** *While taking due note of the aforementioned initiatives, the Committee observes in general with utmost concern: (i) the still very low number of murders that have led to convictions (11 out of 70), despite the amount of time that has elapsed since the events; (ii) the even smaller number of cases (2) of convictions of the instigators; (iii) the high number of arrest warrants that continue to be not enforced; (iv) the even higher number of cases under investigation in respect of which, according to the description given by the Public Prosecutor's Office, there is no hint of any imminent possibility of identifying the perpetrators and instigators of the crimes. The Committee recalls in this connection 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].*
- 310.** *In addition, the Committee observes with particular concern that the cases with regard to which evidence has already been found of a possible anti-union motive (either because large numbers of members of the same union have been killed, or because the CICIG or the Public Prosecutor's Office itself has already specifically identified a possible anti-union motive, or because the victims belonged to trade unions concerning which the Committee was aware that, at the time of the events, they were targeted by anti-union acts) have not given rise either to convictions or to significant progress in the investigations, particularly in respect of the instigators. The Committee draws attention to the following cases in this connection: (i) the nine murders of leaders and members of the Union of Banana Workers of Izabal (SITRABI), Mr Marco Tulio Ramírez Portela (investigation carried out in collaboration with the CICIG), Mr Carlos Enrique Cruz Hernández, Mr Idar Joel Hernández Godoy, Mr Oscar Humberto González Vásquez, Mr Henry Aníbal Marroquín Orellana, Mr Pablino Yaque Cervantes, Mr Héctor Alfonso Martínez Cardona, Mr Mardo de Jesús Morales Cardona and Mr Miguel Ángel Gonzales Ramírez; (ii) the three murders of leaders and members of the Union of Workers of the Municipality of Coatepeque, Mr Roberto Oswaldo Ramos Gómez, Mr Armando Donald Sánchez Betancourt and Mr Amado Corazón Monzón, and the murders of Mr Wilder Hugo Barrios López, of the Union of Minibus Drivers of the Magnolia Camposanto District, and of Mr Luis Haroldo García Ávila, of the Union of Commercial Workers of Coatepeque, which, according to the Public Prosecutor's Office, could be linked to the murders of the members of the Union of Workers of the Municipality of Coatepeque; (iii) the three murders of leaders and members of the National Union of Health Workers of Guatemala, Mr Sergio Miguel García, Mr Lisinio Aguirre Trujillo and Mr Julio Pop Choc, the possible anti-union motive behind the first two having been identified by the Public Prosecutor's Office and the CICIG; (iii) the murder of Mr Pedro Antonio García, of the Union of Municipal Workers of Malacatán, San Marcos, which was considered to have a possibly anti-union motive by the CICIG; (iv) the murder of Mr Manuel de Jesús Ramírez, Secretary-General of the Union of Technical and Administrative Support Workers of the Criminal Public Defence Institute, who had reported to the Committee the dismissal of the founding members of his organization (Case No. 2978) and whose murder is considered to have a possibly anti-union motive by the Public Prosecutor's Office; and (v) the murder of Mr Juan Fidel Pacheco Coc, Secretary-General of the Union of Migration Clerks, who, before his murder, had complained to the Committee of anti-union practices and threats against members of his organization (Case No. 2673).*

- 311.** *With regard to the nine aforementioned murders of members of SITRABI, the Committee notes with regret that the Public Prosecutor's Office merely mentions the difficulties in identifying witnesses to the murders and does not provide information concerning any investigations aimed at identifying the instigators of the nine murders. In the specific case of the investigations into the murder of Mr Héctor Alfonso Martínez Cardona, member of SITRABI, the Committee does not understand the reasons why the Public Prosecutor's Office's request for permission to locate the mobile telephone carried by the victim at the time of the incident was denied by the courts. In light of this example, the Committee urges that the necessary steps be taken to strengthen collaboration between the Public Prosecutor's Office and the judiciary.*
- 312.** *Noting that the CICIG is providing support for the investigation of some of the cases referred to in the two preceding paragraphs, the Committee urges the Government, in accordance with the guidelines suggested by the CICIG, to take as a matter of urgency all necessary measures to ensure that the investigations are directed towards both the perpetrators and the instigators of the acts and that, in planning and conducting the investigations, the possible anti-union motive behind the murders be fully and systematically taken into account. The Committee urges the Government to keep it promptly informed of the initiatives taken and the results obtained.*
- 313.** *Generally speaking, while being aware of some steps that have been taken since the adoption of the roadmap in 2013, the Committee considers that the high degree of impunity that continues to prevail and the very high number of murders awaiting elucidation and sentencing urgently require the allocation of additional economic and human resources to the Special Unit. The Committee urges the Government to inform it promptly of the initiatives taken and the results obtained in this regard. Similarly, while it has taken note of the adoption in September 2014 of an outline agreement on cooperation between the judiciary, the Public Prosecutor's Office, the Ministry of the Interior and the Ministry of Labour and Social Welfare, the Committee observes that a substantial number of arrest warrants continue not to be enforced and that, in some cases, requests for judicial authorization to advance investigations have not been granted. Accordingly, recalling the commitments made by the Government under the roadmap, the Committee urges the Government to strengthen inter-agency collaboration between the aforementioned bodies with regard to the murders of trade union leaders and members.*
- 314.** *In addition, recalling the comments contained in the 2014 CICIG report on the lack of action of the bodies tasked with administering justice and noting that, as a follow-up to the complaint under article 26, the Government reported that the Supreme Court had prepared a draft text in that connection, the Committee encourages the Government to take all necessary measures to establish special courts in order to deal more swiftly with crimes and offences committed against members of the trade union movement. The Committee requests the Government to inform it of the concrete initiatives taken in this regard. Furthermore, as in its previous examination of the case, the Committee continues to observe that the information provided by the Public Prosecutor's Office, on the one hand, and the CICIG report, on the other, refers in several cases to the impossibility of relying in the investigations on the collaboration of witnesses, owing to their fear of reprisals. The Committee therefore urges the Government once again to develop and implement effective protection measures for persons who agree to collaborate in criminal investigations into acts of anti-union violence. The Committee requests the Government to keep it promptly informed of initiatives taken in this regard.*

New allegations of murders

- 315.** *With regard to the aforementioned complaint made by the Autonomous Popular Trade Union Movement of Guatemala concerning 16 additional murders of trade union leaders*

and members in 2013 and 2014, the Committee notes that the Government reports as follows: (i) on 17 September 2015, Mr José Cruz López Yax was sentenced to a 30-year prison term for the murder of Ms Santa Alvarado Cajchum, the motive for the murder being conjugal separation; (ii) with regard to the murder of Mr Carlos Antonio Hernández Mendoza, the court has ordered a stay of proceedings; (iii) with regard to the murder of Mr Jorge Ricardo Barrera Barco, a case which has the support of the CICIG, a request has been made for abatement of the criminal prosecution; (iv) in the case of the murders of Mr Mayro Rodolfo Juárez Galdámez, Mr Joél González Pérez, Mr Juan Martínez Matute and Ms Kira Zulueta Enríquez Mena, the relevant investigations are being carried out; investigations into the murders of Ms Kira Zulueta Enríquez Mena and Mr Mayro Rodolfo Juárez Galdámez are being carried out with the support of the CICIG.

- 316.** *The Committee requests the Government to provide further information about the reasons for the request for abatement of the criminal prosecution concerning the murder of Mr Jorge Ricardo Barrera Barco and for a stay of proceedings in the case concerning Mr Carlos Antonio Hernández Mendoza, leader of the National Union of Health Workers, a trade union organization already affected by several murders.*
- 317.** *Furthermore, the Committee notes with concern that the Government provides no information regarding the murders of: (i) Mr Jerónimo Sol Ajcot; (ii) Mr Gerardo De Jesús Carrillo Navas; (iii) Mr William Retana Carias; (iv) Mr Manuel De Jesús Ortiz Jiménez; (v) Mr Genar Efrén Estrada Navas; (vi) Mr Edwin Giovanni De La Cruz Aguilar; (vii) Mr Luis Arnoldo López Esteban; and (viii) Mr Marlon Velázquez, and that those names do not appear on the lists of the Public Prosecutor's Office. Recalling that, in the event of assaults on the physical or moral integrity, the Committee has considered that an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts [see *Digest*, op. cit., para. 50]. The Committee therefore urges the Government to send as promptly as possible information concerning the relevant investigations to identify and bring to justice both the perpetrators and the instigators of the acts.*

Other allegations of violence already examined

- 318.** *With regard to the death threats against the trade union member Ms Lesvia Morales, concerning which the Committee had urged the Government and the complainant organization to work together in good faith so that the relevant file can finally be identified, the Committee notes that the Government, in a communication of 3 June 2015, transmits the information provided by the Public Prosecutor's Office, indicating that: (i) in the databases of the Public Prosecutor's Office no trace has been found of that name and surname; (ii) however, within that system, searches are carried out using complete names and surnames (two names and two surnames), and consequently the search would need to be refined in case "Lesvia Morales" is in fact one name and one surname. In light of the foregoing, the Committee once again urges the Government to carry out a full investigation in the records of the Public Prosecutor's Office to determine whether or not the aforementioned complaint exists and urges the MSICG to cooperate in the search. The Committee requests the Government and the complainant organization to keep it informed in this regard.*
- 319.** *With regard to the murder attempts and death threats against Mr Leocadio Juracán, the Committee had requested the Government to contact the Office of the Human Rights Ombudsperson without delay to identify the case in question and thus be in a position to give full information about the actions taken by the State in respect of this complaint. The Committee notes that the Government indicates that: (i) Mr Leocadio Juracán's complaint was reported to the Office of the Human Rights Ombudsperson, which transmitted it to the*

Public Prosecutor's Office; (ii) despite being summoned to appear on repeated and different occasions by the Public Prosecutor's Office, Mr Leocadio Juracán never appeared; (iii) to the extent that the crime of making threats is an offence that is liable to public prosecution upon application by the party concerned, it is not possible for the Public Prosecutor's Office to follow up with the corresponding investigation.

- 320.** *With regard to the allegations of death threats against Ms Selfa Sandoval Carranza, SITRABI board member, and the allegations of illegal detention and intimidation of members of the SITRAPETEN in several hotels across the country, the Committee notes that it has not received the additional information requested from the complainant organizations. The Committee reiterates its request, pointing out that, in the event of it not receiving the said information for its next examination of the case, it will not pursue its examination of the aforementioned allegations.*
- 321.** *With regard to the allegations of attempted extrajudicial killings, death threats and the injuries sustained by the members of the Union of Commercial Workers of Coatepeque, the Committee notes with regret that it still has not received the relevant observations of the Government. Recalling the commitments made by the Government under the roadmap adopted in October 2013 and further observing that several members of the aforementioned organization were murdered, the Committee once again urges the Government to institute an independent judicial inquiry into the allegations of attempted extrajudicial killings and death threats sustained by the trade union members. The Committee requests the Government to keep it informed in detail about such investigations and the resulting criminal proceedings.*
- 322.** *The Committee also notes again with regret the absence of information as to the whereabouts of María Antonia Dolores López, a minor at the time of the events (13 years old), daughter of Roberto Dolores, who disappeared, apparently as the victim of a kidnapping, a few days after her father had testified concerning the murder of Mr Miguel Ángel Ramírez Enríquez. Recalling the importance of providing effective protection for witnesses of anti-union violence, the Committee urges the Government to inform it of the actions taken to determine the whereabouts of María Antonia Dolores López.*
- 323.** *With regard to the Committee's recommendation that the Government take all necessary measures to ensure that the forces of order fully implement the principles of freedom of association when maintaining public order during demonstrations, the Committee notes that the Government reports: (i) the adoption in 2012 of the protocol on police conduct in evictions, No. 1–2012, issued by the Directorate of the National Civil Police of the Ministry of the Interior; and (ii) the inclusion of three paragraphs on the use of force for the maintenance of public order in the manual on referendums and consultation, under police procedures core assignment 5, of the Academy of the National Civil Police.*

New allegations of violence

- 324.** *The Committee notes that it has not received the Government's comments regarding the death threats against Mr Jorge Byron Valencia Martinez, Secretary-General of STAYSEG. Emphasizing the seriousness of the allegations and recalling the Government's commitments under the roadmap to protect members of the trade union movement against acts of violence, the Committee urges the Government to take all necessary measures to provide adequate protection to Mr Jorge Byron Valencia Martinez. Observing in addition that the complainant organization alleges that the trade union leader had to assume part of the basic costs of the escort assigned to him, an allegation which has also been made in other similar cases brought to the attention of the Governing Body of the ILO as part of the follow-up to the complaint made under article 26, the Committee urges the Government to increase the*

budget for protection arrangements for members of the trade union movement so that protected persons do not personally incur any expense as a result.

The Committee's recommendations

325. *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, assaults and death threats and the climate of impunity.***
- (b) *The Committee firmly expects that the commitments made by the Government in the October 2013 roadmap and reaffirmed by the President of the Republic in March 2016 with regard to the conviction of perpetrators and instigators of murders of trade union members and the protection of trade union leaders and members against violence and threats will translate into actions and concrete results. The Committee urges the Government to inform it as promptly as possible of the actions taken in this regard and of the results obtained.***
- (c) *The Committee encourages the continuing development of collaboration between the Public Prosecutor's Office and the CICIG and stresses the importance of concerned trade union organizations being consulted when that institution is examining murder cases. The Committee requests the Government to keep it informed of the results of such collaboration in regard to the 12 murder cases selected in June 2015.***
- (d) *The Committee urges the Government, in accordance with the guidelines suggested by the CICIG, to take as a matter of urgency all necessary measures to ensure that the investigations under way are directed towards both the perpetrators and the instigators of the acts and that, in planning and conducting the investigations, the possible anti-union motive behind the murders be fully and systematically taken into account. The Committee urges the Government to keep it promptly informed of the initiatives taken and the results obtained.***
- (e) *The Committee urges the Government to take all necessary measures to ensure that additional economic and human resources are allocated to the Special Unit of the Public Prosecutor's Office for Crimes against Trade Unionists. The Committee requests the Government to inform it promptly of the initiatives taken and the results obtained in this regard.***
- (f) *The Committee urges the Government to continue strengthening inter-agency collaboration between the Ministry of Labour, the Ministry of the Interior, the Public Prosecutor's Office and the judiciary with regard to the murders of trade union leaders and members. The Committee requests the Government to keep it informed in this regard.***
- (g) *The Committee urges the Government to take all necessary measures to establish special courts in order to deal more swiftly with crimes and offences committed against members of the trade union movement. The Committee***

requests the Government to inform it of concrete initiatives taken in this regard.

- (h) The Committee again urges the Government to develop and implement effective protection measures for persons who agree to collaborate in criminal investigations into acts of anti-union violence. The Committee requests the Government to keep it promptly informed of initiatives taken in this regard.*
- (i) The Committee requests the Government to provide further information about the reasons for its request for abatement of the criminal prosecution concerning the murder of Mr Jorge Ricardo Barrera Barco and for a stay of proceedings in the case of Mr Carlos Antonio Hernández Mendoza.*
- (j) The Committee urges the Government to send as promptly as possible information concerning the relevant investigations to identify and bring to justice both the perpetrators and the instigators of the murders of Mr Jerónimo Sol Ajcot, Mr Gerardo De Jesús Carrillo Navas, Mr William Retana Carias, Mr Manuel De Jesús Ortiz Jiménez, Mr Genar Efrén Estrada Navas, Mr Edwin Giovanni De La Cruz Aguilar, Mr Luis Arnoldo López Esteban and Mr Marlon Velázquez.*
- (k) The Committee once again urges the Government to carry out a full investigation of the records of the Public Prosecutor's Office in order to determine the existence of the complaint from Ms Lesvia Morales and urges the MSCIG to cooperate in good faith in the search. The Committee requests the Government and the complainant organization to keep it informed in this regard.*
- (l) The Committee reiterates its request that the complainant organizations provide further information about the allegations of death threats against Ms Selfa Sandoval Carranza, SITRABI board member, and the allegations of illegal detention and intimidation of members of the SITRAPETEN in several hotels across the country. The Committee points out that, in the event of it not receiving the said information for its next examination of the case, it will not pursue its analysis of the aforementioned allegations.*
- (m) The Committee once again urges the Government to institute an independent judicial inquiry into the allegations of attempted extrajudicial killings and death threats sustained by members of the Union of Commercial Workers of Coatepeque. The Committee requests the Government to keep it informed in detail about that inquiry and the resulting criminal proceedings.*
- (n) The Committee once again urges the Government to inform it of the actions taken to determine the whereabouts of Maria Antonia Dolores López, a minor at the time of the event. The Committee requests the Government to keep it informed in this regard.*
- (o) The Committee urges the Government to take all necessary measures to provide adequate protection to Mr Jorge Byron Valencia Martínez. The Committee requests the Government to keep it informed in this regard.*

- (p) *The Committee urges the Government to increase the budget for protection arrangements for members of the trade union movement so that protected persons do not personally incur any expense as a result. The Committee requests the Government to keep it informed in this regard.*
- (q) *The Committee again draws the special attention of the Governing Body to the extreme seriousness and urgent nature of this case.*

CASE No. 2673

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

**Complaints against the Government of Guatemala
presented by
the General Union of Workers of the Directorate-General for
Migration of the Republic of Guatemala (USIGEMIGRA)**

*Allegations: Transfer of trade union leaders
without their consent in violation of the
collective agreement in force*

- 326.** The Committee examined this case at its March 2010 meeting and presented an interim report to the Governing Body [see 356th Report, paras 779–793, approved by the Governing Body at its 307th Session (March 2010)].
- 327.** The Government replied to the requests for information in communications dated 24 May 2010 and 24 September 2015.
- 328.** Guatemala 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 Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the case

- 329.** At its March 2010 meeting, the Committee made the following interim recommendations relating to the allegations made by the complainant organization [see 356th Report, para. 793]:
- (a) With regard to the allegations concerning the transfer on 18 September and 25 January 2009 of several USIGEMIGRA trade union leaders, taking into account that these transfers were decided without the consent of the trade union leaders concerned, in violation of section 9 of the collective agreement in force, the Committee requests the Government to take the necessary steps to cancel these transfers.
 - (b) Taking into account the problems existing on the country's border and the particular characteristics of work in customs, which may require transfer measures in certain cases, the Committee invites the complainant organization and the Directorate General for Migration, in the context of the conciliation and mediation proposed by the Ministry of Labour and the Human Rights Prosecutor, to endeavour to find a negotiated solution to the dispute, including the issue of the composition of the joint board when decisions affecting the trade union are taken. The Committee requests the Government to keep it informed in this regard and to provide the final outcome of the *amparo* appeals pending

and reminds the Government that it may avail itself of technical assistance from the Office in respect of these allegations.

- (c) With regard to the allegations concerning the intimidation of Lucrecia Cuellar Castillo, a member of the union's advisory board who was forced to leave the union and her position as trade union leader, the Committee requests the Government to carry out an investigation into this matter and to keep it informed of the outcome thereof.

B. The Government's reply

330. In its communication of 24 May 2010, the Government affirms that the decisions to transfer trade union leaders who are the subject of the present complaint were taken, in accordance with the terms of the three collective agreements in force at the Directorate-General for Migration, by the joint body (joint board or round table) responsible for decisions on staff movements within the institution and that the transfers were therefore legal. The Government also refers to the existence of inter-union disputes within the Directorate-General for Migration.

331. In its communication of 24 September 2015, the Government states that: (i) the transfers of Rubén Darío Balcarcel López, Mayra Leticia Vásquez Rodríguez, Moisés Flores Morán, Mario Rolando Oxom Rey, Jorge Raymundo Orozco Miranda, Humberto Fidel Joachin López, César Augusto López González, Miguel Roberto López Pedroza, Lucrecia Rufina Cuellar Castillo, Marco Vinicio Hernández González, Víctor Hugo Mérida Gómez and Ada Elizabeth Samaoya Pérez, all members of USIGEMIGRA, were rendered inoperative since the aforementioned workers subsequently joined the other two unions at the Directorate-General for Migration (the Union of Migration Workers (STM) and the Union of Workers of the Directorate-General for Migration at the Ministry of the Interior (SITRAMMIG), a union affiliated to the STM), both represented in the joint body responsible for staff movements within the directorate; (ii) there are no *amparo* appeals pending in relation to those transfers; (iii) under section 51 of the Labour Code, which provides that the collective agreement must be negotiated with the union that has the greatest number of workers directly affected by the negotiations, the current collective agreement in force at the institution was signed by the STM and SITRAMMIG; (iv) the 16th Labour and Social Welfare Court found on 17 February 2011 that the economic and social collective dispute supported by USIGEMIGRA had been deprived of substance through the entry into force of the collective labour agreement signed by the STM and SITRAMMIG; and (v) with regard to the alleged acts of intimidation against Ms Lucrecia Cuellar, the Public Prosecutor's Office stated that no complaints relating to that person had been registered.

C. The Committee's conclusions

332. *With regard to the transfers of the USIGEMIGRA trade union leaders, the Committee notes the Government's statement that the transfers of 12 workers who were members of the complainant organization were rendered inoperative since the workers concerned joined the other two unions at the Directorate-General for Migration and that there are no amparo appeals pending in relation to those transfers. The Committee notes that nine of the 12 workers referred to by the Government (Humberto Fidel Joachin López, Jorge Raymundo Orozco Miranda, César Augusto López González, Miguel Roberto López Pedroza, Lucrecia Rufina Cuellar Castillo, Moisés Flores Morán, Mayra Leticia Vásquez Rodríguez, Rubén Darío Balcarcel López and Mario Rolando Oxom Rey) form part of the list of the 12 USIGEMIGRA leaders whose transfers are the subject of the present complaint. However, the Committee observes that the Government has not sent any information with regard to the transfers of the union leaders Víctor Manuel Valladares, Carlos Adán García Caniz and Mary Gregoria Gutiérrez García. Recalling that in its previous examination of the case it asked the Government to take the necessary steps to cancel the transfers objected*

to by the complainant organization, the Committee requests the Government to send information as soon as possible on the employment situation of these three individuals.

333. *Moreover, the Committee notes the Government's indication that the transfers of 12 workers who were members of USIGEMIGRA were rendered inoperative since the workers concerned joined the other two unions at the Directorate-General for Migration, namely the STM and SITRAMMIG, both organizations being represented in the joint body responsible for decisions on staff movements within the institution. Recalling that no person should be prejudiced in his or her employment by reason of membership of a trade union, even if that trade union is not recognized by the employer as representing the majority of workers concerned [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 776], the Committee expects that the Government will ensure that all workers at the Directorate-General for Migration are able to exercise freely their right to freedom of association, regardless of the trade union organization to which they belong.*

334. *With regard to the alleged acts of intimidation against Ms Lucrecia Cuellar, while noting that the Public Prosecutor's Office stated that no complaints relating to that person had been registered, the Committee regrets that the Government has not conducted an investigation into this allegation. Recalling that where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see **Digest**, *op. cit.*, para. 835], the Committee trusts that the Government will give full effect to this principle in the future.*

The Committee's recommendation

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

Recalling that in its previous examination of the case it had asked the Government to take the necessary steps to cancel the transfers objected to by the complainant organization, the Committee requests the Government to send information as soon as possible on the employment situation of union leaders Víctor Manuel Valladares, Carlos Adán García Caniz and Mary Gregoria Gutiérrez García.

CASE NO. 3169

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

**Complaint against the Government of Guinea
presented by**

- the National Organization of Free Trade Unions of Guinea (ONSLG)
- the General Union of Workers of Guinea (UGTG)
- the Guinean Confederation of Free Trade Unions (CGSL)
- the Autonomous Trade Union Confederation of Guinean Workers and Retirees (COSATREG)
- the General Confederation of Workers of Guinea (CGTG)
- the Democratic Union of Workers of Guinea (UDTG) and
- the General Confederation of Work Forces of Guinea (CGFOG)

Allegations: The complainant organizations denounce a process for the determination of trade union representation in the private and public sectors, in part by way of trade union elections, conducted by the Government in violation of legal texts and without their participation

- 336.** In a communication dated 21 August 2015, the National Organization of Free Trade Unions of Guinea (ONSLG), the General Union of Workers of Guinea (UGTG), the Guinean Confederation of Free Trade Unions (CGSL), the Autonomous Trade Union Confederation of Guinean Workers and Retirees (COSATREG), the General Confederation of Workers of Guinea (CGTG), the Democratic Union of Workers of Guinea (UDTG) and the General Confederation of Work Forces of Guinea (CGFOG) filed a complaint of violations of freedom of association against the Government of Guinea.
- 337.** In a communication of 24 December 2015, the Government presented its observations on the allegations of the complainant organizations.
- 338.** Guinea 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

- 339.** The complainant organizations denounce a process for the determination of trade union representation in the private and public sectors conducted by the Government in violation of legal texts and without their participation. They consider that the legislative void on the organization of trade union elections in the Labour Code and the Guinean Public Service Regulations led to Government interference in trade union affairs with the issuing of a decree regulating the organization of trade union elections, which would constitute a violation of ILO Convention No. 87.
- 340.** According to the complainant organizations, the Labour Code does not regulate the organization of trade union elections, which depend only on the will of organizations of employers and workers. The Minister of Labour had established a review committee to

prepare for trade union elections, but the Memorandum of Understanding proposed by the Government as a basis for discussion had been rejected by the trade unions. The General Labour Inspectorate was requested to draft the minutes of that meeting, when Decree No. D/2014/257/PRG/SGG, of 18 December 2014, regulating trade union elections in the public, semi-public and private sectors, was issued by the President of the Republic, before work was finalized. The complainant organizations indicate that this decree was denounced before the national courts and attach a copy of a memorandum submitted to the Supreme Court on this matter.

341. They state that, from 30 March to 7 July 2015, the Government, through the General Labour Inspectorate and the General Inspectorate for the Public Administration, undertook the organization of evaluations/trade union elections of workers' organizations in the public, semi-public and private sectors, unilaterally excluding the informal sector despite its weight in the national economy. They allege that, out of more than 2,000 enterprises, only 150 were contacted by the ministry responsible for labour. A meeting to announce the results, presided over by the ministers responsible for labour and the public service, was allegedly held on 8 July 2015 without the participation of the trade union confederations, then, on 22 July 2015, a message was sent to all the trade union organizations, to which the complainant organizations replied by letter dated 4 August 2015 (attached to the complaint). The complainant organizations also allege that the minister responsible for labour and his counterpart in the public service sent to the President of the Republic the results contested in five out of 38 communes, for the purpose of designating workers' representatives to the Economic and Social Council. Consequently, the complainant organizations reject the decisions emanating from these operations and allege the violation of Act No. L/91/004/CTRN of 23 September 1991 on the composition and functioning of the Economic and Social Council.

342. The complainant organizations attach to their complaint copies of Decree No. D/2014/257/PRG/SGG, of 18 December 2014, of Act No. L/91/004/CTRN of 23 September 1991 and of Decree No. D/2015/145/PRG/SGG of 24 July 2015, appointing members of the Economic and Social Council. They also transmit a document containing the final result of the evaluation of the level of representativeness of the national trade union organizations and a letter from the Office of the President of the Republic dated 13 July 2015 on the designation of delegates of the most representative trade union confederations to the Economic and Social Council.

B. The Government's reply

343. In its communication of 24 December 2015, the Government provided its observations and contested the facts described by the complainant organizations, while also reaffirming its willingness to respect freedom of association.

344. According to the Government, the process for organizing trade union elections and evaluating the representativeness of trade union organizations was conducted with respect for tripartism and involving all employers' and workers' organizations in the final decision. These organizations were invited to a tripartite meeting where the draft decree was examined. The meeting, presided over by the employers' representative, had a trade union representative as vice-president – a member of COSATREG, one of the complainant organizations. While at the outset the principle of issuing an order had been put forward, during the meeting the decision to issue a decree was adopted by the majority of the members present, as only such an instrument would allow simultaneous coverage of the private and the public sectors. The Government states that some trade union confederations contested the decree and that it was informed that the matter would be referred to the Supreme Court, although it had not yet been questioned on the matter by a judicial authority.

345. The Government maintains that, far from being an exclusionary measure, the evaluation of trade union representation was conducted to respect the provisions of the Labour Code and other legislative and regulatory texts requiring that information. The evaluation campaign was launched by the labour inspectorate, which invited the employers to proceed with elections of trade union delegates where necessary, in particular in cases where terms of office had expired. These elections were conducted within enterprises without Government involvement. The follow-up consisted only of an arithmetic computation of the number of members by trade union confederations.
346. The Government highlights the fact that the evaluation process gives a very clear picture of trade union representation in the formal sector. The trade union confederations were told that the difficulties involved in evaluating the informal sector meant that more preparation was necessary in order to be able to assess the protagonists involved, which criteria to use and the modalities for evaluation, and that it would consequently be done at a later stage. The results were announced on 8 July 2015 in the presence of all the trade union organizations and of the employers' representative, who welcomed the initiative and asked that the process be improved. On that occasion, and later by correspondence, the trade union confederations were asked to nominate members of the tripartite committee responsible for complaints relating to trade union elections. The Government questions the fact that the complaint makes no reference to the fact that several confederations, including the complainant organizations, had nominated a representative to that committee. The observations and complaints addressed to the committee have all been dealt with and are set out in the final evaluation report addressed to all the social partners.
347. The Government considers that the decree is not contradictory and does not replace any provisions of the Labour Code or of ILO Convention No. 87; on the contrary, it fills a legislative void on the organization of trade union elections in the Labour Code and the Guinean Public Service Regulations. It also recalled that it would acknowledge and respect any decision emanating from the Guinean courts which, considering the matter in accordance with article 521.1 of the Labour Code, would cast doubt on the evaluation process and its results.

C. The Committee's conclusions

348. *The Committee notes the complainants' allegations that the legislative void on the organization of trade union elections in the Labour Code and the Guinean Public Service Regulations led to Government interference in trade union affairs with the issuing of a decree regulating the organization of trade union elections, which would constitute a violation of ILO Convention No. 87, while the Government considers that, far from being an exclusionary measure, the evaluation of trade union representativeness was conducted to respect the provisions of the Labour Code and other legislative and regulatory texts requiring that information.*
349. *The Committee considers it appropriate to recall first, that on several occasions, and particularly during discussion on the draft of Convention No. 98, the International Labour Conference referred to the question of the representative character of trade unions, and, to a certain extent, it agreed to the distinction that is sometimes made between the various unions concerned according to how representative they are. Article 3(5) of the Constitution of the ILO includes the concept of "most representative" organizations. Accordingly, the Committee felt that the mere fact that the law of a country draws a distinction between the most representative trade union organizations and other trade union organizations is not in itself a matter for criticism. However, the determination of the most representative organization must be based on objective, pre-established and precise criteria so as to avoid any possibility of bias or abuse, and the distinction should generally be limited to the recognition of certain preferential rights, for example for such purposes as collective*

bargaining, consultation by the authorities or the designation of delegates to international organizations. The Committee also recalls that Conventions Nos 87 and 98 are compatible with systems which envisage union representation for the exercise of collective trade union rights based on the degree of actual union membership, as well as those envisaging union representation on the basis of general ballots of workers or officials, or a combination of both systems. [See *Digest of decisions and principles of the Freedom of Association Committee*, fifth (revised) edition, 2006, paras 346, 349 and 354.]

- 350.** *The Committee observes that the complainant organizations allege that the Government conducted the process for the determination of trade union representation in the private and public sectors and adopted a decree on that subject without their participation, which was denounced before the national courts. The Committee notes the Government's reply, contesting these allegations and indicating that the trade union confederations were invited to a tripartite meeting for which the vice-president was a representative of COSATREG, one of the complainant organizations, during which the draft decree was examined and adopted by a majority of the members present, and stating that it has not yet been questioned on the matter by a judicial authority. The Committee emphasizes the value of consulting organizations of employers and workers during the preparation and application of legislation which affects their interests.*
- 351.** *In the light of the information provided by the complainant organizations and the Government, the Committee observes that the evaluation of the representation of workers' organizations in the public, semi-public and private sectors was conducted from 30 March to 7 July 2015 and that the informal sector was excluded despite its weight in the national economy. Recalling that, according to the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), in designing, implementing and evaluating policies and programmes of relevance to the informal economy, including its formalization, the Government should consult with and promote active participation of the most representative employers' and workers' organizations, which should include in their ranks, according to national practice, representatives of membership-based representative organizations of workers and economic units in the informal economy, the Committee notes that, according to the Government's reply, the trade union confederations had been told that the difficulties involved in evaluating the informal sector meant that more preparation was necessary in order to be able to assess the protagonists involved, which criteria to use and the modalities for evaluation, and that it would consequently be done at a later stage. The Committee invites the Government to avail itself of ILO technical assistance in this regard if it so wishes.*
- 352.** *The Committee observes that, according to the complainant organizations, out of more than 2,000 enterprises only 150 were contacted by the ministry responsible for labour, and the minister responsible for labour and his counterpart in the public service sent to the President of the Republic the results contested by five out of 38 communes, for the purpose of designating workers' representatives to the Economic and Social Council, in violation of Act No. L/91/004/CTRN of 23 September 1991. The Committee notes the Government's reply that an evaluation campaign was launched by the labour inspectorate, which invited the employers to proceed with elections of trade union delegates where necessary, in particular in cases where terms of office had expired; that these elections were conducted within the enterprises without Government interference and that the follow-up only consisted of an arithmetic computation of the number of members by trade union confederations. The Committee also notes that, according to the documents submitted by the Government, the union elections took place in the mixed private sector in a sample of 153 enterprises. As the trade union elections were conducted in order to ascertain trade union representativeness at the national level, the Committee requests the Government to indicate whether the choice of enterprises where the elections were held was the subject of consultation with the social partners and to indicate the relevant criteria.*

- 353.** *Moreover, the Committee observes that Act No. L/91/004/CTRN of 23 September 1991, on the composition and functioning of the Economic and Social Council, makes provision for the appointment of 12 members to represent the employees of the public and private sectors, nominated by the most representative trade union organizations of their branches of activity, and that the nomination of these members by way of Decree No. D/2015/145/PRG/SGG of 24 July 2015, appointing members of the Economic and Social Council, was conducted in accordance with the results set out in the document containing the final results of the evaluation of the level of representativeness, attached by the complainant organizations. The Committee recalls that it has considered, with regard to legislation establishing a system for determining representativeness, that granting the right to sit on the Economic and Social Council only to those trade union organizations deemed to be the most representative in view of the Act would not appear to influence workers unduly in the choice of organization that they wish to join, nor to prevent less representative organizations from defending the interests of their members, organizing their activities and formulating their programmes [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para 357].*
- 354.** *The Committee further notes the Government's indication that the results were announced on 8 July 2015 in the presence of all the trade union organizations and the employers' representative, who welcomed the initiative and asked that the process be improved and that several trade union confederations, including the complainant organizations, nominated their representatives to the tripartite committee responsible for complaints arising from the trade union elections, which dealt with all the observations and complaints addressed to it and which are recorded in the final evaluation report sent to all the social partners.*
- 355.** *The Committee also observes the Government's statement that it would acknowledge and respect any decision emanating from the Guinean courts which cast doubt on the evaluation process and its results. The Committee requests the Government and the complainant organizations to keep it informed of any administrative or judicial actions those organizations might file which would challenge the abovementioned decree, the evaluation process or its results, to provide a copy of rulings handed down and to report on any follow-up action taken in respect of these rulings.*

The Committee's recommendations

- 356.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) As the trade union elections were conducted in order to ascertain trade union representativeness at the national level, the Committee requests the Government to indicate whether the choice of enterprises where the elections were held was the subject of consultation with the social partners and to indicate the relevant criteria.*
 - (b) The Committee requests the Government and the complainant organizations to keep it informed of any administrative or judicial actions those organizations might file which would challenge Decree No. D/2014/257/PRG/SGG of 18 December 2014, the evaluation process or its results, to provide a copy of rulings handed down and to report on any follow-up action taken in respect of these rulings.*

CASE NO. 3032

INTERIM REPORT

**Complaint against the Government of Honduras
presented by**

- **the Latin American Federation of Education and Culture Workers (FLATEC)**
 - **the Federation of Teachers' Organizations of Honduras (FOMH)**
 - **the General Confederation of Workers (CGT)**
 - **the Single Confederation of Workers of Honduras (CUTH) and**
 - **other national organizations**
 - **Education International (EI)**
- supported by**
- **Education International of Latin America (IEAL)**

Allegations: The complainant organizations allege the murder of a female trade unionist, the institution of criminal proceedings, the detention of trade unionists, the declaration of a strike as illegal by the administrative authority, mass dismissals for participation in protests, restrictions on the right to strike and union leave, and other anti-union acts

- 357.** The Committee last examined this case at its March 2015 meeting, when it presented an interim report to the Governing Body [see 374th Report, paras 372 to 423].
- 358.** One of the complainant organizations, the Single Confederation of Workers of Honduras (CUTH), submitted additional information in a communication dated 12 June 2015.
- 359.** The Government submitted its observations in communications dated 29 and 30 April and 19 October 2015.
- 360.** Honduras has ratified 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

- 361.** In its previous examination of the case, the Committee made the following recommendations [see 374th Report, para. 423]:
- (a) The Committee requests the complainant organizations to provide information in their possession on the death of Ms Ilse Ivania Velásquez Rodríguez and in particular whether it was due, as the Government states, to a car accident and whether anyone has been charged or detained in this regard.
 - (b) As regards the legal proceedings instituted against 24 teachers for the crimes of sedition and unlawful association, and their subsequent detention, when they were participating in a peaceful demonstration, the Committee urges the Government to inform it without delay on the specific acts for which they are being prosecuted, on the status of the legal proceedings instituted and, where applicable, the outcome.

- (c) Concerning the dispute which is the subject of this complaint, the Committee notes the allegations relating to the suspension of the economic regime set forth in the Honduran Teachers' Statute, under section 3 of Decree-Law No. 224-2010, of 28 October 2010, and to the failure to pay salary increases, the Committee requests the Government and the complainant organizations to seek a negotiated solution acceptable to all the parties concerned, in accordance with the principles of freedom of association laid down in the ratified Conventions on freedom of association and collective bargaining. The Committee expects that the parties will take full account of the principles referred to in its conclusions in the future and requests the Government to inform it of the outcome of the salary negotiations provided for in Decree-Law No. 224-2010, of 28 October 2010.
- (d) As for the allegation regarding the suspension of the deduction of union dues for teachers' organizations, the Committee emphasizes that the suspension of the deduction of union dues infringes union rights; it therefore requests the Government to take the necessary steps, if it has not done so already, to ensure that all teachers' organizations once again benefit from the check-off facility for the union dues of their members.
- (e) As for the declaration of illegality made by the State Secretariat of the Labour and Social Security Departments, which led to the adoption of Executive Decision No. 15575-SE-2012, of 18 October 2012, and the subsequent imposition of sanctions involving salary deductions, temporary suspension or dismissal, as the case may be, affecting hundreds of teachers, the Committee requests the Government and the complainant organizations to seek a negotiated solution acceptable to all the parties concerned, in accordance with the principles of freedom of association laid down in the ratified Conventions on freedom of association and collective bargaining; it also requests the Government to take steps to amend the legislation so that the legality or illegality of the strike is declared by an independent body.
- (f) Concerning the allegations referring to the sending of inspectors to each lawfully convened assembly, by the State Secretariat of the Education Department, the Committee emphasizes that the presence of representatives of the authorities or the employer at union assemblies constitutes interference in violation of the principles of freedom of association laid down in ratified Conventions on freedom of association and collective bargaining. It requests the Government to ensure that such practices do not recur in the future.
- (g) As for the refusal of union leave requested by numerous officials, under circular letter No. 0019-SE-2013, of 7 February 2013, the Committee requests the Government to resume dialogue with the complainant organizations in order to find a prompt solution to this situation, and to inform it of the outcome of any legal proceedings instituted.
- (h) The Committee notes with regret that the Government's reply is not sufficiently clear as regards the allegations pertaining to: (1) the exclusion of teachers' organizations from the higher authority of the administration of INPREMA; and (2) the suppression of the protests resulting from the failure to pay salary increases from 2010 to 2013. The Committee firmly urges the Government to send its observations in this regard without delay, in particular information concerning the complaints submitted to the competent authorities by the persons who have been victims of police repression during the protests.
- (i) Moreover, the Committee requests the complainant organizations to provide more detailed information on the allegations concerning: (1) the unilateral suspension of the teacher selection and competitive recruitment boards; (2) the request for a report on the amounts, use and handling of the funds obtained as a result of the deductions transferred to teachers' organizations; (3) the institution of civil liability proceedings against four Trade Union of Honduran Teachers (SINPRODOH) officials, for an amount of HNL49,070,777.49; and (4) the alleged professional persecution with no further details against two members of the Association of Secondary Teachers of Honduras (COPEMH). The Committee requests the complainant organizations to furnish all information available to them in relation to these allegations, so that the Government may provide a precise response.
- (j) The Committee requests the Government to send its observations on the communication dated 23 January 2015 from the General Confederation of Workers (CGT), the Single Confederation of Workers of Honduras (CUTH) and other national organizations concerning allegations of sanctions against education trade unionists and other restrictions on trade union rights in relation to the dispute at hand.

B. Additional information and new allegations from a complainant organization

- 362.** In a communication of 12 June 2015, one of the complainant organizations, the CUTH provided additional information on some of the Committee's recommendations from its previous examination of the case (recommendations (a) to (e), (g) and (i)); it also presented fresh allegations concerning restrictions on the right of assembly, certain amendments to teachers' working conditions, and the criminalization of teachers.
- 363.** With respect to the Committee's recommendation (a), the complainant explains that during a teachers' demonstration, Ms Ilse Ivania Velásquez Rodríguez suffered a blow to the head which caused her to lose her balance and fall to the ground prior to the collision [in a context of police repression]; according to the autopsy report, the cause of death was a cerebral oedema, which the complainant organization attributes to the blow she suffered prior to the collision. The complainant adds that the authorities have not yet provided any information about any arrest or prosecution.
- 364.** As to recommendation (b), the complainant organization reports that the 24 accused teachers remain in detention, that the legal proceedings have suffered delays which have postponed the hearings arbitrarily, and that the teachers were anxious at the prospect of being convicted.
- 365.** Concerning recommendation (c), the complainant indicates that there has not been any communication from the Government with a view to initiating the salary negotiations provided for in Decree-Law No. 224-2010 of 28 October 2010; there has been no salary increase since 2006.
- 366.** Regarding recommendation (d), the complainant organization states that the Government is still not deducting union dues, which has been the case since February 2013; consequently, no transfers have been made to the teachers' organizations. Furthermore, it notes that the Act on the National Social Welfare Institute for Teachers (INPREMA), as amended by Decree-Law No. 267-2013 of 22 January 2014, contains arbitrary provisions on union dues, imposing a limit on the number of members per organization and a contribution rate of 49.32 Honduran lempiras (HNL).
- 367.** As to recommendation (e), the complainant organization indicates that there are new cases of teachers who were sanctioned for attending meetings held by teachers' organizations.
- 368.** With respect to recommendation (g), the complainant organization alleges that union leave requested by numerous officials is still being denied.
- 369.** Regarding recommendation (h)(1), the complainant organization reports that the Government administers the INPREMA unilaterally, and alleges that the teachers' organizations participate merely as members of the assembly of participants.
- 370.** As to recommendation (i)(1), the complainant organization explains that, by communication of 11 September 2013, the State Secretariat of the Department of Education sought to authorize the members of the teacher selection boards in only five of the country's 18 departments.
- 371.** Furthermore, the complainant organization alleges that the right of assembly of teachers' organizations is being restricted and that teachers' representatives are still being victimized and harassed, as they are prohibited from convening meetings outside of working hours and are being denied leave to attend meetings. The complainant also presents a series of allegations concerning changes to working conditions.

C. The Government's reply

- 372.** In communications dated 29 and 30 April and 19 October 2015, the Government conveyed the following information.
- 373.** With regard to recommendation (a) from the Committee's previous examination of the case, the Government reiterates that the death of Ms Ilse Ivania Velásquez Rodríguez was caused by a vehicle collision, and appends forensic report No. A-600-11 of the Department of Forensic Medicine. Furthermore, it indicates that a driver, Mr Carlos Eduardo Zelaya Ríos, has been charged with culpable homicide and the case is pending a final judgment from the trial court.
- 374.** With regard to recommendation (b), the Government indicates that the legal proceedings instituted against 24 teachers for the crimes of sedition and unlawful association when they participated in a demonstration have not yet concluded.
- 375.** As to recommendation (c), the Government informs the Committee that Decree-Law No. 18-2010 of 28 March 2010, containing the Act on Fiscal and Financial Emergencies has been extended repeatedly, and consequently the economic regime set forth in the Honduran Teachers' Statute remains suspended. The Government explains that the policy on salary increases has been progressive, subject to the economic circumstances of the State; that being the case, the last salary increment for teachers was approved in July 2012.
- 376.** Concerning recommendation (d), the Government indicates that the suspension of the deduction of union dues for teachers' organizations was temporary, owing to the change in the internal payment system in the human resources department of the State Secretariat of the Department of Education. It explains that the purpose of Decree-Law No. 267-2013 of 22 January 2014, which contains the reforms to the Act on the National Pension Institute for Teachers (INPREMA), is not to deny the right to membership of a teachers' organization, but to protect the teachers' investments; nor does it prohibit the granting of pension benefits by teachers' organizations. The Government adds that teachers' participation in pension savings accounts is voluntary.
- 377.** With reference to recommendation (e), the Government indicates that the legal provisions governing the employment relationship between the State and the national public education system do not include a means of declaring a collective work stoppage illegal, and that that is the responsibility of the State Secretariat of the Departments of Labour and Social Security as the competent authority. The Government refutes the statement of the CUTH and indicates that no teachers have been sanctioned merely for having attended meetings held by teachers' associations. It explains that the sanctions imposed pursuant to the decision in question concern only those teachers who had left schools in 2012.
- 378.** Concerning recommendation (f), the Government indicates that the allegations referring to the State Secretariat of the Department of Education sending inspectors to each lawfully convened assembly have not been proven. It adds that the teachers' meetings are held in public places and hence any interested party may attend.
- 379.** As to recommendation (g), the Government indicates that during the period of 2011 to 2015, it continued to grant leave for trade union affairs whenever the applicants were entitled to it. It adds that more than 50 teachers' representatives currently enjoy paid union leave.
- 380.** As to recommendation (h)(1), the Government explains that the board of specialists is the higher level authority of INPREMA for administration and implementation, which is the executive and participatory body of the assembly of participants and contributing members. It adds that the teachers' organizations are part of the assembly of participants and

contributing members, with influence over the institute's strategic policy. The Government indicates that membership of both organs is incompatible with the law.

381. Concerning the unilateral suspension of teacher selection boards and competitive recruitment examinations (recommendation (i)(1)), the Government indicates that the boards have been established and explains that the legislation does not exclude teachers' organizations from participating.

382. With regard to recommendation (j) from the previous examination of the case, the Government provides the following information:

- Concerning the sanctions placed on the five teaching union officials from the department of Cortés – Ms Reina Isabel Discua, Mr José Antonio Carvallo, Mr José Antonio Alas, Mr Wilson Mejía Fiallos and Mr Reynaldo Inestrosa – it indicates that the administrative proceedings are ongoing. To date, no sanctions have been placed on the aforementioned teachers, who are not teaching union officials, and there is no evidence that they are entitled to union leave. The disciplinary proceedings were initiated by the Education Directorate of the department of Cortés on the grounds of alleged failure to perform their duties (of the directorate and subdirectorates of schools) and of resisting orders issued by the competent authority.
- As to the suspension of the deputy director of the Instituto Central Vicente Céspedes, Mr Valentín Canales Bustillo, the Government explains that the disciplinary proceedings were initiated because he had not taken over the leadership of the institute as required by law. Mr Canales Bustillo was reinstated after complying with the sanction that had been imposed.
- Concerning the publication in the Official Journal of 21 regulations of the Basic Law on Education, the Government recalls that under that law, the secretariat of the Department of Education shall issue the corresponding regulations. The regulations in question do not diminish or restrict the rights recognized in the Constitution; furthermore, they were adopted after a process of consultation with various sectors of the teaching profession, parents and civil society.
- With regard to the official communication sent by the National Commission of Banks and Securities in November 2014 mandating the transfer of the union dues accrued by each trade union organization to INPREMA, where teachers had opted for a pension savings account, the Government informs the Committee that the pension savings account is a personalized account which enhances the financial gains of the participants when they retire, and that teachers' participation is voluntary.

383. With reference to the allegations of restrictions on the right of assembly of teachers' organizations, continued victimization and harassment of teachers' representatives, prohibition on holding meetings outside of working hours and refusal of leave to attend meetings, the Government categorically rejects the allegations; it clarifies that the intended use of school facilities is for children, and that no applications for teacher training days had been received.

384. As to the allegations of changes to working conditions, the Government explains that there have been no such changes; the legislation in force was merely being applied. As to entry into the teaching profession, it states that the new arrangements are on the basis of a competitive examination.

D. The Committee's conclusions

385. *The Committee recalls that, in the present case, the complaints form part of a long dispute between teachers' organizations and the Government, which gave rise to protests and strikes during the period from 2010 to 2013, caused by the suspension of the economic regime set forth in the Honduran Teachers' Statute and the delays in the payment of salaries in arrears, among other factors. Further, the Committee recalls that the allegations still pending in this case relate to: (1) the death of a trade unionist on 18 March 2011, while she was participating in a peaceful demonstration; (2) the legal proceedings instituted against 24 teachers for the crimes of sedition and unlawful association, and their arrest while participating in a peaceful demonstration; (3) the exclusion of teachers' organizations from the higher level authority of the administration of the INPREMA; (4) the suspension of the economic regime set forth in the Honduran Teachers' Statute, and its de-indexation from the minimum salary (preventing the continuing use of the minimum salary as a reference for the automatic and direct increase of salaries); (5) the failure to pay salary increments from 2010 to 2013 and the suppression of the protests to which this gave rise; (6) the declaration of the protests as illegal by the administrative authority and the resulting sanctions imposed on more than 600 teachers; (7) the suspension of the deductions of union fees for teachers' organizations; (8) the adoption of Decision No. 15096-SE-2012 of 30 July 2012, which provides for the extension of the school year in the case of stoppages or suspensions of classes; (9) the refusal of requests for renewal of union leave; (10) the unilateral suspension of teacher selection boards and competitive examinations; (11) the request for a report on the amounts, use and handling of the funds obtained as a result of the deductions transferred to teachers' organizations; (12) the civil liability claims brought against four SINPRODOH officials, for an amount of HNL49,070,777.49; (13) the workplace harassment of two members of the COPEMH; and (14) the sanctions against trade unionists in the teaching profession and other restrictions on trade union rights.*
386. *With regard to recommendation (a), the Committee observes that both the complainant organization and the Government concur that the death of Ms Ilse Ivania Velásquez Rodríguez was caused by a cerebral oedema. However, the Committee notes a contradiction in the account of the circumstances leading to her death: the complainant organization alleges that prior to the collision, the victim suffered a blow to the head which caused her to lose her balance and fall onto the roadway, in a context of political repression, and attributes the cerebral oedema to the blow to the head; whereas the Government denies that there was any political repression and attributes the cerebral oedema solely to the collision. The Committee notes that according to the information provided by the Government, a driver has been charged with culpable homicide and a final judgment is pending. The Committee recalls that "[t]he killing, disappearance or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events" [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 48]. The Committee requests the Government to keep it informed of the outcome of the legal proceedings.*
387. *Concerning recommendation (b), the Committee notes that, according to the information provided by the complainant organization, the teachers remain in detention and the legal proceedings have suffered delays; the Government has not denied the situation and only indicates that the proceedings have not concluded. The Committee recalls that "justice delayed is justice denied" [see **Digest**, op. cit., para. 105]. Observing with concern that the imprisonment of 24 teachers took place in 2011 and that the Government still does not provide information on the specific acts imputed to them, the Committee emphasizes that prolonged detention of persons awaiting trial involves a risk of abuse. Thus, the Committee*

expects that all necessary measures are taken so that the ongoing legal proceedings can be concluded without further delay and that measures for conditional release are provided if the judicial decisions are not taken in the near future. The Committee requests the Government to keep it informed in this regard.

- 388.** *As to recommendation (c), the Committee notes the complainant organization's statement that there has not been any communication from the Government, and the Government's explanation of the extension of the suspension of the economic regime set forth in the Honduran Teachers' Statute and the need to adapt to the economic circumstances of the State. The Committee reiterates its request to the Government and the complainant organizations to seek a negotiated solution acceptable to all the parties concerned, in accordance with the principles of freedom of association laid down in the ratified Conventions on freedom of association and collective bargaining. Furthermore, it requests the Government to inform it of the outcome of any relevant negotiations entered into.*
- 389.** *Concerning recommendation (d), the Committee notes the divergence between the allegations of a continued suspension of the deduction of union dues and the Government's response that the suspension was temporary. In this connection, the Committee observes that the Government submits documentary evidence, signed by the deputy director of human resources for teaching of the State Secretariat of the Department of Education, indicating that teachers' payroll deductions corresponding to their union contributions to the respective teachers' organizations were functioning normally. Taking account of this documentary evidence, while expressing regret for any suspension that occurred and trusting that the deductions will be made as normal, the Committee, not having received any additional information from the complainant organizations in this regard, will not pursue its examination of this allegation.*
- 390.** *Furthermore, concerning the allegations that the Act on the National Social Welfare Institute for Teachers (INPREMA), as amended by Decree-Law No. 267-2013 of 22 January 2014, contains arbitrary provisions on union dues, the Committee observes that, under article 4 of that decree, "the State Secretariat of the Department of Education, the State Secretariat of the Department of Finance and private schools shall be prohibited from making any type of deductions payable to teachers' organizations that deviate from or are in excess of those established in the preceding article. The State Secretariat of the Department of Education shall so inform the relevant authorities and the private schools, where applicable, in order that the automatic deductions be cancelled for the duration of any such irregularity for those teachers' organizations not complying with the provisions of the preceding article". The Committee recalls that "a legal restriction on the amount which a federation may receive from the unions affiliated to it would appear to be contrary to the generally accepted principle that workers' organizations shall have the right to organize their administration and activities and those of the federations which they form" [see **Digest**, *op. cit.*, para. 483]. The Committee requests the Government to submit its observations on this matter without delay, in particular as to the scope of article 4 of Decree-Law No. 267-2013 of 22 January 2014, to clarify how trade unions' right to organize their administration is safeguarded.*
- 391.** *Furthermore, regarding the allegations concerning the official communication sent by the National Commission of Banks and Securities in November 2014 mandating the transfer of the union dues accrued by each trade union organization to INPREMA, where teachers had opted for a pension savings account, the Committee notes the Government's indication that the pension savings account is voluntary and requests the complainant organization to provide more detailed information, including a copy of the official communication to which it refers.*

392. *With regard to recommendation (e), the Committee notes the Government's explanations as to the limited scope of sanctions under Executive Decision No. 15575-SE-2012 of 18 October 2012; the declaration of illegality of a collective work stoppage; and the jurisdiction of the State Secretariat of the Departments of Labour and Social Security in that regard. The Committee recalls that responsibility for declaring a strike illegal should not lie with the Government, but with an independent and impartial body. The Committee once again requests the Government to take measures to amend the legislation such that the legality or illegality of a strike is declared by an independent body.*
393. *With respect to recommendation (f), the Committee notes that the Government is of the opinion that the allegations have not been proven by the complainant organizations, and that any interested party may attend the meetings in question as they are held in public places. While recalling that where a representative of the public authorities can attend trade union meetings, this may influence the deliberations and the decisions taken (especially if this representative is entitled to participate in the proceedings) and hence may constitute an act of interference incompatible with the principle of freedom to hold trade union meetings [see **Digest**, *op. cit.*, para. 132], the Committee once again requests the Government to ensure that such practices do not recur in the future.*
394. *Concerning recommendation (g), the Committee notes the statement of the Government maintaining that, between 2011 and 2015, union leave continued to be granted for trade union affairs whenever the applicants were entitled to it. Therefore, unless the complainant organizations provide additional information in this regard, the Committee will not pursue its examination of this allegation.*
395. *As to recommendation (h), the Committee notes the Government's explanation concerning the inclusion of teachers' organizations in the assembly of participants and contributing members, one of the management and administrative bodies of INPREMA. Therefore, the Committee will not pursue its examination of this allegation.*
396. *The Committee notes that the Government makes no reference to the complaints made by victims of repression during the protests against the failure to pay salary increments from 2010 to 2013. The Committee once again urges the Government to submit its observations without delay, in particular providing information on the complaints submitted to the competent authorities by the persons who suffered police repression during the protests.*
397. *With reference to recommendation (i), the Committee recalls that it requested the complainant organizations to provide more detailed information on the allegations concerning: (1) the unilateral suspension of the teacher selection boards and competitive examinations; (2) the request for a report on the amounts, use and handling of the funds obtained as a result of the deductions transferred to teachers' organizations; (3) the institution of civil liability proceedings against four officials of the SINPRODOH, for an amount of HNL49,070,777.49; and (4) the allegations, without further details, of workplace harassment of two members of the COPEMH (recommendation (i)) so that the Government may accurately respond to them. In the absence of comprehensive information requested from the complainants, and noting the information from the Government indicating that the boards have been established and explaining that the legislation does not exclude the participation of trade union organizations, the Committee will not pursue its examination of these allegations.*
398. *With regard to recommendation (j), the Committee notes the information provided by the Government concerning: (1) the five teachers from the department of Cortés subject to disciplinary proceedings for alleged failure to perform their duties and resisting orders issued by the competent authority, where the Government clarifies that the persons concerned are not officials of teaching unions, that they do not appear to be entitled to union*

leave and that no sanctions have been placed on them; (2) the reinstatement of the deputy director of the Instituto General Vicente Cáceres, after he complied with the sanction that had been imposed; (3) the adoption and publication of 21 regulations of the Basic Law on Education, in accordance with the relevant law, through a process of consultation with various sectors. In such circumstances, the Committee will not pursue its examination of these allegations.

- 399.** *As to the fresh allegations of restrictions on the right of assembly of teachers' organizations, continued victimization and harassment of teachers' representatives, prohibition on holding meetings outside of working hours and refusal of leave to attend meetings, the Committee requests the complainant organizations to provide more detailed information.*

The Committee's recommendations

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

- (a) The Committee requests the Government to keep it informed of the outcome of the legal proceedings concerning the death of Ms Ilse Ivania Velásquez Rodríguez.*
- (b) Concerning the legal proceedings instituted against 24 teachers for the crimes of sedition and unlawful association, and their subsequent arrest while participating in a peaceful demonstration, the Committee expects that all necessary measures are taken so that the ongoing legal proceedings can be concluded without further delay and that measures for conditional release are provided if the judicial decisions are not taken in the near future. The Committee requests the Government to keep it informed in this regard.*
- (c) As to the suspension of the economic regime set forth in the Honduran Teachers' Statute, pursuant to article 3 of Decree-Law No. 224-2010 of 28 October 2010, the Committee reiterates its request to the Government and complainant organizations to seek a negotiated solution acceptable to all the parties concerned, in accordance with the principles of freedom of association laid down in the ratified Conventions on freedom of association and collective bargaining. It requests the Government to inform it of the outcome of any negotiations entered into on the matter.*
- (d) Concerning the arbitrary provisions on union dues under Decree-Law No. 267-2013 of 22 January 2014, the Committee requests the Government to send its observations without delay, in particular on the scope of article 4 of the decree in question, to inform the Committee how trade unions' right to organize their administration is safeguarded.*
- (e) Regarding the sending of an official communication by the National Commission of Banks and Securities in November 2014 mandating the transfer of the union dues accrued by each trade union organization to INPREMA, where teachers had opted for a pension savings account, the Committee requests the complainant organization to provide more detailed information, including a copy of the official communication to which it refers.*

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- (f) *With regard to the declaration of illegality by the State Secretariat of the Departments of Labour and Social Security which led to the adoption of Executive Decision No. 15575-SE-2012 of 18 October 2012, and the subsequent imposition of the sanctions of salary deductions, temporary suspension or dismissal, as the case may be, affecting hundreds of teachers, the Committee once again requests the Government to take measures to amend the legislation such that the legality or illegality of a strike is declared by an independent body.*
- (g) *Concerning the allegations that the State Secretariat of the Department of Education sends inspectors to each lawfully convened assembly, the Committee, recalling that the presence of a representative of the public authorities or of the employer in trade union meetings constitutes an act of interference incompatible with the principle of freedom to hold trade union meetings laid down in ratified Conventions on freedom of association and collective bargaining, once again requests the Government to ensure that such practices do not recur in the future.*
- (h) *As to the suppression of protests against the failure to pay salary increments from 2010 to 2013, the Committee once again urges the Government to submit its observations without delay, in particular providing information on the complaints submitted to the competent authorities by the persons who suffered police repression during the protests.*
- (i) *Moreover, the Committee requests the complainant organization to provide more detailed information on the allegations concerning: (1) the sending of an official communication by the National Commission of Banks and Securities in November 2014 mandating the transfer of the union dues accrued by each trade union organization to INPREMA, where teachers had opted for a pension savings account; and (2) the restrictions on the right of assembly of teachers' organizations and the victimization and harassment of teachers' representatives.*

CASE NO. 3135

INTERIM REPORT

**Complaint against the Government of Honduras
presented by
the Single Confederation of Workers of Honduras (CUTH)**

Allegations: The complainant organization alleges the initiation of proceedings for the imposition of penalties and dismissals, other anti-union acts, and the refusal by the state entity Executive Directorate of Revenues (DEI) to negotiate with the trade union

- 401.** The complaint is contained in communications from the Single Confederation of Workers of Honduras (CUTH) dated 11 August 2011, 11 March 2014 and 12 June 2015. These communications were received on 12 June 2015.
- 402.** The Government sent its observations in a communication dated 7 September 2015.
- 403.** 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 complainant's allegations

- 404.** In a communication dated 11 August 2011, the complainant organization alleges that, on 8 April 2011, the Workers' Union of the Executive Directorate of Revenues (SITRADEI) presented a list of demands relating to the first collective labour agreement covering working conditions to the State Secretariat of the Labour and Social Security Departments, which was submitted by the General Labour Inspectorate on 13 April 2011 to the Executive Director of the Executive Directorate of Revenues (DEI). The complainant explains that on repeated occasions it requested the Executive Director of the DEI to negotiate the first collective agreement and that the request was always refused.
- 405.** In a communication dated 11 March 2014, the complainant organization alleges, for the period since 2011: that attempts have been made to destroy the SITRADEI; anti-union harassment of SITRADEI officials and members; the initiation of disciplinary proceedings, with the aim of dismissing trade unionists who would not agree to a polygraph test; the ongoing refusal to begin the negotiations of the first collective agreement; and the arrest of trade union members following the intervention of police and military officials at the country's customs posts, claiming alleged acts of corruption.
- 406.** Regarding the allegation of failure to negotiate the list of demands relating to the first collective agreement covering working conditions, the complainant organization documents that: (1) on some occasions the DEI agreed to negotiate the list of demands, while on others it cited its status as a decentralized institution in order not to comply with them (reports of the General Labour Inspectorate dated 13 April 2011, 8 May 2012, 26 June 2013, 8 July 2014 and 18 July 2014); (2) on a number of occasions, the State Secretariat of the Labour and Social Security Departments decided that through the General Labour Inspectorate the DEI would be requested to initiate the applicable conciliatory discussions, in accordance with the Labour Code; and (3) on 10 July 2013, the representatives of the DEI, the State

Secretariat of the Labour and Social Security Departments and the SITRADEI met to address the labour issues encountered and to reach an agreement through conciliation that would satisfy the needs of the workers and of the State. The meeting addressed issues including the negotiation of the collective agreement sought by the SITRADEI and the regulation of leave for officials to perform their trade union activities.

- 407.** Concerning the harassment of trade union officials and members, the complainant organization refers to penalties imposed on Ms Ruby Jackeline Soto, Ms Rossana Esther Ventura, Ms Carmen María Mondragón, Ms Rosa Vilma Ortiz, Ms Milly Janet Meza, Ms Mercy Nohelia Escoto, Mr Mario Antonio Cruz, Mr Oscar Omar Sanos, Mr Darwin Enrique Barahona and Mr Jorge Alberto Chavarría, executive members of trade union branches and confederations, for participating in union activities.
- 408.** The complainant organization also refers to trade union repression against Mr Jorge Alberto Argueta Romero and Mr Carlos Alberto Rodríguez, Treasurer and Disputes Secretary, respectively, of the SITRADEI executive board, for having participated for two hours in a trade union activity on 6 January 2014. Both officials were notified of their dismissal on October 2014.

B. The Government's reply

- 409.** In its communication dated 7 September 2015, the Government states that the DEI is a responsible institution that respects human and labour rights. It observes that the complaint relates to a period of almost five years; the most recent allegations focus mainly on the alleged intention of the Government to destroy the SITRADEI.
- 410.** With respect to the failure to negotiate the list of demands relating to the first collective labour agreement covering working conditions, the Government states that the DEI is a decentralized institution which is attached to the State Secretariat of the Finance Department. It explains that the DEI was established in 2010 and that it is governed by the special regulations for administrative, fiscal and customs careers, which came into force on 7 March 2012. On 24 September 2013, the then minister in charge of the DEI requested an opinion from the General Directorate of Labour of the State Secretariat of the Labour and Social Security Departments, in order to determine whether the DEI was obliged to negotiate a collective agreement with the SITRADEI. On 26 September 2013, the General Directorate of Labour issued an opinion indicating that the DEI was not obliged to negotiate a collective agreement with the SITRADEI. The Government recalls, moreover, that under article 536 of the Labour Code, "trade unions of public employees cannot present lists of demands or conclude collective agreements, but trade unions of other official workers shall have all the powers of other workers' unions and their lists of demands shall be handled on the same basis as all others, even if they are not entitled to call or conduct strikes".
- 411.** With regard to the harassment of trade union officials and members, the Government explains that executive and branch members were summoned in due legal form for abandoning their respective jobs and suspending their work in an untimely manner (on 3, 6 and 7 January and 1 April 2014) and for not complying with and violating a number of internal rules set out in Chapter XXIII (disciplinary regulations) of the special regulations for administrative, fiscal and customs careers. It adds that the objections presented by the employees concerned were rejected and that the penalties imposed were upheld by legal decision.
- 412.** The Government also explains that, on 22 October 2014, Mr Jorge Alberto Argueta Romero and Mr Carlos Alberto Rodríguez were dismissed for having unjustifiably suspended their work. This was done in accordance with due legal process or, put in other terms, after having obtained the respective judicial authorizations to proceed with their dismissal (withdrawal

of immunity), once the decision of the Labour Court relating to Mr Jorge Alberto Argueta Romero had been confirmed by the Court of Appeal, and once the appeal for the protection of constitutional rights (*amparo*) lodged with the Constitutional Chamber of the Supreme Court by both men had been allowed, without suspending the act contested.

413. With regard to the polygraph test, the Government states that it is regulated by the General Supervisory Act governing the Application of Tests for the Evaluation of Trust for all public servants. It adds that the SITRADEI lodged an action of unconstitutionality against the test and that the Constitutional Chamber of the Supreme Court allowed the action, but without suspending the act contested.

C. The Committee's conclusions

414. *The Committee observes that the present case alleges actions or omissions by the DEI, which occurred between August 2011 and January 2015, consisting of: the intention to destroy the SITRADEI through anti-union harassment of SITRADEI officials and members; the initiation of disciplinary proceedings, with the aim of dismissing trade unionists who would not agree to a polygraph test; the arrest of trade union members following the intervention of police and military officials at the country's customs posts, claiming alleged acts of corruption; and the ongoing refusal to begin the negotiations of the first collective agreement.*
415. *With regard to the allegation of harassment of officials and members, the Committee notes the Government's explanations whereby the penalties imposed on the executive and branch members of the trade union were imposed in accordance with the law, and the objections presented by the employees concerned were rejected. Concerning the dismissal of Mr Jorge Alberto Argueta Romero and Mr Carlos Alberto Rodríguez, the Committee notes that, according to the Government, they were dismissed for having unjustifiably suspended their work, in accordance with due legal process, once the appeal for the protection of constitutional rights (*amparo*) lodged with the Constitutional Chamber of the Supreme Court had been allowed, without suspending the act contested. The Committee requests the Government to inform it of the result of the appeal for the protection of constitutional rights (*amparo*) lodged with the Constitutional Chamber of the Supreme Court.*
416. *Regarding the alleged initiation of disciplinary proceedings, with the aim of dismissing trade unionists who would not agree to a polygraph test, the Committee takes note of the explanations provided by the Government indicating that the polygraph test is regulated by the General Supervisory Act governing the Application of Tests for the Evaluation of Trust for all public servants. Recognizing the workers' fear that the polygraph test could be used for anti-union purposes and the alleged disciplinary proceedings aimed at dismissing trade unionists who would not agree to taking the test, the Committee requests the Government to inform it of the result of the action of unconstitutionality lodged by the SITRADEI against the use of polygraph tests. The Committee also requests the complainant organization to provide more detail about the initiation of disciplinary proceedings for the purpose of dismissing trade unionists who do not agree to a polygraph test.*
417. *The Committee requests the complainant organization to provide more detail about the alleged arrest of trade unionists following the intervention of police and military officials at the country's customs posts, claiming alleged acts of corruption.*
418. *With regard to the alleged refusal to negotiate, the Committee notes that, according to the Government, the DEI is not obliged to negotiate a collective agreement with the SITRADEI and that the Labour Code does not apply to the trade union in respect of the presentation of lists of demands nor the conclusion of collective agreements. In this respect, the Committee recalls that: "all public service workers other than those engaged in the administration of*

*the State should enjoy collective bargaining rights, and priority should be given to collective bargaining as the means to settle disputes arising in connection with the determination of terms and conditions of employment in the public service” [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 886].*

The Committee’s recommendations

419. *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 inform it of the results of: (i) the appeal for the protection of constitutional rights (amparo) lodged with the Constitutional Chamber of the Supreme Court in respect of the dismissal of Mr Jorge Alberto Argueta Romero and Mr Carlos Alberto Rodríguez; and (ii) the action of unconstitutionality lodged by the SITRADEI against the use of polygraph tests.***
- (b) *The Committee requests the complainant organization to provide more detail about the allegations concerning: (i) the initiation of disciplinary proceedings for the purpose of dismissing trade unionists who do not agree to a polygraph test; and (ii) the detention of trade unionists, as a result of the intervention of police and military officials at the country’s customs posts, claiming alleged acts of corruption.***

CASES NOS 2177 AND 2183

INTERIM REPORT

**Complaints against the Government of Japan
presented by**

Case No. 2177

– **the Japanese Trade Union Confederation (JTUC–RENGO)**

Case No. 2183

– **the National Confederation of Trade Unions (ZENROREN)**

Allegations: At its origin, the complainants had alleged that the reform of the public service legislation was developed without proper consultation of workers' organizations, further aggravating the existing public service legislation and maintaining the restrictions on the basic trade union rights of public employees, without adequate compensation. Following extensive consultations, they now demand rapid guarantees for their basic labour rights

- 420.** The Committee has already examined the substance of these cases on nine occasions, most recently at its June 2014 meeting, when it presented an interim report to the Governing Body [372nd Report, paras 328–375, approved by the Governing Body at its 321st Session (June 2014)].
- 421.** The National Confederation of Trade Unions (ZENROREN) (Case No. 2183) submitted additional information in a communication dated 18 June 2015.
- 422.** The Government sent its observations in a communication dated 26 January 2016.
- 423.** Japan 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

- 424.** At its June 2014 meeting the Committee made the following recommendations [see 372nd Report, para. 375].
- (a) The Committee urges the Government to take the necessary measures, without further delay, in consultation with the social partners concerned to ensure basic labour rights for public service employees in full respect for the freedom of association principles embodied in Conventions Nos 87 and 98, ratified by Japan, in particular as regards:
- (i) granting basic labour rights to public servants;
- (ii) fully granting the right to organize and to collective bargaining to firefighters and prison staff;

- (iii) ensuring that public employees not engaged in the administration of the State have the right to bargain collectively and to conclude collective agreements, and that those employees whose bargaining rights can be legitimately restricted enjoy adequate compensatory procedures;
- (iv) ensuring that those public employees who are not exercising authority in the name of the State can enjoy the right to strike, in conformity with freedom of association principles, and that union members and officials who exercise legitimately this right are not subject to heavy civil or criminal penalties; and
- (v) the scope of bargaining matters in the public service.

The Committee expects that the necessary legislative amendments will be submitted to the Diet without delay and requests the Government to keep it informed of developments in this regard.

- (b) The Committee requests the Government and the complainant organizations to keep it informed of the results of the lawsuit filed by KOKKOROREN, as well as of the lawsuits concerning the unilateral cut at the “Workmen’s” Health and Welfare Organizations and those filed by the employees’ unions of a number of national university corporations against the university management for the wage-cut measures.
- (c) The Committee requests the Government to provide detailed information on the functioning of the National Personnel Authority in the current context and any proposals for its revision.

B. Additional information from the complainants

- 425.** In a communication dated 18 June 2015, ZENROREN asserts that while the Government continues to maintain the reform of the public service personnel system as an important task for the national administration, it disregards the Committee’s recommendation on this matter, in neglecting the restoration of the basic labour rights of public service employees even as a subject for its study.
- 426.** According to ZENROREN, the legislation on the partial revision of the National Public Service Law, which was adopted on 11 April 2014, had a serious problem in relation with the basic labour rights of public service employees. Through this revision, broad powers over the decision of labour conditions have been transferred to and concentrated on the Cabinet Bureau of Personnel Affairs, including the power so far held by the National Personnel Authority (NPA) to decide or revise the grade-based quota of posts, the discretion on planning of appointments, examinations and trainings, the personnel administration and the management of mechanism and quota of posts of the Ministry of Internal Affairs and Communications, uniform control of newly established leading posts, and basic policy on the total personnel expenditures. For the national public service workers whose constitutional basic labour rights are unfairly restricted, the transfer of the compensatory function of the NPA, which concerns the decision of salaries and working conditions, to the very organ of the employer amounts to the deprivation of the right itself.
- 427.** While such a powerful organ of the employer was set up, the basic labour rights are referred to in a supplementary resolution of the Cabinet Committees of both Upper and Lower Houses, which says that for an autonomous labour-management relations system, “necessary exchanges of opinion with staff organizations concerned should be conducted and reaching agreements pursued”. However, according to ZENROREN, neither the Government (the Cabinet Bureau of Personnel Affairs) nor the ruling parties have shown any posture to sincerely face up to the provision of article 12 of the Basic Labour Law or of the Supplementary Resolution.
- 428.** Furthermore, on 7 August 2014, the NPA issued a recommendation which included the “Comprehensive Review of the Salary System”. It would cut the pay standard by 2 per cent on average (maximum 4 per cent for older workers) and to review the pay rate of area

allowances and covered areas by using the margins from the pay cut (namely to expand the gap between areas). The Government also adopted a Cabinet decision on 15 November 2013 on the “treatment of the pay revision of the public service workers” according to which

as regards the national service workers’ salary, the government will come to grips with a drastic reform of the pay system, such as: (i) making a review of the national public service workers’ pay in view of reflecting the local salary standard in the public service workers’ salaries; (ii) reviewing the pay structure of the higher age staff, taking account of the pay gap between public and private sectors particularly for those in late 50s, and (iii) more accurately reflecting the abilities and performances in the treatment, and will effectuate it in the fiscal 2014. To this end the Government requests from the NPA that it will work out concrete measures without delay.

The recommendation of the NPA mentioned above was made precisely according to the content of this decision.

- 429.** ZENROREN is of the view that all the developments cited above demonstrate that the NPA is no longer a third-party organ independent from the Cabinet, but subordinated to the employer, the Government, and that its recommendation system is not functioning as a compensatory measure for the restriction of the basic labour rights. While the power to decide or revise the grade-based quota of posts was transferred to the Cabinet Bureau of Personnel Affairs, article 8 of the pay law was amended to include that the “opinion of the NPA should be taken into consideration when the grade-based quota of posts is set up or revised.”
- 430.** The complainant expresses its concern that the Government, eager to promote the reduction of the payroll of the public service workers, is placing pressure on the NPA without adequately securing the compensatory function for the restriction of the basic labour rights. As a consequence, the task of restoring the basic labour rights is left neglected and the public service workers remain deprived of their rights without any compensatory measures. The situation is getting serious since the Government is presently under pressure to further consolidate the power of the employer.
- 431.** The complainant adds that the ruling party’s present draft amendment to the Constitution of Japan proposes to add to the description of the basic labour rights (in article 28) an item specifying “the right of the public servants can be restrained in whole or in part” while no consideration is made to the restoration of the basic labour rights. Given the stable majority secured by the Government through the last general elections, the move towards amendment may be accelerated and, thus, legally revise the working conditions of public servants for the worse.
- 432.** The complainant is concerned about the spillover effect of the pay cut to workers of municipality services and independent administrative agencies pursuant to the cases of national public service employees. This spillover effect has spread and, as of October 2013, according to the Ministry of Internal Affairs and Communication, a reduction of salaries based on the “request” from the Government has been conducted in 1,069 local government units (59.8 per cent of total). ZENROREN raises serious concern that as the result of the request made by the national Government to local governments to reduce wages of their public service staff without due consultation with workers unions and in disregard of the recommendations of local personnel committees, similar wage cuts are being carried out in a number of local governments. In Izumisano City, Osaka Prefecture, since the present mayor took office in 2011, the wage of the public service workers has been reduced by 8 to 13 per cent. The collective bargaining session regarding the charging of the union’s office space which had been offered for free for the last 36 years and the check-off of the union fee was unilaterally terminated by the city and charging was forced through. The union side made claims for remedy before the Osaka Prefectural Labour Relations Commission on

six points. To date, two out of these six points have been recognized as unfair labour practices by the Commission. In Kamakura City, Kanagawa Prefecture, in September 2014, labour-management negotiations reached an agreement regarding the wage reduction on some 100 city workers by an average of over 10 per cent, to carry out an interim measure to ease the impact of drastic change over the period of six years. However, the city assembly unilaterally adopted the resolution to introduce the reduction without such a transitional measure, which led to the wage cut made effective immediately. At present, the workers' union of the city is filing a claim for remedy before the Prefectural Labour Relations Commission. The complainant observes that, as shown in the above, under the circumstances where the determination of working conditions based on collective bargaining is not recognized by law, there are many cases of wage reduction and serious infringement of rights of local public service workers.

433. Furthermore, with regard to the ruling of the Tokyo District Court on the claim by the Japan Federation of National Service Employees (KOKKOROREN) that the salary cut law is invalid and in violation of the Constitution, the complainant indicates that the court held 12 hearings in total and concluded the case on 17 July 2014. In its decision dated 30 October 2014, the District Court ruled that the pay cut forced in disregard of the recommendation of the National Personnel Authority, made in compensation for the restriction of the basic labour rights of Government employees, did not violate article 28 of the Constitution. The complainant expresses its concern that the court decision did not even recognize the government's negligence of sincere negotiations with KOKKOROREN as violation of the obligation. Instead, the Court justified the anti-Constitutional decision of the Government and the Diet to cut salaries and unjustly ruled to turn down all claims by the plaintiffs. The District Court ruled that the pay cut of the case under examination did not violate ILO Conventions: "neither ILO Convention No. 87 nor Convention No. 98 is such that guarantees the right of collective bargaining of the national service employees", and "it cannot be ruled as violation of these Conventions that the Prime Minister did not submit to the Diet a pay bill that reflected the NPA's recommendation or that the parliamentarians adopted the provisional exemption law on revising the pay system." While such interpretation already raises serious concern, the ruling also set a much smaller limit to the Government's obligation to conduct negotiations with national service employees' unions in the event that the pay is reduced without having a recommendation from the NPA. Worse, while admitting the lack of substantial consultations between the Government and KOKKOROREN, the District Court gave weight to the documents presented in formality and the number of the negotiations registered to turn down all claims of the plaintiffs. Consequently, since the ruling is so erroneous both in the interpretation of the Constitution and related laws and in terms of determination of facts, KOKKOROREN appealed the case to the Tokyo High Court on 13 November 2014.

434. ZENROREN refers to the claim for relief measures to unfair labour practice before the Labour Relations Commissions regarding the unilateral reduction of bonuses made by the management of Rosai (OSH) Hospitals in disregard of working rules. Rosai Hospitals are run by the Japan Labour Health and Welfare Organization (the Organization), an independent administrative agency, set up in different parts of Japan. Following four investigations and four hearings, on December 2013, the Kanagawa Prefectural Labour Relations Commission concluded in an Order that: "Unilateral disadvantageous modification without due negotiations is unacceptable" and "The act of the Organization is regarded as unfair dominating intervention which could weaken the bargaining power of unions and debilitate them." The Commission thus strongly denounced the unfair labour practice of the Organization. The Organization, challenging the decision, filed a claim before the Central Labour Relations Commission, calling for the re-examination of the case and the repeal of the Order. According to the complainant, so far three investigations have been carried out by the Central Labour Relations Commission and the complainant union in that case, Rosai Hospital Workers' Union (ZENROSAI), calls for a rapid resolution.

- 435.** The complainant recalls that eight workers' unions of national university corporations have filed lawsuits opposing unilateral reduction of salaries. In the earliest case filed by the Faculty and Staff Union of Japanese Universities, ZENDAIKYO, so far nine oral proceedings have been held, where the arguments of both sides were made clear. The main claims of the plaintiff unions of eight universities are: (i) it is unfair that the management unilaterally terminated collective bargaining sessions and forced through the wage reduction; (ii) it is unfair that no management effort has been made, including the attempt to reduce the rate of wage cuts; and (iii) it is unfair that the Government (Ministry of Education, Culture, Sports, Science and Technology), in the name of a "request", actually ignored the principle of autonomy of labour relations and university autonomy, imposed a virtual wage cut and conducted the reduction of the management expenses grants to the universities. The arguments of the defendant national university corporations are as follows: (i) the wage cut was unavoidable since it was imposed by the national government; (ii) the salary reduction was not unfair as it was conducted based on appropriate proceedings; and (iii) the cut in personnel expenses was essential in dealing with the reduction of the management expenses grant from the Government, therefore it was not unfair. The ruling on the case filed by ZENDAIKYO was given on 21 January 2015, and that by the union of Fukuoka University of Education was given on 28 January 2015. Both judgments turned down all the claims by the plaintiffs.
- 436.** The judgment of the case filed by ZENDAIKYO, while admitting that the disadvantage suffered by the individual plaintiffs by the wage reduction was significant and impacted the life of the plaintiffs as well as education and higher education of their children, gave undue focus on the different responsibility on the National Institute of Technology from other profit-making businesses, and thus easily recognized the high level of necessity of the wage reduction. Regarding collective bargaining, the court only accepted the argument of the employer and unilaterally shifted the responsibility of terminating the collective bargaining sessions onto the union, thus legitimizing the disadvantageous modification of working rules. In the complainant's view this ruling was incorrect both in respect of the interpretation of labour laws and the labour contract act and the determination of facts, and was extremely unfair in dismissing the plaintiffs' claims. The complainant also expresses its concerns over the ruling on the case of Fukuoka University of Education which dismissed the claims by stating that the disadvantage suffered by the plaintiffs was only temporary and not to be overestimated.

C. The Government's reply

- 437.** In its communication dated 26 January 2016, the Government recalls that measures for the autonomous labour-employer relations system set forth in article 12 of the Civil Service Reform Law were incorporated in the four civil-service-reform-related bills that were dropped due to dissolution of the House of Representatives on November 2012. However, since various opinions were expressed by the employer and the worker sides regarding measures for the autonomous labour-employer relations system, they were not incorporated in the Amendment Act of the National Public Service Law, etc., established in April 2014. However, in planning the Amendment Bill of the National Public Service Act, etc., the Government had numerous meetings with relevant trade unions, including the Alliance of Public Service Workers Unions (APU) and KOKKOROREN affiliated to ZENROREN.
- 438.** In reply to the comments from ZENROREN alleging that

broad powers over the decision of labour conditions have been transferred to and concentrated in the Cabinet Bureau of Personnel Affairs, including the power so far held by the National Personnel Authority (NPA) to decide or revise the grade-based quota of posts, the discretion on planning of appointments, examinations and trainings, the personnel administration and the management of mechanism and quota of posts of the Ministry of Internal

Affairs and Communications, uniform control of newly established leading posts, and basic policy on the total personnel expenditures,

the Government specifies that the Amendment Act of the National Public Service Law, etc. includes the following elements: (i) the NPA continues to have authority over affairs related to ensuring fairness in appointment of national public service employees; (ii) because the fixed numbers of officials in each grade of the salary schedules (described as “the grade-based quota of posts” by ZENROREN) are linked to officials’ working conditions and since there were numerous indications from many fields on the need to ensure good working conditions, the provision was added that the Prime Minister will fully respect the opinions of the NPA that are submitted from the perspective of ensuring officials’ working conditions when deciding and revising the fixed numbers of officials in each grade of the salary schedules. It also refers to authority besides that related to appointment and the fixed numbers of officials in each grade of the salary schedules, but these areas are to be controlled by the Cabinet Bureau of Personnel Affairs as necessary personnel management systems in order to better promote the Government’s human resources strategy for national public service employees and are to be independent of compensatory measures for restrictions placed on basic labour rights; (iii) the Amendment Act of the National Public Service Law, etc., was planned based on the current restrictions placed on basic labour rights of national public service employees and the NPA recommendation at the core of a compensatory measure for restrictions placed on basic labour rights has not been changed in any way. This is in reply to ZENROREN’s assertion that national public service workers whose constitutional basic labour rights are unfairly restricted are deprived of the right for compensatory measures by the transfer of the compensatory function of the NPA, which concerns the decision of salaries and working conditions, to the very organ of the employer; and (iv) the Government is willing to respect NPA recommendation, which is a compensatory measure for restrictions placed on basic labour rights. A Cabinet Decision of 25 July 2014 – formulated after the enactment of the Amendment Act of the National Public Service Act, etc. – clarified the Government’s commitment: “The basic stance concerning remuneration is to respect the NPA recommendation” in the “Basic Policy on Total Personnel Cost for National Officials”. Therefore, in the Government’s view, ZENROREN’s assertion is unreasonable.

- 439.** As for measures for the autonomous labour–employer relations system, during the deliberations in the Diet regarding the Amendment Bill of the National Public Service Law, etc., the Minister in charge of Civil Service Reform stated on November 2013 in the House of Representatives Cabinet Committee that as there are various indications about measures for the autonomous labour–employer relations system and they have not yet gained the understanding of the people the Government has to continue to examine measures for the autonomous labour–employer relations system carefully.
- 440.** With regard to the granting of basic labour rights, the Minister in charge of Civil Service Reform stated on October 2014 in the House of Representatives Cabinet Committee that it was necessary for the Government to continue to examine carefully these issues since granting the right to conclude collective agreements to national public service employees may have an adverse effect on the operations of public services due to prolonged labour–employer negotiations and the fact that negotiation costs may also increase, leading to confusion in the public opinion. Furthermore, granting the right to strike to national public service employees would result in a stagnation of public services and adversely affect the lives of the public, consequently causing a loss of confidence in public services.
- 441.** Based on the establishment of the Amendment Act of the National Public Service Law, etc., the Cabinet Bureau of Personnel Affairs is taking charge of article 12 of the Civil Service Reform Law, which takes measures to make the autonomous labour–employer relations system open to the people. The Cabinet Bureau of Personnel Affairs has been conducting an exchange of opinions with employees’ organizations as necessary regarding various issues

including measures for the autonomous labour–employer relations system, and the Cabinet Bureau of Personnel Affairs shall continue to promote mutual understanding through the exchange of opinions in the future. In this regard, the Minister in charge of civil service reform clearly stated such position of the Cabinet Bureau of Personnel Affairs in the House of Councillors Cabinet Committee on November 2014. Therefore, the Government considers that ZENROREN’s assertion that “neither the Government nor the ruling parties, however, have shown any posture to sincerely face up to the provision of article 12 of the Basic Labour Law or of the Supplementary Resolution” is untrue.

- 442.** Furthermore, with regard to the fixing of a number of officials in each grade of the salary schedules, the Government indicates that these numbers are the upper limits of the numbers of national public service employees that can be set to a given grade in the salary schedule when the employer decides the grade of the employees. The authority of the NPA to decide and revise the fixed numbers of officials in each grade of the salary schedules was transferred to the Cabinet Bureau of Personnel Affairs in the Amendment Act of the National Public Service Act, etc. In order to implement an efficient and effective operational system quickly and flexibly in response to the Cabinet’s important policy issues and changes in demand for administrative services. However, when the Prime Minister decides and revises the fixed numbers of officials in each grade of the salary schedules, the opinion of the NPA – submitted from the perspective of ensuring officials’ good working conditions – should be “fully respected.” In fact, after enactment of the Amendment Act of the National Public Service Act, etc., the Cabinet Bureau of Personnel Affairs has decided and revised the fixed numbers of officials in each grade of the salary schedules according to the opinions submitted by the NPA.
- 443.** The Government recalls that measures for the autonomous labour–employer relations system of local public service employees were incorporated in the Amendment Bill of the Local Public Service Law, etc. and the Draft Law on Labour Relations of Local Public Service Employees, that were dropped due to dissolution of the House of Representatives on November 2012. And since various opinions were expressed by the employer’s side (local governments) and the workers’ side (including APU, the All-Japan Prefectural and Municipal Workers Union (JICHIRO), and the Japan Federation of Prefectural and Municipal Workers’ Unions (ZENROREN–JICHIROREN) regarding measures for the autonomous labour–employer relations system, they were not incorporated in the Amendment Act of the Local Public Service Law and the Act for Local Incorporated Administrative Agency established in April 2014. The Ministry of Internal Affairs and Communications will continue to examine the handling of measures for local public service reform while listening carefully to the opinions of those concerned with considerations given to the examination of national civil service reform in the future.
- 444.** With regard to measures concerning the remuneration of national public service employees, the Government recalls that it took a special temporary measure, based on the “Law of Revision and Temporary Special Provisions on Remuneration for National Public Service” (Act No. 2 of 2012, hereinafter referred to as “the Revision and Special Temporary Measures on Remuneration Law”), to cut personnel expenses of national public service employees since further reduction in annual expenditures was indispensable, taking into consideration the severe national fiscal situation and the necessity to respond to the Great East Japan Earthquake. The special temporary measure to reduce remuneration for national public service employees was implemented for two years ended on 31 March 2014.
- 445.** Following a comprehensive review of the remuneration system, on August 2014, the NPA made the following recommendations to the Diet and the Cabinet: (i) to balance the remuneration level with the private employees’ remuneration level, the monthly remuneration and special remuneration (bonuses) of national public service employees in regular service should be raised; and (ii) a comprehensive review of the remuneration system

should be implemented aiming to revise the distribution of remuneration among regions and age groups as well as based on duties and performance, while maintaining the raised remuneration level.

- 446.** With regard to the remuneration of local public service employees, the Government recalls that it is ordinarily determined by the by-laws of each local government. According to the law, a request from the national Government is only a technical advice and cannot force the reduction of remuneration. As a result, any request from the national Government never alters the independent process of local Governments to decide upon the reduction of remuneration for local public service employees through discussion in assemblies, taking the reports and recommendations of the Personnel Committee. In October 2013, the Minister of Industry and Commerce reported on a number of local governments which did not accept the request for reduction of remuneration.
- 447.** Furthermore, in November 2013, the Cabinet confirmed the end of the special temporary measure to reduce remuneration for national public service employees on 31 March 2014, in accordance with the Revision and Special Temporary Measures on Remuneration Law. And since the 2014 fiscal year onwards, the national Government has not requested the reduction for remuneration of local public service employees.
- 448.** In relation to the recommendation made by the NPA in August 2014 on the comprehensive review of the remuneration system, the Cabinet confirmed on October 2014 that a review of remuneration for national public service employees shall be conducted in accordance with the NPA recommendations which suggested a comprehensive review of the remuneration system should be implemented aiming to revise the distribution of remuneration among regions and age groups as well as based on duties and performance. Following the Cabinet decision, the MIC sent the notification “About the measures of revision of remuneration for local public service employees” requesting each local government to perform a proper review, including a more accurate reflection of local private sector remuneration.
- 449.** Remuneration of local public service employees in various local governments are considered to be, in accordance with the spirit of the Local Public Service Act and based on the recommendations of the Personnel Committee, properly determined by the by-laws of each local government, having passed through the vote of assemblies of local governments. Additionally, the recommendations of the Personnel Committee are important as part of a compensatory measure for restrictions placed on basic labour rights, which a neutral and professional third-party institution makes in accordance with the research on the state of private-sector remuneration. Although these recommendations are not legally binding, they should be respected in the fullest.
- 450.** With regard to the lawsuit filed by KOKKOROREN against the salary cut adopted by the Diet on 25 May 2012, the Government indicates that the Tokyo District Court dismissed KOKKOROREN’s claim on 30 October 2014. The Tokyo District Court ruled that given the severe fiscal situation of Japan and the Great East Japan Earthquake, the necessity of the Revision and Special Temporary Measures on Remuneration Law for taking the measure to reduce remuneration for national public service employees could not be denied, and the Diet’s judgment on this matter cannot be regarded as unreasonable. Therefore, it cannot be said that the Revision and Special Temporary Measures on Remuneration Law was legislated without its necessity being acknowledged. In addition, because the measure to reduce remuneration for national public service employees is limited to two years, and the Government has recognized the measure as very unusual, showing its stance of continuing to respect the NPA recommendation, it is not appropriate to evaluate the measure to reduce remuneration for national public service employees implemented at an average reduction rate of 7.8 per cent as impairing the original function of the NPA recommendation. Finally, the Government response to a request for collective bargaining, in the process of establishing

the Revision and Special Temporary Measures on Remuneration Law, was unavoidable within the scope of collective bargaining obligations limited by the principle of determining their working conditions by law, and so it cannot be deemed that the Government committed illegal acts that violate the collective bargaining rights of the plaintiff. KOKKOROREN appealed to the Tokyo High Court on November 2014.

- 451.** With regard to the lawsuit about the salary reduction in the Organization, the Government reports the following: (i) the Kanagawa Labour Relations Commission conducted four investigations, four trials, and two adjustments before issuing a decree on 19 December 2013; (ii) the labour union issued statements on the details of relief for the five areas, and most of them were dismissed, although it was ruled that collective bargaining and the payment regarding the term-end and diligence allowance were unfair labour practice as provided in article 7, sections 2 and 3 of the Trade Union Law; (iii) the Organization expressed objection to the decree of the Kanagawa Labour Relations Commission and filed the re-examination in the Central Labour Relations Commission on 27 December 2013; (iv) the labour union also filed the re-examination on 6 January 2014; and (v) the Central Labour Relations Commission investigated the case seven times and a settlement was established between the Organization and the labour union on 8 January 2015. Thus, the statement that the Ministry of Health, Labour and Welfare performed unfair labour practice was withdrawn.
- 452.** With regard to the lawsuit against national university corporations, the Government reports that as of 1 October 2015, the labour unions of nine national university corporations (instead of eight alleged by the complainant) have brought lawsuits, which are still pending, against their respective universities seeking the payment of lost wages stemming from measures to reduce remuneration. In lawsuits against two of the national university corporations, regional courts have ruled against the plaintiffs and rejected their demands. In their rulings, the lower courts stated that there was a high degree of necessity for the implementation of the salary cuts and that there were no problems in the negotiations with the unions. With regard to the results of the other lawsuits, the Government will provide additional information about the rulings. However, the Government recalls that it has requested each national university corporation to consider the trend of the review of the remuneration of national public service employees and to take necessary measures in this regard within the context of the university's autonomous and independent labour-management relations. The Government did not compel by legal force the national university corporations to reduce remuneration.
- 453.** With regard to the court case involving ZENDAIKYO mentioned by the complainant in its communication of 18 June 2015, the Government reports that in its lawsuit against the National Institute of Technology, ZENDAIKYO demanded the payment of salary lost through the measure to reduce remuneration, but on 21 January 2015, the regional court, hearing the case, handed down its ruling rejecting the demand. The contents of the ruling were similar to the ruling by the lower courts in the two lawsuits against the national university corporations mentioned above.
- 454.** Finally, with regard to the functions of the NPA in the current context, the NPA continues to make recommendations to the Diet and the Cabinet based on the principle of meeting changing conditions established in the National Public Service Act as a compensatory measure for restrictions placed on basic labour rights. Furthermore, with regard to deciding and revising the fixed numbers of officials in each grade of the salary schedules, according to the Act on Remuneration of Officials in the Regular Service revised by the Amendment Act of the National Public Service Act, etc., the Prime Minister shall hear and fully respect the NPA's opinions, submitted from the viewpoint of securing adequate working conditions of employees. Additionally, in the process of the operation, the NPA prepares a draft decision and revision of the fixed numbers of officials in each grade of the salary schedules after hearing the opinions of both employers and employees and submits the draft to the

Prime Minister as an opinion during the budgetary process, which starts with the requests made by the Cabinet Office and each ministry. Then, the Prime Minister decides and revises the fixed numbers in each grade of the salary schedules based on the NPA's opinion. And, in addition to implementing the compensatory function for restrictions placed on basic labour rights as mentioned above, the NPA continues to play the role of ensuring fairness in the personnel administration of public employees, concerning appointment, recruitment examinations and training, etc.

455. As concluding remarks, the Government states that it has done its utmost to have meaningful discussions and achieve fruitful civil service reform, bearing in mind the basic idea that frank exchanges of views and coordination with relevant organizations are necessary. The Government will continue to refer to the Committee's recommendations and commit to provide the Committee with timely and relevant information on progress made. In the meantime, the Government requests that the Committee acknowledges its efforts on this matter.

D. The Committee's conclusions

456. *The Committee recalls that it decided to examine these two cases, initially filed in 2002, in conjunction taking into account that they both concern the reform of the public service in Japan and its consequence in terms of realization of freedom of association principles. The Committee notes the detailed information from the Government and a complainant organization in relation to its previous recommendations, including on the most recent steps taken in this reform process.*
457. *With regard to the national public service reform, in its previous examination of this case, the Committee had expressed its regret that, despite the progress which had been achieved towards the elaboration of a reform of the public service in Japan which would have included a number of basic labour rights for national public service employees, in the end none of these measures were adopted. With regard to the local public service reform, the Committee recalls that the amendment bills that had been submitted to the Diet in November 2012, were dropped from the agenda pursuant to its dissolution due to the elections. The Committee urged the Government to pursue full, frank and meaningful consultations with all interested parties on these issues and expected that the Government would make every effort to complete the civil service reform without any further delay.*
458. *The Committee notes the Government's reiteration that the Amendment Act of the National Public Service Law, adopted in April 2014, does not include measures for the autonomous labour–employer relations system given that there were various issues raised with the system that had been incorporated in the previous bills. The Committee notes from both the Government and ZENROREN that under the Amendment Act the Cabinet Bureau of Personnel Affairs took charge of examining measures for the autonomous labour–employer relations system in article 12 of the Reform Law with continuous hearing of relevant trade unions, including the APU and KOKKOROREN affiliated to ZENROREN.*
459. *With regard to the local public service, the Committee observes that the Government reiterates that measures for the autonomous labour–employer relations system of local public service employees were incorporated in the Amendment Bill of the Local Public Service Law, etc. and the draft Law on Labour Relations of Local Public Service Employees were dropped due to dissolution of the House of Representatives on November 2012. Moreover, since divergent opinions were expressed by the employers' side (local governments) and the workers' side (including APU, JICHIRO, and ZENROREN–JICHIROREN regarding measures for the autonomous labour–employer relations system, they were not incorporated in the Amendment Act of the Local Public Service Law and the Act for Local Incorporated Administrative Agency established in April 2014. However, the*

Ministry of Internal Affairs and Communications continues to examine the handling of measures for local public service reform by continuously hearing from those concerned.

- 460.** *The Committee deeply regrets that, given the time that has elapsed since the complaint was filed and despite the long and intensive dialogue in which the Government and the social partners have been engaged, no concrete measures have yet been taken to provide basic labour rights to the public service in order to ensure full respect for the freedom of association principles embodied in Conventions Nos 87 and 98, ratified by Japan. The Committee cannot but once again urge the Government to expedite its consultation with the social partners concerned to ensure, without further delay, basic labour rights for public service employees in line with its previous recommendations. The Committee expects that the necessary legislative amendments will be submitted to the Diet without delay and requests the Government to keep it informed of developments in this regard.*
- 461.** *In its latest communication, ZENROREN once again expresses concern over the unilateral reduction of the national public service employees' wage, the pressure for reduction of local public employee wages and the degradation of the NPA recommendation system. ZENROREN refers to the spillover effect of the pay cut to workers of municipality services and independent administrative agencies pursuant to the cases of national public service employees. ZENROREN alleges that this spillover effect has spread as the result of the request made by the national Government to local governments to reduce wages of their public service staff without due consultation with workers unions and in disregard of the recommendations of local personnel committees, similar wage cuts are being carried out in a number of local governments. The Committee notes that the Government reiterates that the reduction in wages of national public service employees was indispensable taking into consideration the severe national fiscal situation and the necessity to respond to the Great East Japan Earthquake. The Government also recaps that this special measure was implemented for two years and ended on 31 March 2014. As regards local employees, the Committee notes the Government's statement that it cannot impose such a reduction but did need to draw local governments' attention to the serious need to respond to this situation. Moreover, since the 2014 fiscal year onwards, the national Government has not requested the reduction for remuneration of local public service employees.*
- 462.** *Following serious concerns raised in the complaints that the authority of the NPA recommendations on wage settlement, which acts as a compensatory measure until the basic labour rights are granted to public servants, has been undermined, and with respect to possible transfer of authority relating to the administration of salary scales to the Cabinet Personnel Bureau, the Committee previously requested detailed information on the NPA's functioning in the current context and any proposals for its revision. The Committee observes that ZENROREN is still of the view that, since the passing of the partial revision of the Public Service Personnel Act in April 2014, developments demonstrate that the NPA is no longer a third-party organ independent from the Cabinet, but subordinated to the Government, and that its recommendation system is not functioning as a compensatory measure for the restriction of the basic labour rights. The Committee notes the Government's indication that the NPA continues to make recommendations to the Diet and the Cabinet based on the principle of meeting changing conditions established in the National Public Service Act as a compensatory measure for restrictions placed on basic labour rights. Furthermore, with regard to deciding and revising the fixed numbers of officials in each grade of the salary schedules, the Government indicates that according to the Act on Remuneration of Officials in the Regular Service revised by the Amendment Act of the National Public Service Law, etc., the Prime Minister shall hear and fully respect the NPA's opinions, submitted from the viewpoint of securing adequate working conditions of employees. In addition, in the process of the operation, the NPA prepares a draft decision and revision of the fixed numbers of officials in each grade of the salary schedules after hearing the opinions of both employers and employees and submits the draft to the Prime*

Minister as an opinion during the budgetary process, which starts with the requests made by the Cabinet Office and each ministry. Then, the Prime Minister decides and revises the fixed numbers in each grade of the salary schedules based on the NPA's opinion. Finally, the Government recalls that the NPA continues to play the role of ensuring fairness in the personnel administration of public employees, concerning appointment, recruitment examinations and training, etc. The Committee requests the Government to continue to provide information on the functioning of the NPA recommendation system, as a compensatory measure until the basic labour rights are granted to public servants.

463. Furthermore, the Committee takes note of the information provided both by the Government and by ZENROREN on the outcome of the lawsuit filed by KOKKOROREN against the salary cut adopted by the Diet on 25 May 2012. The Committee observes that, in its decision of 30 October 2014, the District Court ruled that: (i) given the severe fiscal situation of Japan and the Great East Japan Earthquake, the necessity of the Revision and Special Temporary Measures on Remuneration Law for taking the measure to reduce remuneration for national public service employees could not be denied, and the Diet's judgment on this matter cannot be regarded as unreasonable. Therefore, the Court considered that it could not be said that the Revision and Special Temporary Measures on Remuneration Law was legislated without its necessity being acknowledged; (ii) because the measure to reduce remuneration for national public service employees is limited to two years, and the Government has recognized the measure as very unusual, showing its stance of continuing to respect the NPA recommendation, it is not appropriate to evaluate the measure to reduce remuneration for national public service employees implemented at an average reduction rate of 7.8 per cent as impairing the original function of the NPA recommendation; and (iii) the Government response to the request for collective bargaining, in the process of establishing the Revision and Special Temporary Measures on Remuneration Law, was unavoidable within the scope of collective bargaining obligations limited by the principle of determining their working conditions by law, and so the Court considered that it could not be deemed that the Government committed illegal acts that violate the collective bargaining rights of the plaintiff. Noting that KOKKOROREN appealed to the Tokyo High Court on November 2014, the Committee requests the Government and the complainant to provide information on the results of this appeal.
464. The Committee also notes the information provided both by the Government and the complainant on the status of the lawsuits concerning the unilateral cut at the "Workmen's Health and Welfare Organization" which was finally settled in January 2015 and those concerning the wage cut measures at nine state-run universities. In this regard, the Committee notes that in lawsuits against two of the national university corporations, regional courts have ruled against the plaintiffs and rejected their demands. In their rulings, the courts stated that there was a high degree of necessity for the implementation of the salary cuts and that there were no problems in the negotiations with the unions. The Committee requests the Government and the complainant organization to keep it informed of the results of the remaining lawsuits at the other state-run universities.
465. In view of the history of the present case, the Committee considers appropriate to recall as a general matter that in cases where the Government has resorted to statutory limitations on collective bargaining, the Committee stresses that repeated recourse could, in the long term, only prove harmful and destabilize labour relations, as it deprives workers of a fundamental right and means of furthering and defending their economic and social interests. Where the budgetary powers lay with the legislative authority, a fair and reasonable compromise should be sought between the need to preserve as far as possible the autonomy of the bargaining parties, on the one hand, and measures which must be taken by governments to overcome their budgetary difficulties, on the other [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 1000 and 1035].

The Committee's recommendations

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

- (a) The Committee once again urges the Government to expedite its consultation with the social partners concerned to ensure, without further delay, basic labour rights for public service employees in full respect for the freedom of association principles embodied in Conventions Nos 87 and 98, ratified by Japan, in particular as regards:*
 - (i) granting basic labour rights to public servants;*
 - (ii) fully granting the right to organize and to collective bargaining to firefighters and prison staff;*
 - (iii) ensuring that public employees not engaged in the administration of the State have the right to bargain collectively and to conclude collective agreements, and that those employees whose bargaining rights can be legitimately restricted enjoy adequate compensatory procedures;*
 - (iv) ensuring that those public employees who are not exercising authority in the name of the State can enjoy the right to strike, in conformity with freedom of association principles, and that union members and officials who exercise legitimately this right are not subject to heavy civil or criminal penalties; and*
 - (v) the scope of bargaining matters in the public service.*

The Committee expects that the necessary legislative amendments will be submitted to the Diet without delay and requests the Government to keep it informed of developments in this regard.

- (b) The Committee requests the Government to continue to provide information on the functioning of the NPA recommendation system, as a compensatory measure until the basic labour rights are granted to public servants.*
- (c) The Committee requests the Government and the complainant organizations to keep it informed of the results of the appeal to the Tokyo High Court made by KOKKOROREN concerning its lawsuit against the salary cut adopted by the Diet on 25 May 2012.*
- (d) The Committee requests the Government and the complainant organizations to keep it informed of the results of the remaining lawsuits filed by the employees' unions of a number of national university corporations against the university management for the wage-cut measures.*

CASE NO. 3171

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

**Complaint against the Government of Myanmar
presented by
the International Union of Food, Agricultural, Hotel, Restaurant, Catering,
Tobacco and Allied Workers' Associations (IUF)**

Allegations: The complainant organization alleges anti-union practices, including harassment, discrimination and dismissals of trade union members and officials, as well as interference in union activities, denial of access to workplace and attempts to dismantle the Bagan Hotel Union, carried out by the management of the Bagan Hotel River View

- 467.** The complaint is contained in a communication from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) dated 16 November 2015.
- 468.** The Government forwarded its response to the allegations in a communication dated 5 January 2016.
- 469.** Myanmar 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

- 470.** In a communication dated 16 November 2015, the complainant organization, IUF, alleges anti-union practices, including harassment, discrimination and dismissals of trade union members and officials, as well as interference in union activities, denial of access to workplace and attempts to dismantle the Bagan Hotel Union, carried out by the management of the Bagan Hotel River View (hereinafter, the hotel).
- 471.** The complainant indicates that the Hotel in the Mandalay Region is one of seven hotels owned by the KMA Group, a conglomerate with holdings in agriculture, forestry, shipping, mining, construction, energy, machinery, and auto sales among other activities. According to the complainant, in response to longstanding grievances, workers at the hotel formed and sought to register a union at the end of 2012 submitting the required registration materials with the Myingyan Labour Office. As there was no response for more than six months, the union again submitted the material and the Bagan Hotel Union was officially registered on 13 June 2013, 18 months after its initial application. Some 125 employees out of 170 staff became members. The Bagan Hotel Union is affiliated to the IUF.
- 472.** The complainant alleges that management responded to the formation of the union by harassing and discriminating its members and officers. As early as November 2013, the human resources manager of the company owning the hotel requested the union leaders to disband the union (evidence cited in the Naypyidaw Arbitration Council's report of 6 May

2015), and older union members were told to no longer report for work despite the lack of a formal, written retirement policy. On 7 March 2015, management allegedly summoned the union executive to a closed, filmed meeting in a private hotel room guarded by hotel security and instructed them to disband the union and to sign resignation letters. Five union leaders who refused were immediately terminated. On 8 March 2015, the union leaders were denied entry to the workplace, and told that if they did not submit resignation letters they would have to sign blank papers. The dismissed union leaders were denied access to their members on the hotel premises, and continue to be denied access.

- 473.** The complainant indicates that, on 9 March 2015, the union formally wrote to the Township Conciliation Body, informing it of the dismissals and requesting its intervention. On 13 March 2015, a tripartite meeting was convened by the Township Conciliation Body at which a representative confirmed that the company owning the hotel wished the union to disband (statement recorded in the Naypyidaw Arbitration Council's report of 6 May 2015). The competent government authorities are thus aware of the company's consistent hostility to the presence of a union at the hotel and at its other hotels. According to the law, a tripartite mediation meeting under the auspices of the conciliation body should result in an agreement between union and management within three days. Ten days following the meeting, the union formally requested on 23 March 2015 the Mandalay Division Arbitration Body to act. As a result, the union learned that that the Township Conciliation Body had communicated to the Mandalay Division Arbitration Body (but not to the union or the company) a recommendation that the hotel reinstate the five dismissed union leaders.
- 474.** According to the complainant, on 31 March 2015, a meeting was convened with the Mandalay Division Arbitration Body, where the human resources manager of the company owning the hotel confirmed his wish to see the union disband (statement cited in the Naypyidaw Arbitration Council's report of 6 May 2015). On 3 April 2015, the Mandalay Division Arbitration Body ordered management to reinstate all the dismissed union leaders after determining that there was no legal basis for their dismissal. In response, the company appealed the order to the Naypyidaw Arbitration Council. On 6 May 2015, the Arbitration Council reaffirmed the reinstatement decisions of the bodies which had previously ruled and ordered the hotel management to reinstate all five union leaders with full compensation and back wages (attached to the complaint). The Arbitration Council further ruled that the union leaders' employment was protected under the Labour Organization Law, which also provides that decisions should be implemented within 30 days. However, the 2014 Act on the Application of Writs provides for a period of up to two years to appeal the decision.
- 475.** The complainant alleges that, on 8 May 2015, during the peaceful demonstration of some 70 hotel employees, union members and non-members, in front of the hotel for implementation of the reinstatement order, management informed staff that they would have to sign warning letters pledging not to join in any future protests, and that if they failed to sign their managers would sign, meaning that they had all received warnings for having engaged in peaceful protest activity.
- 476.** Furthermore, the complainant alleges that, on 4 June 2015, in a meeting with the union to discuss implementation of the Arbitration Council decision, management agreed to pay compensation and back wages and to rehire the workers at their former positions and salary for a period of six months. The workers would not, however, receive the customary payment based on distribution of the service charge, which is an important part of workers' remuneration in Myanmar and in the region. Most importantly, they were told not to report for work, as the hotel had lodged an appeal to the Supreme Court based on the Application of Writs Act; management would then make a final decision on their employment status on the basis of the court decision. A management statement to that effect is included in the agreement, which the union leaders reluctantly agreed to sign on the understanding that the Supreme Court would provide further clarification on their employment status in a decision

which should normally take only several months. After waiting several weeks to receive confirmation that the appeal had been submitted to the Court, the union investigated the matter and learned that no appeal had been filed, meaning that they had signed the 4 June agreement on the basis of false information.

- 477.** According to the complainant, on 16 June 2015, the union requested the Naypyidaw Labour Department Registrar to assist them in obtaining official reinstatement letters from the hotel, in accordance with the decision of the Naypyidaw Arbitration Council. On 18 June 2015, the hotel management, in order to formally comply with the order of the Naypyidaw Arbitration Council, offered reinstatement letters to the five dismissed union leaders, informing them that they would receive their basic monthly wages (without service charge and other remuneration) but were not to report to work. The union leaders continued to be denied access to their jobs and to their members. On 13 July 2015, the union formally wrote to the Nyaung U Township Conciliation Body, explaining that in the current situation, the union leaders were experiencing severe economic hardship due to the insufficiency of the basic salary, and that the union was unable to function as the leaders were denied access on-site to the members and could not hold meetings, collect dues or submit the required reports to the Government, and called on it to assist in securing their legally mandated reinstatement at their jobs. A meeting on 1 October 2015 between union and management representatives failed to yield any progress. On 4 November 2015, the union communicated to the IUF information received from the Deputy Labour Minister according to which the company had now appealed the reinstatement decision of the Naypyidaw Arbitration Council, which meant that the agreement signed by the union on 4 June 2015 was based on false information from management that an appeal had already been lodged with the Supreme Court.
- 478.** The complainant alleges that rights violations at the hotel continue. The union President and four executive members who were illegally dismissed are still denied access to their workplace and to their members. There are reports that applicants are being screened to determine potential union supporters, and older union members were again pressured to retire. The complainant denounces that government authorities have failed to implement and enforce the reinstatement orders in a way which offers meaningful protection to the union's members and officers and would allow the workers in the establishment to effectively exercise their rights under Conventions Nos 87 and 98. This failure is compounded by a serious flaw in the legal system which gave management up to two years to appeal the reinstatement orders during which period the Government claims it cannot enforce official decisions. The Government's failure in this regard creates a climate of impunity which allows violations of basic trade union rights to continue. Workers at the hotel continue to be victimized solely on account of their union membership and enjoy no legal protection in this regard. The unduly lengthy registration procedures observed in this case also discouraged workers from effectively exercising their rights (one-and-a-half years to obtain legal registration for the Bagan Hotel Union).
- 479.** Recalling that the ILO has a long history of involvement in the fight for the observance of international human rights standards in Myanmar, the IUF denounces that tourism in Myanmar is booming but tourism industry workers continue to be denied their basic rights.

B. The Government's reply

- 480.** In a communication dated 5 January 2016, the Government indicates that the five workers of the Basic Labour Organization of Bagan Hotel including U Thein Shwe were dismissed as claimed on low service charge. Although the Conciliation Body in Nyaung Oo Township conciliated this case, the settlement could not be reached. Therefore, this case was referred to the Conciliation Body in Mandalay Region, which decided to reinstate the five workers including U Thein Shwe and to compensate interim period damages with the last payment (not including service charge). However, as the KMA Group was not satisfied with that

decision, the Conciliation Body (Mandalay Region) referred the matter to the Arbitration Council, which decided in case No 25/2015 that: (i) the President of the union and four other officials were dismissed without having a legitimate reason for extraordinary dismissal and should therefore, be reinstated and compensated with full wage interim period damages as the last payment during the term of examination; and (ii) the employer should pay full compensation to the workers according to section 51 of the Settlement of Labour Dispute Act 2012. In accordance with the decision of the Arbitration Council, the employer paid the total amount of Kyats 4,613,599.70 including Kyats 1,548,599.70 for interim period damages and Kyats 3,065,000 for compensation to the workers by the witness of the Staff Officer of the Factories and General Labour Laws Inspection Department, Nyaung Go Township. In this case, the workers were compensated by the employer.

- 481.** However, regarding the reinstatement of workers, the Government observes that the workers and the employer concluded a contract with free consent on 4 June 2015. In its paragraph 3, it is stipulated that the employer agreed to grant the workers monthly pay of the original post and the five workers agreed to enjoy their salary by staying at home (without going to work (hotel)) while the writ is submitted to the Supreme Court of the Union (as the employer was not satisfied by the decision of the Arbitration Council) pending the rendering of its decision on this case. According to this agreement, the employer applied the writ case of 93/2015 to the Supreme Court of the Union on 4 August 2015. At present, this case is under process by the Supreme Court of the Union. The Government underlines that the employer and the workers concluded the contract to reach an agreement with free consent without fully complying with section 24(b) of the Settlement of Labour Dispute Act, which provides for “concluding mutual agreement if the settlement is reached in conciliating under subsection (a), before the Conciliation Body”.
- 482.** Moreover, the Government provides information concerning the registration process of the Basic Labour Organization of Bagan Hotel. The five executive committee members of the Bagan Hotel Labour Organization applied for registration of the union on 23 May 2013. After scrutinizing the application in accordance with the stipulation by the township registrar of the District Labour Exchange Office, Myingvan Township, the receipt of application to register as a labour organization was issued. According to the procedure, the application was forwarded to the Chief Registrar Office in Nay Pyi Taw on 27 May 2013. The Chief Registrar issued the recognizing Certificate for the Basic Labour Organization of Bagan Hotel with the registration No. Nyaung Go (Ancient Bagan)/Services (Hotel)/Basic (240/2013) on 1 July 2013 under the Labour Organization Law 2011. As it was issued within the time frame provided in the law, the allegation that it took 18 months to have the certification of the Basic Labour Organization of Bagan Hotel is not true.
- 483.** Lastly, the Government states that, in the present case, the Ministry of Labour, Employment and Social Security is taking action by supervising both parties (employers and workers) regarding the full in compliance (sic) with the decision of the Arbitration Council. Moreover, it is being solved by cooperating with the local labour federations in order not to have negative impacts on the benefits of workers. At present, it appears that a proper understanding of labour laws by workers and employers is still required. Awareness-raising activities on labour law will be conducted and the process of reviewing and amending labour laws is being implemented through social dialogue with the participation of tripartite representatives.

C. The Committee’s conclusions

- 484.** *The Committee notes that, in the present case, the complainant organization alleges anti-union practices, including harassment, discrimination and dismissals of trade union members and officials, as well as interference in union activities, denial of access to*

workplace, attempts to dismantle the Bagan Hotel Union, carried out by the management of the Bagan Hotel River View (hereinafter the Hotel).

485. *The Committee notes, in particular, the complainant's allegations that: (i) at the Hotel owned by the KMA Group, the newly formed union submitted the required registration material at the end of 2012 and resubmitted it after six months in the absence of response; the Bagan Hotel Union was registered on 13 June 2013, 18 months after its initial application; (ii) management responded to the formation of the union by harassing and discriminating against union members and officers, for instance by requesting in November 2013 union leaders to disband the union and older union members to no longer report for work despite the lack of a formal retirement policy and, in 2015 during the dispute settlement procedure, by repeatedly expressing the wish for the union to disband; (iii) on 7 March 2015, management summoned the union executive to a closed filmed meeting in a private hotel room guarded by hotel security, instructed them to sign resignation letters, immediately terminated five union leaders who refused and subsequently denied them access to the hotel indicating that if they did not submit resignation letters they would have to sign blank papers; (iv) on 9 March 2015, the union launched a procedure with the Township Conciliation Body; (v) in the absence of a response, the union referred the matter on 23 March 2015 to the Mandalay Division Arbitration Body, which, as recommended by the Township Conciliation Body, ordered management on 3 April 2015 to reinstate the dismissed union leaders after determining that there was no legal basis for their dismissal; (vi) following the company's appeal, the Naypyidaw Arbitration Council reaffirmed, on 6 May 2015, the reinstatement of all five union leaders with full compensation and back wages within 30 days as provided by law; (vii) on 8 May 2015, during the peaceful demonstration of some 70 hotel employees, union members and non-members, in front of the hotel for implementation of the reinstatement order, management informed staff that they would have to sign warning letters pledging not to join in any future protests, otherwise their managers would sign, constituting a warning; (viii) on 4 June 2015, management agreed to pay compensation and back wages and to rehire the workers for a period of six months at their former positions and salary (without the customary payment based on distribution of the service charge), provided that they did not report for work, as the management had lodged an appeal with the Supreme Court in line with the Application of Writs Act (two-year time frame) and would await its judgment; the union leaders reluctantly agreed to sign since the Supreme Court would provide clarification on their employment status in a decision which should normally take only several months; the union subsequently learned that no appeal had been filed and that they had signed the agreement on the basis of false information; (ix) the management issued on 18 June 2015 reinstatement letters along the lines of the agreement and continued to deny access to the workplace; on 4 November 2015, information was received according to which the company had now appealed the reinstatement order to the Supreme Court; (x) rights violations at the hotel continued: the union officials were still denied access to the workplace; applicants were being screened to determine potential union supporters, older union members were again pressured to retire, and workers at the hotel continued to be victimized on account of their union membership; and (xi) the Government's failure to enforce the reinstatement order was compounded by the two-year time frame for appeal under the Application of Writs Act during which period the Government claims it cannot enforce official decisions.*

486. *The Committee also notes the Government's indications that: (i) the five officials of the Basic Labour Organization at the Hotel including U Thein Shwe were dismissed as claimed on low service charge; (ii) the Conciliation Body in Nyaung Oo Township conciliated this case, but the settlement could not be reached; (iii) the case was referred to the Conciliation Body (Mandalay Region), which decided to reinstate them and to compensate interim period damages with the last payment (not including service charge); (iv) as the employer was not satisfied with that decision, the matter was referred to the Naypyidaw Arbitration Council (case No. 25/2015); (v) the Arbitration Council decided that the union President and four*

officials were dismissed without legitimate reason and should be reinstated and compensated with full wage interim period damages as the last payment during the term of examination, and that the employer should pay full compensation to the workers according to section 51 of the Settlement of Labour Disputes Act; (vi) accordingly, the employer paid the total amount of kyats 4,613,599.70 (US\$3,920) – kyats 1,548,599.70 (US\$1,315) for interim period damages and kyats 3,065,000 (US\$2,605) for compensation; the workers were thus compensated by the employer; (vii) however, regarding their reinstatement, the parties concluded a contract with free consent on 4 June 2015 according to which the employer agreed to grant the workers monthly pay of the original post and the five workers agreed to enjoy their salary by staying at home (without going to work) while the writ is submitted to the Supreme Court of the Union (as the employer was not satisfied with the decision of the Arbitration Council) and a decision is rendered; (viii) in line with the contract, the employer appealed to the Supreme Court of the Union on 4 August 2015, and the case is under examination; (ix) in the Government's view, the conclusion of the above contract is not in full compliance with section 24(b) of the Settlement of Labour Dispute Act, which provides for concluding mutual agreement if the settlement is reached in conciliating before the Conciliation Body; (x) the Ministry is taking action by supervising both parties regarding the full incompliance (sic) with the Arbitration Council's decision and by cooperating with the local labour federations so as not to have negative impacts on the benefits of workers; awareness-raising activities on labour law will be conducted as it appears that a proper understanding by workers and employers is still required in this regard; and (xi) the allegation that the union registration process took 18 months is untrue, as the application was submitted by the union on 23 May 2013, and the certificate was issued on 1 July 2013 in line with the Labour Organization Law.

- 487.** *Regarding the allegations concerning the registration procedure, the Committee observes that the dates of submission of the application for union registration indicated by the complainant (first submission end of 2012) and by the Government (23 May 2013) do not coincide. Noting that, according to the information provided by the complainant and the Government, the union was registered between mid-June and 1 July 2013, the Committee notes that the time between the alleged date of first-time submission of the application by the complainant and the union's registration would add up to six months (and not 18 months), whereas the time between the submission date asserted by the Government and the union's registration would be approximately one month in line with the Labour Organization Law. From the information at its disposal, the Committee is not in a position to ascertain the accurate date of submission of the application for union registration. It can only indicatively recall its view that a long registration procedure constitutes a serious obstacle to the establishment of organizations, that a period of one month envisaged by the legislation to register an organization is reasonable, and that, in case of a period of more than three months, the Committee had previously expressed regret that there was a delay in registering the union despite the fact that there were no apparent obstacles justifying the delay [see 238th Report, Case No. 1289 (Peru), para. 148].*
- 488.** *Regarding the allegations of anti-union discrimination, harassment and intimidation of union members and officials at the Hotel, the Committee notes the lack of Government response but does observe that, in addition to the dismissal of five union officials, the various acts alleged by the complainant (some of which are claimed to be recorded in the Arbitration Council's report (in Burmese)), including the requests to withdraw from the union or to sign resignation letters, the repeated employer statements as to the desire to disband the union, and the requests for older union members no longer to report to work despite the lack of a retirement policy, have not been contested by the Government. The Committee generally recalls that no person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment. Since inadequate safeguards against acts of anti-union discrimination, in particular against*

*dismissals, may lead to the actual disappearance of trade unions composed only of workers in an undertaking, additional measures should be taken to ensure fuller protection for leaders of all organizations, and delegates and members of trade unions, against any discriminatory acts. Not only dismissal, but also compulsory retirement, when imposed as a result of legitimate trade union activities, would be contrary to the principle that no person should be prejudiced in his or her employment by reason of trade union membership or activities. Moreover, the Committee emphasizes that attempts by employers to persuade employees to withdraw authorizations given to a trade union could unduly influence the choice of workers and undermine the position of the trade union, thus making it more difficult to bargain collectively, which is contrary to the principle that collective bargaining should be promoted [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, paras 771, 773, 793 and 863]. The Committee requests the Government to conduct an investigation into these allegations and if found to be true to ensure an effective remedy, including sufficiently dissuasive sanctions, so that such acts are immediately ceased.*

- 489.** *Regarding the allegation that, after a peaceful demonstration of hotel employees, both union and non-union members, for the reinstatement of the union leaders, management again requested its workers to sign letters this time pledging not to join future protests and threatened that otherwise they would issue warning letters, the Committee notes that the Government does not respond to these allegations. Recalling generally that workers should enjoy the right to peaceful demonstration to defend their occupational interests [see **Digest**, op. cit., para. 133], the Committee requests the Government to carry out an investigation into these specific allegations and if found to be true to ensure an effective remedy, including sufficiently dissuasive sanctions, so that such acts do not recur.*
- 490.** *With respect to the alleged failure to enforce the decision of the Arbitration Council of 6 May 2015, the Committee observes that, according to the complainant, the Government refrained from enforcing the reinstatement order because it claims not to be able to do so during the two-year time frame for appeal to the Supreme Court under the Application of Writs Act, and that the Government states that the part of the award regarding compensation had been complied with but that as regards the part concerning reinstatement, a new agreement had been concluded between the parties on 4 June 2015. Noting the Government's indication that the five workers have been fully compensated by the employer in accordance with the relevant part of the Arbitration Council's decision, the Committee observes that the agreement concluded by the parties to the dispute subsequent to the arbitration award diverges from the terms of the award concerning their reinstatement (agreement for the employer not to pay the service charge and for the workers not to report to work). The Committee further notes that, while the Government states that the parties entered the contract of their own free will, the complainant alleges that the union concluded the contract based on the false information that the employer had appealed to the Supreme Court. Given that the employer, even if there was a delay, did indeed lodge an appeal at the latest two months later, the Committee is not in a position to conclude that the agreement of 4 June 2015 was based on false information. In these circumstances, the Committee welcomes the Government's position to monitor the parties' compliance with the award as modified by the agreement, to take measures to ensure that the workers' benefits are not negatively impacted and to conduct awareness-raising activities to enhance workers' and employers' understanding of labour laws. Noting that the agreement is valid only until the Supreme Court renders its decision, the Committee expects that the final judgment in this case will be issued without delay and requests the Government to provide a copy of the judgment once it is handed down.*
- 491.** *As regards the five union officials that have been denied access to the hotel premises since their dismissal, thus affecting their union activities, the Committee recalls that, for the right to organize to be meaningful, the relevant workers' organizations should be able to further*

*and defend the interests of their members, by enjoying such facilities as may be necessary for the proper exercise of their functions as workers' representatives, including access to the workplace of trade union members. Governments should guarantee the access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization. Trade union representatives who are not employed in the undertaking but whose trade union has members employed therein should be granted access to the undertaking. The granting of such facilities should not impair the efficient operation of the undertaking concerned [see **Digest**, op. cit., paras 1103, 1105 and 1106]. The Committee is therefore of the view that the agreement of 4 June 2015 modifying the reinstatement order of the Arbitration Council, by which the workers have agreed not to report for work, should not be understood as to preclude their right as trade union representatives to access the workplace in order to be able to carry out their representation function. The Committee requests the Government to take measures to bring the union and the employer together with a view to reaching agreement on the specific access of the union officials to the workplace so as to allow for the proper exercise of their functions, with due respect for the rights of property and management. It requests the Government to keep it informed of the progress made in this regard.*

- 492.** *In light of the above, the Committee wishes to generally recall that the basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed. 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. The Committee has recalled the need to ensure by specific provisions accompanied by civil remedies and penal sanctions the protection of workers against acts of anti-union discrimination at the hands of employers. Similarly, the Committee emphasizes that the existence of legislative provisions prohibiting acts of interference on the part of the authorities, or by organizations of workers and employers in each other's affairs, is insufficient if they are not accompanied by efficient procedures to ensure their implementation in practice [see **Digest**, op. cit., paras 817, 818, 824 and 861]. The Committee asks the Government to review the relevant legislation, in consultation with the employers' and workers' organizations concerned, with a view to making any necessary amendments, so as to ensure the effective protection of workers against anti-union discrimination and interference by providing for swift means of redress, appropriate remedies and sufficiently dissuasive sanctions. The Committee encourages the Government to avail itself of ILO technical assistance in this respect and invites it to give consideration to the ratification of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).*

The Committee's recommendations

- 493.** *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 conduct an investigation into the allegations of anti-union discrimination, harassment and intimidation of union members and officials at the Bagan Hotel River View owned by the KMA Group and if found to be true to ensure an effective remedy, including sufficiently dissuasive sanctions, so that such acts are immediately ceased.*
 - (b) The Committee requests the Government to carry out an investigation into the specific allegation of intimidation after a peaceful demonstration of union*

and non-union members and, if found to be true, to ensure an effective remedy, including sufficiently dissuasive sanctions, so that such acts do not recur.

- (c) The Committee expects that the final judgment in this case will be issued without delay and requests the Government to provide a copy of the judgment of the Supreme Court once it is handed down.*
- (d) The Committee requests the Government to take measures to bring the union and the employer together with a view to reaching agreement on the specific access of the union officials to the workplace so as to allow for the proper exercise of their functions, with due respect for the rights of property and management. It requests the Government to keep it informed of the progress made in this regard.*
- (e) The Committee asks the Government to review the relevant legislation, in consultation with the employers' and workers' organizations concerned, with a view to making any necessary amendments, so as to ensure the effective protection of workers against anti-union discrimination and interference by providing for swift means of redress, appropriate remedies and sufficiently dissuasive sanctions. The Committee encourages the Government to avail itself of ILO technical assistance in this respect and invites it to give consideration to the ratification of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).*

CASE NO. 3177

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

**Complaint against the Government of Nicaragua
presented by
the Confederation of Trade Union Action and Unity (CAUS)**

Allegations: Refusal by the administrative authority to register a new trade union and anti-union discrimination (dismissals) by the public sector employer against the workers who formed the union

- 494.** The complaint is contained in a communication of 10 November 2015 from the Confederation of Trade Union Action and Unity (CAUS).
- 495.** The Government sent its observations in a communication dated 5 February 2016.
- 496.** 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

- 497.** In its communication of 10 November 2015, the complainant organization denounces the administrative authority's refusal to register a new trade union and alleges anti-union discrimination (pressure and dismissals) by the municipal authority of El Crucero against the workers who formed the union.
- 498.** The complainant organization describes the sequence of events which gave rise to the complaint, as follows: (i) on 26 November 2012, a group of workers employed by the El Crucero municipal authority agreed to convene a general assembly in order to create a new trade union for the municipal employees; (ii) on 5 December 2012, the general assembly was held; having verified that 32 active employees of the municipality (whose names are provided by the complainant) were present and that the requirements of Nicaraguan labour law were met, the employees formed the El Crucero Municipal Workers' Union, adopted its constitution and subsequently elected its executive committee; (iii) on 6 December 2012, they submitted an application for registration of the union to the Trade Union Associations Directorate at the Ministry of Labour, in order for the union to be included in the official register, acquire legal personality and have its executive committee approved; all the legally required documentation, including the list of workers with their names and signatures, was appended to the application; (iv) since the ten-day period for registration established by article 213 of the Labour Code had elapsed without any response from the authority, on 11 February 2013 five of the elected trade union officers applied in writing to the director of the Trade Union Associations Directorate for the union to be registered; and (v) through Decision No. 04-2013 the Trade Union Associations Directorate rejected the union's application for registration, on the grounds that a special inspection by the Departmental Labour Inspectorate on 14 February 2013 had established that five of the founding members, who were also on the executive committee, were not active employees of the municipality.
- 499.** The complainant organization alleges that the Trade Union Associations Directorate: (i) failed to fulfil its duty to register the union within the legally established period of ten days from the submission of the application, only responding 75 days later; (ii) despite the fact that it lacked the legal authority to do so, that this was not a requirement for union registration and that nobody had requested it, it called for a special investigation, even though none of the three grounds for refusing registration established by article 213 of the Labour Code was applicable to the union (objectives or aims not in conformity with the Labour Code, fewer than 20 members, or proven falsification of signatures or non-existence of individuals listed as members); and (iii) colluded with the municipal authority in failing to register the trade union in time and thereby leaving the workers unprotected; in the two months following the trade union's establishment, the municipal authority pressurized and penalized the workers, issuing letters of dismissal to most of the executive committee members.

B. The Government's reply

- 500.** In its communication of 5 February 2016, the Government affirms that its actions conformed entirely to national law and that no fundamental right related to freedom of association was violated. The Government indicates that this is demonstrated by the events which occurred and the actions and decisions of the competent authorities: (i) on 6 December 2012, the Trade Union Associations Directorate received, from an officer of the complainant organization, an application for registration of the El Crucero Municipal Workers' Union; (ii) on 19 December 2012, a group of workers of the aforementioned municipality appeared, requesting proof that the union was in the process of being registered and denouncing the fact that various people elected to positions of leadership had lost their jobs; (iii) on 8 February 2013, the Ministry of Labour received a complaint from members of the trade union that was being registered objecting to the supposed violation of trade union immunity

and the dismissal of workers proposed as members of its executive committee; (iv) on 11 February 2013, as a result of the complaint received on 19 December 2012 the Trade Union Associations Directorate requested the Departmental Labour Inspectorate to conduct an inspection at the El Crucero municipal offices in order to ascertain whether the individuals who had attended the constituent assembly of the union were active workers; (v) on 14 February 2013, the Departmental Labour Inspectorate conducted an inspection at the aforementioned municipal offices to investigate the allegations, including the supposed violation of trade union immunity, and established that only two of the eight workers who claimed to comprise the executive committee were in fact actively employed, and that the other six had resigned from their posts, unbidden and of their own free will; it therefore declared the complaint alleging violation of trade union immunity to be unfounded (Departmental Labour Inspectorate Decision No. 106-2013 also shows that the inspection of the payroll documents for the first two weeks of February 2013 revealed that 13 of the 32 workers listed by the complainant organization as present at the union's constituent assembly were not actively employed); (vi) on 19 February 2013, as a result of the inspection, the Trade Union Associations Directorate issued Decision No. 4-2013 rejecting the union's application for registration on the grounds that the applicants were not active municipal employees; the application thus failed to comply with one of the fundamental legal requirements (article 207 of the Labour Code requires that there be no fewer than 20 members for the creation of a trade union); (vii) on 21 February 2013, the Trade Union Associations Directorate received an appeal against Decision No. 4-2013; it referred the appeal to the Labour Inspectorate-General, which in turn issued Decision No. 76-2013 declaring the appeal to be unfounded and upholding Decision No. 4-2013; (viii) on 23 May 2013, one of the members of the executive committee of the union which had applied for registration (Ms Alejandra Urtecho Meléndez) lodged an appeal for *amparo* (protection of constitutional rights) against Decision No. 76-2013 and, on 30 October 2013, the Constitutional Chamber of the Supreme Court of Justice issued Ruling No. 1530, which dismissed the appeal for *amparo*, finding that it did not substantiate the alleged violations of the applicant's labour rights and that the applicant did not provide evidence to rebut the findings of the labour inspection, which had established that a number of the members present at the union's constituent assembly were not active employees of the municipality concerned. The ruling of the Constitutional Chamber of the Supreme Court of Justice, a copy of which is provided by the Government, also indicates that the appellant: (a) did not attach evidence to her appeal for *amparo* that each of those present at the union's constituent assembly was actively employed; and (b) was not entitled to trade union immunity because the union had not previously been registered, and dismissing members of the executive committee of a trade union which had not been duly registered was in conformity with the Labour Code and the Municipal Administrative Careers Act.

501. Lastly, the Government highlights the progress made in terms of freedom of association in the country, referring to the large increase in registrations of trade unions (with 1,437 new trade union organizations registered in the 2007–15 period), and the recognition of public sector trade unions and unions formed by own-account workers.

C. The Committee's conclusions

502. *The Committee notes that the complainant objects to the administrative authority's refusal to register a new trade union and alleges anti-union discrimination by the public employer (El Crucero municipality) in the form of dismissals of the workers who formed the trade union.*
503. *As regards the refusal to register the trade union, the Committee observes that an inspection carried out by the Departmental Labour Inspectorate, in response to a complaint that members of the union's executive committee were not active workers, established that 13 of the 32 workers listed by the complainant as participants in the union's constituent assembly*

were not active workers. The Committee observes that, in view of this information, the Trade Union Associations Directorate refused to register the trade union on the grounds that it failed to meet the requirement of 20 workers established by article 206 of the Labour Code. The Committee recalls, in this connection, that the legal requirement that there be a minimum number of 20 members to form a union does not seem excessive and, therefore, does not in itself constitute an obstacle to the formation of a trade union [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 292]. However, the Committee notes with regret the delay in the processing of the union's application for registration, which was received on 6 December 2012 and was not decided upon until 19 February 2013 (75 days later – even though article 213 of the Labour Code imposes a ten-day deadline). The Committee notes that Departmental Labour Inspectorate Decision No. 106-2013, which was appended by the Government, indicates that failure to meet the minimum membership requirement (by one single worker) was established on the basis of payroll information listing the number of active workers in February 2013, two months after the application for registration was made, and that after the submission of this application a complaint was made concerning dismissals in violation of trade union immunity. The Committee cannot rule out the possibility that the delay in proceedings may have had a negative impact on the union's ability to fulfil the membership requirement and consequently become registered and obtain trade union immunity for its executive committee. It requests the Government to carry out an additional investigation in this regard, to indicate whether the application met the membership requirements for registration at the time of filing, and to the extent that anti-union dismissals are found to have occurred, to register the union if the workers still desire. Finally, the Committee wishes to recall 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].

504. As regards the allegation of anti-union pressure and dismissals, the Committee observes that, if proven, the dismissals would have created an obstacle to the union's registration (which was refused on the grounds that the union was one worker short). In this respect, the Committee regrets that the complainant organization did not provide more detailed information to substantiate its allegation, such as the dismissal letters to which it refers or the names of those affected. On the one hand, the Committee notes the Government's indication that it received a complaint alleging violation of trade union immunity, but that the complaint was dismissed after the Departmental Labour Inspectorate established that the six members of the executive committee who were no longer actively employed had resigned from their posts voluntarily. On the other hand, the Committee observes that the ruling of the Constitutional Chamber of the Supreme Court of Justice, appended by the Government, refers to dismissals and indicates that trade union immunity did not apply because the union had not previously been registered and that the dismissal of members of the executive committee of a trade union which had not been duly registered was in accordance with the law (the ruling does not consider whether anti-union motives were involved and merely states that the protection afforded by trade union immunity was not applicable). The Committee expresses its concern at the fact that the allegation of anti-union discrimination was not examined in greater depth, particularly since, if it had been proven, it would have affected not only the workers concerned but also the efforts to establish a trade union within the municipal authority. The Committee recalls that where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see **Digest**, *op. cit.*, para. 835]. In view of the divergent nature of the information supplied concerning the allegation of anti-union dismissals, including inconsistency between the administrative and legal decisions communicated by the Government, and also the lack of specific details that would enable examination of the allegation, the Committee requests the complainant to provide the Government with the most detailed information and evidence possible regarding the alleged

dismissals and anti-union motives. The Committee also requests the Government to carry out any additional investigation to determine whether anti-union dismissals took place and, if so, to impose penalties that constitute a sufficiently dissuasive sanction and to award adequate compensation. The Committee requests the Government to keep it informed in this regard.

The Committee's recommendations

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

- (a) With regard to the allegations of anti-union dismissals, the Committee requests the complainant to transmit to the Government the most detailed information and evidence possible regarding the alleged dismissals and anti-union motives.*
- (b) The Committee requests the Government to indicate whether the application met the membership requirements at the time of registration and to carry out additional investigations in order to determine whether anti-union dismissals took place and, if so, to impose penalties that constitute a sufficiently dissuasive sanction, to award adequate compensation and to register the union if the workers still desire. The Committee requests the Government to keep it informed in this regard.*

CASE NO. 3147

DEFINITIVE REPORT

Complaint against the Government of Norway presented by Industri Energi (IE)

Allegation: The complainant alleges that the Government intervened in collective bargaining in the laundry and dry-cleaning industry through the imposition of compulsory arbitration, thereby restricting the right to strike and the right to collective bargaining

506. The complaint is contained in a communication dated 17 April 2015 from Industri Energi (IE).

507. The Government of Norway sent its observations in a communication dated 7 March 2016.

508. 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).

A. The complainant's allegation

- 509.** In its communication dated 17 April 2015, the complainant, IE, explains that it is affiliated to the Norwegian Confederation of Trade Unions (LO) and organizes employees in the Norwegian petroleum and chemical industries; the majority of employees within these industrial sectors are represented by IE.
- 510.** IE alleges that on 21 January 2014, in connection with the 2014 wage settlement, it terminated its “Collective agreement for the laundry and dry-cleaning industry (Agreement No. 105)” with the employers’ organization, the Federation of Norwegian Industries (NHO). The agreement was to expire on 30 April 2014. The negotiations for a new collective agreement started on 16 June 2014, but broke down as early as 17 June 2014. After the failed attempt, on 20 June 2014, IE issued a notice of collective work stoppage for all members covered by the collective agreement, and issued a notice of collective resignation on 29 August 2014 for 200, members divided among 17 companies. The mediation started on 3 September 2014, and ended on the early morning of 5 September 2014 without the parties reaching an agreement. A strike was thus initiated at the start of the business day on 5 September 2014.
- 511.** As some companies affected by the strike offer laundry services for the health sector, an issue soon arose as to whether the strike, in a worst-case scenario, could put the life and health of the population at risk by not supplying clean laundry to hospitals, etc.
- 512.** The complainant explains it has been a long-term practice in connection with strikes within the Confederation of Norwegian Business and Industry to have multipartite committees that process applications from companies concerning dispensation to conduct work that would normally be affected by the strike, but where societal interests indicate that the activity should be partly or fully exempted from the strike. In order to alleviate the situation at the health trusts, IE was prepared, as in previous strikes, to grant dispensations for laundry/dry-cleaning companies so that clean laundry could be supplied to the health trusts. Several applications for such dispensations were also received during the period from when the notice of collective resignation was issued. The complainant provides a list of nine applications. According to the complainant, and as reflected in the list, the NHO, with the exception of two applications where a request for further information was made, responded negatively.
- 513.** The complainant submits a copy of a letter dated 9 September 2014 addressed to the Ministry of Health and Care Services in which the Norwegian Board of Health Supervision indicated that “the risk at [that] time [was] significantly higher for situations which may endanger life and health” and that it has been “reported that the Federation of Norwegian Industries [was] not contributing toward using the dispensation scheme in order to prevent such situations from occurring”. IE indicates that the Minister of Labour and Social Affairs received a message from the Norwegian Board of Health Supervision stating that a continued strike would create a confusing and unpredictable situation for health trusts and nursing homes in the counties of Rogaland, Vest-Agder and Nord-Trøndelag and could, in turn, constitute a risk to life and health. The Minister, having heard the parties, noted that there was no possibility of reaching an agreement as the employers’ side refused to change its view on granting applications for dispensations. The Minister warned that in these circumstances, the dispute would be resolved through a compulsory arbitration. A resolution to this effect was made by the Cabinet on 19 September 2014.

- 514.** IE cites the following paragraphs of the Royal Decree imposing compulsory arbitration, in which the Government explains the grounds for intervening:

The Ministry of Labour and Social Affairs' understanding of the situation, based on the Norwegian Board of Health Supervision's assessment and the stalemate situation, is that the consideration for life and health indicates that the labour dispute between Industri Energi and the Federation of Norwegian Industries must be resolved without further industrial action.

Norway has ratified a number of ILO Conventions that safeguard the right to organise and right to strike (Convention Nos 87, 98 and 154). As the Conventions have been interpreted by ILO bodies, there are strict requirements for intervening in the right to strike, but intervention is nevertheless possible if the strike puts the life, health or personal safety of the entire or large parts of the population at risk. Article 6(4) of the Social Charter under the Council of Europe contains an equivalent provision that protects the right to strike. However, Article 6 must be viewed in the context of Article G, which allows for restrictions that are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

The Ministry of Labour and Social Affairs is of the opinion that a decision to have compulsory arbitration in the present labour dispute is within the framework of the Conventions Norway has ratified. Should a conflict be proven between international Conventions and Norway's use of compulsory arbitration, the Ministry of Labour and Social Affairs nevertheless believes that it is necessary to intervene in the dispute.

- 515.** IE argues that the employers involved in the dispute upset the entire balance of power in a legitimate industrial action by refusing to process dispensation applications. The complainant further argues that by doing so the employers gambled with people's life and health, which forced a situation where the Norwegian Board of Health Supervision had no other option than to report that there was a risk to life and health. The labour dispute thus ended on 10 September 2014. The National Wages Board rendered its decision in the dispute on 9 December 2014, and thereby set the terms of the new collective wage agreement.
- 516.** IE explains that the Norwegian labour law system recognizes the right to organize, the right to negotiate collective agreements and the right to strike. For employees in the private sector, the procedures for collective bargaining are laid down in Act No. 1 of 5 May 1927, relating to labour disputes, which contains rules regarding, e.g. notices of collective work stoppage, compulsory mediation and the peace obligation. When entering into collective wage negotiations, the parties are entitled to use industrial action in line with the set procedure, which, according to IE, has been followed in this case. IE further explains that pursuant to the Act, trade unions have a peace obligation during negotiations for collective agreements until compulsory mediation has been implemented. If mediation is unsuccessful, either party may legally pursue industrial action such as strike, lockout or use other industrial action to force the opposing party into a collective agreement. The complainant argues that in this case through the use of compulsory arbitration, the authorities have prevented the use of legitimate industrial action. It further indicates that Norway has no permanent legislation concerning compulsory arbitration: the latter must be adopted as a provisional scheme or by statute in each individual case.
- 517.** The complainant points out that it does not dispute the Norwegian Board of Health Supervision's assessment of the situation: as long as the employer refused to forward the received dispensation applications, as long as a minimum service was not in place, and as long as the available contingency laundry companies remained unused, there was a risk of elevated danger to the life and health of the population. However, IE is of the opinion that this was a deliberate and calculated action on the part of the employers, which cannot be viewed as anything other than an "application" to the Government for compulsory arbitration. This "application" was "granted" by the authorities almost immediately through the decision to end the strike through compulsory arbitration. IE points out that the issue is thus whether the Government is obliged to ensure that employers cannot provoke a risk to

life and health in an industrial dispute outside “essential services” so that the State is not forced to invoke compulsory arbitration.

- 518.** IE stresses that the Committee has addressed the use of compulsory arbitration in labour disputes in Norway on multiple occasions in which the Committee maintained that the use of compulsory arbitration may only be permitted under the following circumstances: (1) if the parties themselves request it; (2) if the labour dispute includes public services that involve civil servants acting on behalf of the State; and (3) if the dispute concerns “essential services” in the strict sense of the term, i.e., services the interruption of which would expose the life, health or personal safety of all or parts of the population.
- 519.** IE considers that the fact that the consequences of a given strike, within a service or enterprise that is not deemed to be “essential”, lead to a risk to life and health, does not mean that the service or enterprise will inherently be deemed to be “essential”. It points out that the Committee has not addressed other cases where the laundry and dry-cleaning industry was deemed to be an “essential service” in the strict sense of the term. The complainant thus concludes the laundry/dry-cleaning industry should not be deemed an “essential service” and thus, workers’ the right to strike in this industry should not be completely restricted.
- 520.** According to the complainant, Norwegian law has developed a practice of multipartite dispensation scheme on a voluntary basis between parties; in general, the employer is neither obliged to apply for dispensations nor use them. Nevertheless, the use of dispensations has, for quite some time, and until the case in question, been common practice during strikes. The dispensation scheme is probably the most important instrument the parties can use to avoid putting life and health at risk during an industrial action. IE argues that if one party is willing, from the outset, to put the life and health of the population at risk by refusing dispensations, the result will be a compulsory arbitration. This, in turn, means a weakened right to strike with a direct impact on the right to organize. Control over the dispensation scheme thus provides opportunities to manoeuvre a conflict into compulsory arbitration. IE indicates that within the health sector, dispensations have proved necessary in order to maintain operations during industrial action. The legal requirement concerning the obligation to provide prudent health services does not cease during a strike, but individuals who are on strike will in most situations be relieved of their personal responsibility. The employer has a set of instruments available to satisfy the health trusts’ prudence requirement, even during a strike. However, dispensations are also used in sectors other than the health sector. In the transport sector, for example, it is normal to issue dispensations for the transport of vital medicines.
- 521.** IE indicates that in the National Wages Board decision of 9 December 2014, the NHO describes the situation as follows:

During the mediation, the Federation of Norwegian Industries stated that IE’s striking employees could result in problems for suppliers to nursing homes and hospitals both in Levanger and Stavanger. Of the 16 companies affected by IE’s notice of collective work stoppage and collective resignation, the Federation of Norwegian Industries received dispensation applications from a total of nine enterprises.

There are strict criteria for granting dispensation applications, and several of the applications did not contain sufficient information to provide an adequate basis for decision-making in relation to the criterion concerning risk to life and health. Several of the applications were also expressed in fairly general terms without detailed information, which complicated the Federation of Norwegian Industries’ assessment. Due to the lack of indication of both which functions and on what basis they were applying for strike exemption, it was absolutely necessary to obtain additional information before the applications could be processed.

- 522.** The complainant claims, however, that the real reason for the employers' organization to deny dispensation is clearly expressed by the CEO of the NHO (as published on a website of a Norwegian broadcaster):

However, in addition to the labour dispute, there is a principal disagreement between the parties concerning how the strike is carried out. The reason is that the Federation of Norwegian Industries does not want to issue dispensations to the striking employees, even if the situation at Stavanger University Hospital (SUS) should develop into an issue of life and health. We are rejecting dispensations as they come in, because we can't have a strike where Industri Energi more or less speculates in dispensations. They take people out on strike, and then they're granted dispensation; that's a hopeless situation.

But what if the authorities declare a risk to life and health?

If that happens, we believe the State must intervene with compulsory arbitration. This is why we have an institution called compulsory arbitration.

IE argues that what the NHO's CEO describes as a "hopeless situation" is actually the union's desire to establish a practice where the life and health of the population is not exposed to risk.

- 523.** In this context, the complainant advocates for a statutory authority for minimum services in order to supply goods and services to the health sector and any other sector and to ensure that the right to strike is not jeopardized by actions or omissions by the employer which create situations where the life and health of people are at risk. The complainant stresses that the Norwegian authorities have not, in spite of repeated recommendations from the ILO, established schemes for the determination of minimum services in cases that fall outside the scope of "essential services", but where the industrial action nevertheless may affect important societal interests or endanger the life and health of all or part of the population. IE thus argues that Norway has disregarded its obligations pursuant to Conventions Nos 87 and 98 by not establishing schemes that enable the State to limit the effects of an industrial action in instances where life or health may be at risk for all or part of the population without restricting the right to strike.
- 524.** The complainant recalls that the Committee has recommended on several occasions to implement a legal system for the determination of minimum services, which can be a good alternative in situations where a full restriction on the right to strike would be inappropriate. The complainant argues that instead of depriving employees of the right to strike, the State should ensure that the enterprise can supply sufficient services to sectors where a risk to the life and health of people may arise during an industrial action. A minimum service can be a tool for all parties, both to ensure that the life and health of people are not put at risk and that the right to strike is protected. The complainant further argues that it is important that provisions concerning minimum services are established plainly and clearly, are followed up stringently and are communicated to the affected parties well before an industrial action takes place.
- 525.** In that regard, IE refers to the Committee's Digest of decisions and points out examples where the Committee has considered that minimum operational services could be provided, which, in its understanding, include a ferry service, ports, underground railway, transportation of passengers and commercial goods, postal services, refuse collection service, the mint, banking services, petroleum sector services, education services, and animal health services.

526. The complainant argues that, as stated above, the scheme was already recommended to the Government by the Committee in Case No. 3038 [372nd Report]:

- (b) Regretting that, despite the recommendations it has previously and repeatedly made in this respect, the Government failed to negotiate a minimum service in the sector with the parties concerned, and convinced that such a way forward would be more conducive to harmonious industrial relations in the oil and gas sector, the Committee encourages the Government to examine the possibility of introducing a minimum service in the oil and gas sector in the event of industrial action, the scope or duration of which may result in irreversible damages; in this regard, the trade union organisations should be able to participate, in the same way as employers and the public authorities, in defining the minimum service, and any disagreement as to the number and duties of the workers involved shall be settled by an independent body.

527. IE further argues that in Case No. 2484 [see 344th Report], the Norwegian authorities stated that agreements concerning such minimum services should be entered into by the parties before and not during a conflict to which the Committee responded:

1094. ... While noting the Government's concern that the decision as to the provision of a minimum service should have been made by the parties themselves, the Committee considers that, in the absence of any agreement by the parties in this regard, an independent body could have been set up to impose a minimum service sufficient to address the safety concerns of the Government, while preserving respect for the principles of the right to strike and the voluntary nature of collective bargaining. While the Committee does consider that, ideally, the minimum services to be provided should be negotiated by the parties concerned, preferably prior to the existence of a dispute, it has considered that disagreements as to the number and nature of the minimum service may be settled by an independent body and recognizes that the minimum service to be provided in cases where the need arises only after a prolonged duration of the strike can only be determined during the dispute. The Committee therefore requests the Government to ensure in the future that, where the prolonged duration of a strike may pose a risk to the public health and safety, consideration will be given to the negotiation or determination of a minimum maintenance service rather than imposing an outright ban on the industrial action through the imposition of compulsory arbitration.

528. As to how such a scheme can be established, the complainant refers to the paragraphs of the Committee's Digest.

529. Addressing the issue of implementation, the complainant explains that schemes similar to minimum services are not unknown in Norway and can be agreed on locally or are statutory for some sectors. For examples, section 3-3 of the Basic Agreement between the LO and the NHO allows individual employers to enter into local agreement concerning work that is necessary in order to prevent danger to life and health or substantial damage (the complainant points out, however, that this provision is limited from a material standpoint to circumstances that involve the business and not the effects of a conflict on a third party). Within the petroleum sector, there are currently two regulations that govern this issue: mobile facilities (platforms, drill ships, etc.) are subject to the Regulations relating to manning of mobile facilities adopted pursuant to the Act relating to ship safety and security; offshore petroleum activities are, in general, subject to the Regulations relating to health, safety and the environment in the petroleum activities in general and at certain offshore facilities. Both regulations are examples of statutory minimum service to be provided during industrial action. The regulations include provisions about safety, safety staffing plans, working environment, health, external environment and financial assets during operation as well as during industrial action, and thus have a perspective different from a traditional minimum service which aims at ensuring that a strike does not endanger people's lives or health.

- 530.** IE discusses the role of the Norwegian Board of Health Supervision and indicates that the basis for its activities is to ensure that health trusts provide the services they are required to, and that these services are prudent. According to IE, the Board also recognizes that strike is a legitimate instrument according to international law. Through its supervisory function, which over time has grown more and more independent of the parties to the conflict, the Norwegian Board of Health Supervision maintains a dialogue with the parties and assess the prudence of the activities. The Board intervenes and, if it is considers necessary, orders the health trust to rectify any deficiencies. If the Board believes that there is a clear and immediate danger to the life and health of people, it will report it to the Ministry of Health and Care Services. In such cases, the complainant argues that the authorities should be able to influence the use of dispensations without having to intervene with compulsory arbitration in order to stop the strike.
- 531.** Further in this respect, IE indicates that the role of the Board is also emphasised in the 2013 FAFO (research foundation) report on security guard strike in 2012:

The Norwegian Board of Health Supervision will always be involved in an industrial dispute if there is a risk that the industrial dispute may endanger life and health. When a tariff negotiation ends in mediation, and there is a risk that a strike will affect important societal functions, the Board of Health Supervision will contact the parties and inquire as to whether they have prudent routines for handling the situations that may occur during a strike. In this meeting with the Board of Health Supervision, the parties must account for their routines, including routines for processing dispensations, and which measures, if any, they have initiated in order to prevent hazardous situations. The Norwegian Union of General Workers was in contact with the Board of Health Supervision before the security guards went on strike, and gave an account of the union's routines. The Board of Health Supervision can intervene directly vis-à-vis health trusts if there is a danger to life and health. As regards other types of institutions that in one form or are affected by a strike, the Board of Health Supervision's mission will be to monitor the situation, receive any reports from involved stakeholders and the local county medical offices, and pass these on to the Ministry of Health and Care Services, which is the Board's paramount authority. If the Board of Health Supervision's assessment of the situation is that life and health may be at risk, the Board will report this immediately, so that both the Ministry of Health and Care Services and the Ministry of Labour and Social Inclusion are informed. The Minister of Labour and Social Affairs will then consider whether the report provides reason to propose compulsory arbitration.

- 532.** In the light of the above, IE queries whether the Board of Health Supervision can be said to be obliged to – within its area – ensure that the parties to an industrial dispute act in a manner that does not endanger the life and health of the population; if the answer to this question is negative, whether it ought to have such an obligation. IE argues that such an obligation could theoretically be derived from both the consideration for the mentioned minimum prudent services, but also from Norway's obligation to ensure that the right to strike does not become illusory.
- 533.** The complainant also observes the section 1-3(2) of the Health Preparedness Act contains a statutory basis for demanding that the supply of services and other benefits be maintained in crisis situations. The Ministry can lay down regulations to stipulate that businesses that provide materials, equipment and services of significance for the health and social sectors, shall be covered by the Act. According to IE, the national legislation thus prescribes a minimum standard that must be maintained. The Health Preparedness Act contains provisions for how this standard shall be ensured. In other words, in IE's view, there has also been ample opportunity within the health sector to establish minimum services.
- 534.** The complainant argues that the authorities should establish a general legal basis for ensuring that minimum services prevent situations causing a danger for life or health in connection with industrial actions. A compulsory minimum service could be stipulated by the relevant supervisory body in the event of a strike, if its length and scope could result in

a danger to life and health. The minimum services must, however, be limited to what is strictly necessary in order to avoid situations where life or health could be in danger. In such a scheme, the employers' and employees' organizations would be recommended to work with the authorities to define the need, scope and practical implementation. The complainant alleges that if the Norwegian authorities had established a scheme, where the parties could determine together the minimum service that is necessary, to maintain in the event of a strike in the laundry and dry cleaning industry, the life and health of people would not have been at potential risk, and there would have been an actual right to strike.

- 535.** IE further points out that the health institutions did not prevail themselves of the “back-up laundry agreements” which could have provided replacement for some of the companies affected by the strike and prevented partly or completely the potential risk to life or health. The back-up laundry service agreements have become common between laundry/dry cleaning services, especially for laundry services that supply the health sector. A back-up laundry service agreement is, in brief, a mutual agreement concerning production support between different laundries in the event of machinery malfunctions, breakdown, fire or a general need for relief over the short or long term. When needed, the support enterprises will intervene in the affected party's delivery obligation. The Norwegian Laundry Service Quality Organization (NVK) has prepared, in 2011, the industry standard for laundry services that handle textiles for health institutions. The standard has now been implemented as a requirement in most public tenders for laundry services in the health sector. For this reason, virtually everyone who wants to compete for laundry services for health institutions are members of the NVK and one of the requirements to be a member of the NVK is to have a back-up laundry service agreement. All laundry services that applied for dispensation during the strike were members of NVK, and thus had a back-up laundry service agreement. In this context, the complainant questions whether the authorities should have an obligation to, or be allowed to, order laundry services to use their back-up agreements if neglecting to do so would endanger the life or health of people.
- 536.** The complainant argues that the procedural system to declare a strike contains a major flaw when it comes to a sector where the health or life of the population could be at risk that further hinders the right to strike. The current law in Norway stipulates that the notice of collective work stoppage constitutes the framework for which employees can legally be included in a strike or lockout. All employees covered by the notice of collective work stoppage must be taken out in the relevant strike or lockout, unless the parties have agreed otherwise. The notice of collective work stoppage is thus binding once it has been issued. A notice of collective work stoppage stipulates the scope and timing of the industrial action. A party cannot unilaterally withdraw or only implement parts of the notice of collective work stoppage without approval from the other party. Neither party may unilaterally change the consequences of an issued notice of collective work stoppage.
- 537.** A practice has been established between most parties to a labour dispute where, in addition to the actual notice of collective work stoppage, one must, at a later date, issue a final notice of collective resignation. This notice fixes the time of stoppage and indicates which employees and companies will be subject to the industrial action. Notices of collective resignation are currently not regulated by law. While this system is generally balanced and functional, it does not take into account, and thus contains no mechanisms to avert situations where the life and health of the population may be at risk. This is an inherent and fundamental weakness of the system. From the procedural standpoint, it should include regulations that give the parties the opportunity to adjust the content and scope of initiated industrial actions where the development of these industrial actions endangers the life and health of people.

B. The Government's reply

- 538.** In its communication dated 7 March 2016, the Government recalls that the dispute arose during the revision of an agreement between IE and the NHO for laundries and dry-cleaners, in connection with the 2014 collective wage settlement. After the negotiations broke down, the National Mediator issued a temporary work stoppage ban on 23 June 2014 and summoned the parties to mediation after the summer. On 29 August 2014, the employee side demanded that mediation be discontinued, and announced a collective work stoppage for 190 members. The mediator then had four days to bring the parties to an agreement. The mediation concluded without result on the morning of 5 September 2014. IE implemented the announced strike on the same day.
- 539.** The Government explains that the strike affected employees in 15 laundry and dry-cleaning firms, mainly in Bergen, Stavanger and Trondheim. The strike primarily impacted laundries and dry-cleaners that provided services to private businesses. Certain health institutions also were among the affected customers. The Government points out that the strike rapidly led to difficulties for the Stavanger University Hospital and two nursing homes in Kristiansand. The health authorities followed the situation at the health institutions. In the evening of 9 September 2014, the Norwegian Board of Health Supervision reported to the Ministry of Health and Care Services that the risk of endangering life and health was substantially elevated. Nursing homes and health trusts in Rogaland, Vest-Agder and Nord-Trøndelag counties had reported that they were approaching a situation where life and health could be endangered. It was also reported that the NHO refused to use the dispensation scheme to prevent such situations from arising.
- 540.** The Government indicates that a shortage of working clothes or patient clothing would have caused the health trusts to implement measures to restrict their activities in order to ensure prudent operations. Activities in hospitals would have had to be transferred to other facilities that were not affected by the ongoing conflict. Transfer of patients to other institutions that did not have the necessary medical records would have represented a risk of breakdown in the medical treatment. Other patients would have had to be discharged before their treatment was concluded. Moving of patients would have delayed examination and treatment and would have affected ambulance resources. This also would have reduced the capacity to safeguard emergency care. The emergency rooms and the capacity at the hospitals would also come under pressure.
- 541.** While the Norwegian Board of Health Supervision did not receive reports of specific situations where the life and health of people had been endangered, it considered the situation to be difficult to follow and unpredictable. This was due to the uncertainty regarding the consequence of the measures implemented by the health service to safeguard operations and it was amplified by the uncertainty associated with the question of when the firms could resume delivery of clean laundry, and the institutions could resume normal operations.
- 542.** Meanwhile, according to the Government, the situation between the parties appeared to have reached an impasse. The employer side refused to apply for dispensations, which could have somewhat alleviated the situation at e.g. Stavanger University Hospital. The Ministry of Labour and Social Affairs was in contact with the parties on the evening of 9 September 2014, and inquired as to whether they could envisage finding a solution to the dispute. The parties saw no such possibility. On this basis, the Minister summoned the parties to a meeting on 10 September 2014. Both parties confirmed that they saw no possibility of reaching an agreement. While the employee side indicated its willingness to grant applications for dispensation from the strike, the employer side refused to apply for dispensations. In light of this, and of the Norwegian Board of Health Supervision's report, the Minister informed the parties that the Government would intervene to propose that the dispute is solved by compulsory arbitration by the National Wages Board.

- 543.** The Government argues that the right to industrial action is not expressly embraced by Conventions Nos 87 and 98, but can be derived from the principles of freedom of association. The principles relating to the right to strike have been progressively developed and the ILO has maintained that the right to strike cannot be considered as an absolute right; it may be subject to restrictions or even a general prohibition in exceptional circumstances. According to the ILO standards as interpreted by the ILO bodies, the consequences of a labour conflict may become so serious that interventions/restrictions on the right to strike are compatible with the principles of freedom of association. When a strike involves public servants exercising authority in the name of the State or essential services in the strict sense of the term, i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, the exercise of this fundamental right can be restricted or prohibited. According to the ILO interpretation the damaging effects must, in addition, be clear and imminent.
- 544.** The Government submits that in Norway, there are long traditions of collective bargaining and collective agreements. The right to organize and collective bargaining are recognized to be fundamental parts of the Norwegian law and is supported by legislation with procedural rules and institutions for resolving disputes. There are no legal restrictions as to who can form and join trade unions and organizations and there is no interference from the authorities concerning the constitutions and rules of trade unions and organizations. The right to industrial action is part of the right to free collective bargaining. No prohibition against strike or lockout exists, except for the armed forces and senior civil servants. These groups nevertheless enjoy the right to organize and to bargain collectively. The role of the authorities is to pave the way for the social partners to take responsibility especially, for wage-setting through collective agreements. In Norway, this role implies offering good solutions regarding mediation and arbitration to solve disputes of interests and a labour court to solve disputes of law.
- 545.** The Government explains that to balance this wide, unrestricted freedom of organization and collective bargaining, including the right to industrial action, there is, however, a broad consensus developed in Norway that the Government has an ultimate responsibility for preventing labour conflicts from causing serious damage. If the Government considers that a conflict has such damaging effects that the life, personal safety or health or vital public interests are endangered, the Government submits a separate bill to the Parliament, proposing for the strike/lockout in question to be forbidden and for the conflict to be solved by the National Wages Board. Outside the session of the Parliament, these cases are adopted as a Provisional Ordinance (provisional law) by a Royal Decree. The latter was the situation in the case at hand.
- 546.** The Government emphasizes its effort in being in compliance with its obligations under the Conventions. The interpretation of international instruments has to be a living process and discussions will always take place regarding the limits of the obligations when it comes to concrete cases. An industrial action is a means intended to put pressure on the opposite party. A country acknowledging the right to industrial action has to endure the inconveniences/damaging consequences entailed by such actions. However, limits must exist as to the extent of the consequences society has to bear. In principle, this is recognized by the ILO as regards labour disputes involving civil servants acting on behalf of the State and labour disputes concerning “essential services” in the strict sense of the term.
- 547.** The Government observes that IE does not question the assessment of the situation by the Norwegian Board of Health Supervision and admits that given the circumstances, there was a risk of elevated danger to life and health. The Government understands that for the complainant, the intervention through compulsory arbitration in this dispute is not per se the essential point of the complaint; rather, the complainant considers that the authorities should establish a general legal basis for ensuring that minimum services prevent situations

endangering the life and health of people in connection with industrial action. Failing to do this, represents, in the complainant's opinion, a violation of Conventions Nos 87 and 98.

- 548.** The Government does not consider that the Member States are obliged, pursuant to the Conventions, to establish a general legal basis for minimum services connected to industrial actions. The Government argues that Norway has implemented a different system and it cannot be assumed that this system is less in conformity with the mentioned Conventions or puts the employees in a poorer situation concerning industrial action. This system does not deprive the social partners from declaring or implementing industrial action regardless of its consequences.
- 549.** According to the Government, a regulation which implies an obligation to establish minimum services would radically deviate from a system developed in Norway through decades and introduce something quite new. The system of intervention by the Government and reference to compulsory arbitration (adopted by Parliament) is an integral part of the Norwegian labour market model. The Government explains that a rather strictly regulated peace obligation is combined with a rather wide permission to industrial action in connection with the establishment of new collective wage agreements or their renewal. The practice of compulsory arbitration constitutes an outer border of the right to industrial action, where this is necessary to protect essential services.
- 550.** The Government further explains that there is a broad consensus between the political parties and between the social partners regarding the system of the intervention in industrial actions. The system has been assessed from time to time and the social partners have taken part in these assessments. In 2001, an official committee consisting of the leaders of the main employers' and workers' organizations and a few experts lodged an Official Norwegian Report. The committee was given a mandate to assess whether the Norwegian negotiation system and the institutional framework surrounding this was well functioning in both private and public sectors. The committee assessed the Norwegian practice regarding authority intervention in industrial actions and referral to compulsory arbitration. Additionally, it assessed the possibility of introducing a system of minimum services during industrial action. The assessments in this respect was not followed up by any specific proposals. The social partners and the experts of the committee were all in all satisfied with the status quo.
- 551.** The Government indicates that another official committee (Holden III) lodged their official report in 2013. Its mandate was to assess the wage formation and the challenges this may create for the Norwegian economy. The committee assessed different sides of the processes regarding collective wage agreements, including the order of negotiation and mediation. All main organizations were represented in the committee. In its unanimous conclusions, the committee indicated that as regards the wage-setting, the system of negotiation functioned well. The question of compulsory arbitration was not considered; in the Government's opinion, this was because the main social partners had no substantial objections to the practice of interventions.
- 552.** Furthermore, the Government indicates that the proposals on prohibiting industrial action and referring the dispute to compulsory arbitration have always been adopted by a large parliamentary majority in Norway. In the last ten years, these have been adopted unanimously. Hence, there is a broad consensus as regards this model. IE is one of 22 national trade unions affiliated to the LO and organizes 60,000 of a total of about 900,000 LO members. There are many other trade unions in Norway. The opinion of IE is not a sufficient ground for starting a process towards such a radical change of the collective bargaining system. The Government has not received any message from the eight main organizations indicating the need for change in this respect.

- 553.** The Government explains that the right to industrial action has more or less been formalized through a combination of laws and collective agreements. The role of the authorities is to pave the way for the social partners to take responsibility for the wage-setting through collective agreements. The social partners are at the same time expected to act responsibly. It is an assumption that the social partners show accountability and are willing to find solutions on difficult questions and implement solutions through their agreements. The social partners are free to bring the issue of minimum services to the negotiation table. They may further develop the existing agreements in this respect or agree upon new ones and develop further procedures on how to practically handle difficult strike situations. An agreement at the sectorial level may be “tailor-made” according to the needs of the specific workplaces in the sector. A collective agreement may be an even better basis for such services than a legislation, due to the specific knowledge of the parties and a closer ownership to an arrangement. It is expected from the social partners that they are responsible for the wage-setting.
- 554.** With regard to the complainant’s argument that in situations where the employer side has a complete control over the dispensation, the employees are, to a great extent, stripped of their basic right to strike to improve their working conditions, the Government underlines that the parties on both sides are responsible for carrying out a safe and secure industrial action. Trade unions are the first to choose who will participate in a strike and which services will be affected. According to section 17 of the 2012 Labour Disputes Act, an industrial action is implemented for all employees comprised by the notice of collective work stoppage, unless the parties agree otherwise. Pursuant to most collective agreements, it is permitted to limit the number of employees involved in a strike action in a notice. It is a usual practice in Norway not to bring all members of a trade union comprised by a notice of collective work stoppage immediately into an industrial action, but to start a strike involving a limited number of employees and to successively escalate the scope. Consequently, trade unions have a substantial possibility to form an industrial action aiming at avoiding the Government’s intervention. The employee side cannot start a strike without considerations of the consequences and hence can envisage dispensation applications from the employer side. The union must always consider the possibility that the employer side may not agree with regard to the question of dispensation.
- 555.** The Government stresses that in the previous cases, the Committee has maintained that an intervention and the use of compulsory arbitration may be permitted if the labour disputes concerns “essential services” in the strict sense of the term. The ILO has in general explained that the content of this notion to a large extent depends on the particular circumstances prevailing in each country. Moreover, it is said that this concept is not absolute, in the sense that a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population. The Committee has also pointed out a long list of services considered as “essential” and likewise a list of services not constituting “essential services in the strict sense of the term”. The complainant referred to this and stated that in their understanding the laundry and dry-cleaning industry should not be deemed an “essential service”. In the Government’s opinion, however, the consequences of an industrial action, and not solely the fact that the employees provide essential services in the strict sense of the term should be taken into consideration when deciding on an intervention through compulsory arbitration.
- 556.** The Government emphasizes that the authorities are not deciding the result of the industrial dispute in cases of intervention by compulsory arbitration. The Provisional Ordinance of 19 September 2014 referred the dispute to be solved by the National Wages Board. The National Wages Board is a permanent voluntary arbitration body appointed pursuant to the 2012 National Wages Board Act. The Board has nine members, of whom five are appointed by the Government for a period of three years. Three of the permanent members are neutral,

e.g. independent of the Government and of the organizations. Two members represent the interests of the employers and employees respectively. These members of the Board, however, act in a more advisory capacity and have no right to vote. The parties in the individual dispute each nominate two members of the Board. Only one of the members from each party and the three neutral members are entitled to vote. Additionally, the Board is not bound by the Governmental policy. It decides the disputes brought before it on an independent basis and applies its own discretion.

- 557.** The Government transmits a communication dated 23 December 2015 from the NHO. The latter considers that under the existing legislative framework, trade unions alone make all decisions in relation to strike, including which company will be affected and which employees will participate and argues that it is solely the unions' responsibility to keep in mind the possible risks to health and safety.
- 558.** The NHO reiterates the long-standing view of the Employers within the International Labour Organization that the right to strike is not embedded in Convention No. 87. In relation to this, the ILO constituents, as from February 2015 (Joint Statement) have agreed to disagree. The Joint Statement did not recognize a right to strike within the scope of Convention No. 87, nor did it legitimize the Committee of Experts' extended interpretations on the topic.
- 559.** The NHO states that it has no particular concerns regarding the use by the Government of compulsory arbitration in the present case. It argues that the strike was arranged in a way that made it obvious that it would pose a threat to the life and health of the population since the affected businesses were large commercial laundries working for national health institutions.
- 560.** The NHO concludes that it had no obligation to seek dispensations as the framework for dispensation is regulated neither by law nor by collective agreements and the workers on strike were chosen deliberately by the complainant. This system may only be used when both parties consider it necessary and unions cannot discharge their responsibility to conduct a socially responsible strike by referring to the practice of dispensations. The NHO considers the complainant to be solely responsible for the strike endangering the health and life of the population.

C. The Committee's conclusions

- 561.** *The Committee notes that the complainant in this case alleges that the Government intervened in collective bargaining and imposed compulsory arbitration thereby ending strike action in the laundry and dry-cleaning industry. The Committee further notes that some of the laundry and dry-cleaning companies affected by the strike provide services to certain health institutions.*
- 562.** *The Committee notes the NHO communication transmitted by the Government. The NHO reiterates the long-standing view of the Employers within the International Labour Organization that the right to strike is not embedded in Convention No. 87. In relation to this, the NHO refers to the Joint Statement of the Employers' and Workers' groups of the ILO made in February 2015.*
- 563.** *The Committee notes from the chronology provided by both the complainant and the Government that: (i) the 2014 collective bargaining for a new collective wages agreement between IE and the NHO was unsuccessful; (ii) the mediation that followed ended on 5 September 2014 without the parties reaching an agreement; (iii) on 9 September 2014, the Norwegian Board of Health Supervision reported to the Ministry of Health and Care Services that the risk of endangering the life and health was substantially elevated; (iv) on 10 September 2014, the Minister of Labour and Social Affairs discussed the matter with the*

parties, which confirmed that they saw no possibility of reaching an agreement: while the employee side indicated its willingness to grant applications for dispensation from the strike, the employer side refused to apply for dispensations; (v) on 19 September 2014, the dispute was referred to the National Wage Board for resolution; and (vi) the Board rendered its decision in the dispute on 9 December 2014 and thereby set the terms of the new collective wage agreement.

- 564.** *The Committee observes that both the complainant and the Government agree with the opinion of the Norwegian Board of Health Supervisions, which concluded that as long as the employer refused to forward the received dispensation applications, as long as a minimum service was not in place and as long as the available contingency laundry companies were not used, there was a risk of elevated danger to the life and health of people.*
- 565.** *The Committee notes the NHO indication that it has no particular concerns regarding the use by the Government of compulsory arbitration in the present case and considers that under the existing legislative framework, trade unions alone make all decisions in relation to strike, including which company will be affected and which employees will participate and argues that it is solely the unions' responsibility to keep in mind the possible risks to health and safety.*
- 566.** *The Committee notes that the Government does not dispute that the right to strike is a fundamental right derived from the principles of freedom of association, but considers that this right can be subject to restrictions or a prohibition in certain circumstances, in particular if a strike involves essential services in the strict sense of the term or if the consequences of the strike give rise to such damaging effects that it endangers the life, personal safety or health or vital public interests.*
- 567.** *Furthermore, the Committee observes that neither the complainant nor the Government argue that the laundry and dry-cleaning services are inherently essential services in the strict sense of the term, but both accept that the consequences of the full stoppage without dispensation could give rise to a situation where the life and personal safety or health of people might be endangered.*
- 568.** *The Committee notes, however, that the complainant and the Government differ in the interpretation of the necessity for the Government to impose compulsory arbitration in the circumstances of this case. The Committee notes that the Government considers its decision to refer the dispute to compulsory arbitration to be entirely consistent with ILO standards and puts forward several arguments to justify it. The Government explains that to balance the wide and unrestricted freedom of organization and collective bargaining, including the right to industrial action, there is a broad consensus developed in Norway that the Government has an ultimate responsibility for preventing labour conflicts from causing serious damage. If the Government considers that a conflict has such damaging effects that the life, personal safety or health or vital public interests are endangered, it would submit a bill to the Parliament, proposing for the strike/lockout in question to be forbidden and for the conflict to be solved by the National Wages Board. The Government considers that the Member States are not obliged, pursuant to Conventions Nos 87 and 98, to establish a general legal basis for minimum services connected to industrial actions. The Government argues that Norway has implemented a different system and it cannot be assumed that this system is less in conformity with the Conventions or puts employees in a poorer situation concerning the exercise of the right to strike. This system does not deprive the social partners from declaring or implementing industrial action regardless of its consequences. Furthermore, the Government indicates that there is a broad consensus in the country as regards this model and points out that IE is one of 22 national trade unions affiliated to the LO; there are many other trade unions in Norway. The opinion of IE is not a sufficient ground for starting a process towards such a radical change of the collective bargaining*

system. The Government has not received any messages from the eight main organizations indicating the need for change in this respect.

- 569.** *In contrast, the Committee notes that the complainant submits that instead of imposing compulsory arbitration, the Government should have intervened and imposed minimum services so as to ensure on the one hand, that the dispute does not endanger the life or health of people, and on the other, that workers can exercise the right to strike. IE calls on the Government to establish schemes for the provision of minimum services in situations where an industrial action takes place in services that fall outside the scope of “essential services”, but where the industrial action nevertheless may affect important societal interests or endanger the life and health of all or part of the population. The complainant argues that such schemes exist or are at least legally possible in some sectors (health and petroleum sector). IE further argues that the Government could have used back-up laundry agreements in order to alleviate the situation of potential danger.*
- 570.** *The Committee recalls, as pointed out by IE, that it has examined several cases concerning Norway where compulsory arbitration was imposed in non-essential services to put an end to a strike. On these occasions, it recalled that it was difficult to reconcile arbitration imposed by the authorities at their own initiative with both the right to strike and the principle of voluntary negotiation [see Case No. 1255 (234th Report), Case No. 1389 (251st Report), Case No. 1576 (279th Report), Case No. 2545 (349th Report) and Case No. 3038 (372nd Report)]. The Committee recalls that compulsory arbitration to end a collective labour dispute and a strike is acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, that is, in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population [see **Digest of decisions and principles of the Freedom of Association Committee, fifth (revised) edition, 2006, para. 564**].*
- 571.** *The Committee recalls that any restriction on the right of workers’ organizations to negotiate wages and conditions of employment freely with employers and their organizations can only be imposed as an exceptional measure. Observing that the issue of the use of compulsory arbitration by the Government to end a legitimate strike and impose the terms of collective agreement in order to safeguard public health and safety has arisen in the country on various, while exceptional, occasions, as attested by the previous complaints, the Committee encourages the Government to discuss with the social partners possible ways of ensuring that basic services are maintained in the event of a strike the consequences of which might endanger the life or health of the population.*

The Committee’s recommendation

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

Observing that the issue of the use of compulsory arbitration by the Government to end a legitimate strike and impose the terms of collective agreement in order to safeguard public health and safety has arisen in the country on various, while exceptional, occasions as attested by the previous complaints, the Committee encourages the Government to discuss with the social partners possible ways of ensuring that basic services are maintained in the event of a strike, the consequences of which might endanger the life or health of the population.

CASE NO. 3018

INTERIM REPORT

**Complaint against the Government of Pakistan
presented by
the International Union of Food, Agricultural, Hotel, Restaurant, Catering,
Tobacco and Allied Workers' Associations (IUF)**

Allegations: The complainant organization alleges anti-union actions by the management of the Pearl Continental Hotel Karachi and the failure of the Government to ensure freedom of association

- 573.** The Committee last examined this case at its June 2015 meeting when it presented an interim report to the Governing Body [see 375th Report, paras 390–418, approved by the Governing Body at its 324th Session (June 2015)].
- 574.** At its March 2016 meeting [see 377th Report, para. 7], the Committee issued an urgent appeal 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 this case at its next meeting, even if the observations or information requested from the Government had not been received in due time. To date, the Government has not sent any information.
- 575.** 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

- 576.** In its previous examination of the case, the Committee made the following recommendations [see 375th Report, para. 418]:
- (a) The Committee deeply regrets that, despite the time that has elapsed since the complaint was presented in April 2013, the Government has still not replied to the complainant's allegations, despite having been invited on several occasions to do so, including by means of two urgent appeals [see 371st and 374th Reports, para. 6]. The Committee urges the Government to provide its observations on the complainant's serious allegations without further delay.
 - (b) The Committee urges the Government to institute immediately an independent inquiry into the following allegations: (i) the harassment of union members; (ii) the acts of violence on 25 February and 13 March 2013 against several union members, General Secretary Ghulam Mehboob and workers participating in a strike; and (iii) the subsequent brief arrest of union officers and members and filing of criminal charges against 47 of them. The Committee requests the Government to inform it of the outcome of this investigation and to keep it informed of any follow-up or redress measures taken.
 - (c) As regards the actions against union officers and members, including dismissals and refusing entry for reinstated workers, the Committee, noting the definitive decision rendered by the Sindh Labour Appellate Tribunal on 15 January 2013 and the numerous orders of the NIRC, including orders of 20 March 2013 and 31 October 2013, firmly expects that the Government will take all necessary steps for their immediate enforcement,

thus ensuring the reinstatement of the workers in question, compensation for lost wages and any damages suffered.

- (d) The Committee expects the Government to make efforts to obtain the comments of the company, via the employers' organization concerned, so that the Committee will be in a position to examine this case in full knowledge of the facts.

577. In June 2015, the Chairperson of the Committee met with a Government representative at the Committee's request in order to express concern over the lack of cooperation on the part of the Government with regard to this case. The Government representative indicated that the National Industrial Relations Commission (NIRC) ordered the Pearl Continental Hotel management to reinstate 32 out of 62 dismissed employees. However, the employer refused entry to these workers and obtained a stay order on reinstatement from Sindh High Court, the highest judicial body of the province. The Government representative stated that the Government of Sindh had appointed an Additional Advocate General to pursue the case in the Sindh High Court and that the matter was still sub judice.

B. The Committee's conclusions

578. *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 to do so, including through three urgent appeals and in a meeting between the Chairperson and one of its representatives in June 2015. The Committee notes that the object of this case is closely linked to that of Case No. 2169 and the facts brought up by the complainant are in direct continuation of those referred to in that case, which was first filed in 2002. The Committee has hence to express its deep concern, that after such an excessively long time and with the outstanding issues unresolved, the Government still fails to cooperate.*

579. *Hence, in accordance with its procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], 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.*

580. *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 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 presenting, for objective examination, detailed replies concerning allegations made against them [see First Report, para. 31].*

581. *While observing that the specific issues raised in this case concern the Sindh Province, the Committee is bound to remind the federal Government that the principles of freedom of association should be fully respected throughout its territory. The Committee urges the Government to bring its conclusions and recommendations to the attention of the competent authorities of the Sindh Province without delay with a view to resolving the pending matters in this case and to obtain full particulars from the Sindh Province for the Committee's next examination.*

582. *The Committee recalls that this case concerns serious allegations of anti-union actions including transfer and dismissal, harassment, arrest and criminal prosecution of trade union members and officials by the management of the Pearl Continental Hotel Karachi and the Government's failure to ensure freedom of association..*

- 583.** *The Committee recalls that the allegations examined in its 372nd and 375th Reports [paras 474–497 and 390–418 respectively] mentioned, among other things, that on 15 January 2013, the Sindh Labour Appellate Tribunal upheld the ruling of the lower court ordering the reinstatement of the union’s General Secretary and 20 other union members (these dismissals were also the object of Case No. 2169, the predecessor to this case concerning the same hotel). While this ruling became final as it was not challenged by the employer, those workers have yet to be reinstated. The Committee further recalls that, following industrial action in response to a labour dispute on 13 March 2013, 62 other union officers and members were allegedly denied access to the workplace, in open defiance of an NIRC order. On 26 April 2013, however, the management requested the NIRC the permission to send 30 out of the 62 workers on “special leave”, which was granted. Out of the remaining 32 workers, six were terminated by verbal communication and their cases are pending before NIRC. On 19 May 2014, 12 workers were transferred to other cities. While the NIRC stopped the transfer orders and required the management to provide a response, the management has refused to pay their salaries or allow them access to hotel premises.*
- 584.** *The Committee notes that this case raises serious issues of effectiveness of the existing legal guarantees and judicial mechanisms of protection against anti-union discrimination. The Committee recalls that cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly, so that the necessary remedies can be really effective. An excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders dismissed by the enterprise, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 826]. Delay in the conclusion of proceedings giving access to remedies diminishes in itself the effectiveness of those remedies, since the situation complained of has often been changed irreversibly, to a point where it becomes impossible to order adequate redress or come back to the status quo ante. What causes even greater concern with regard to this case, is that according to the allegations of the complainant, to which the Government has not provided any response, the final judicial order delivered after an excessively long process has yet to be enforced, while over three years after its issuance at least five workers have reached retirement age and one has died in the meantime [see 375th Report, para. 396]. The Committee urges the Government to ensure, without further delay, the execution of the final ruling of Sindh Labour Appellate Tribunal, thus to secure the reinstatement of the workers in question and compensation for lost wages and any damages suffered. In the case of the union member who died while awaiting the enforcement of the judgement, the Committee urges the Government to ensure that his heirs receive adequate compensation. The Committee requests the Government to provide detailed information on the steps taken in this regard.*
- 585.** *Taking into account the judicial findings of anti-union discrimination, the Committee is bound to note that the ineffectiveness of legal and judicial protection has had a lasting and detrimental effect on the freedom of association and collective bargaining rights of the hotel employees. The Committee understands that with regard to the cases of the 62 workers who were allegedly denied access to the workplace in the aftermath of the industrial action of 13 March 2013, several proceedings were initiated before the NIRC, respectively with regard to the employer’s request for permission to send 30 of those employees on special leave, as well as with regard to the dismissal of the six workers who were terminated by verbal communication and the transfer of 12 workers to other cities. The Committee understands from the information provided to the Chairperson [see para. 5 of this report], that NIRC ordered the reinstatement of 32 of those employees, but the employer obtained a stay order. While the Committee understands the matter is sub judice in Sindh High Court, it is bound to express its deep concern that once again, while an appeal process is under way for an undetermined period of time, an order issued in favour of the workers remains unexecuted. The Committee urges the Government to provide detailed information on the*

progress of the proceedings concerning these workers and firmly expects that the Sindh High Court's decision will be rendered without further delay and that it will be fully executed and requests the Government to provide a copy of the final judgment once it is delivered.

- 586.** *In the absence of any government response to its previous recommendation to this effect, the Committee once again urges the Government to institute an independent inquiry into the allegations of acts of violence, harassment and arrest of trade union members without further delay and to keep it informed of all steps taken in this regard and of the outcome of the investigation.*
- 587.** *The Committee recalls the complainant's allegation that acts of violence and anti-union discrimination were committed in the context of an industrial dispute and in reaction to a lawful strike that followed the failure of conciliation proceedings due to the employer's lack of participation. The complainant further alleged that despite the union's legal certification as the hotel employee's bargaining representative, the management of the hotel still refuses to recognize the union and to enter into good faith collective bargaining with it, and the Government refuses to effectively ensure basic rights and recognition. The Committee recalls from its examination of Case No. 2169 that in 2011, the hotel employees had been without a collective agreement for ten years [see 360th Report, para. 88] and it understands that initiating collective bargaining at the hotel remains a daunting process. The Committee once again draws the attention of the Government to Article 4 of Convention No. 98 according to which, 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 or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. The Committee urges the Government to take measures to encourage and promote free and voluntary negotiations between the employer and the union at the hotel, with a view to the peaceful resolution of outstanding matters and for the determination of workers' terms and conditions of employment through binding collective agreements. The Committee requests the Government to keep it informed of the measures taken in this regard.*

The Committee's recommendations

- 588.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee deeply regrets that, despite the time that has elapsed since the complaint was presented in April 2013, the Government has still not replied to the complainant's allegations, despite having been invited on several occasions to do so, including by means of three urgent appeals and in a meeting between the Chairperson and one of its representatives. The Committee urges the Government to provide its observations on the complainant's serious allegations without further delay.*
- (b) *While observing that the specific issues raised in this case concern the Sindh Province, the Committee is bound to remind the federal Government that the principles of freedom of association should be fully respected throughout its territory. The Committee urges the Government to bring its conclusions and recommendations to the attention of the competent authorities of the Sindh Province without delay with a view to resolving the pending matters in this case and to obtain full particulars from the Sindh Province for the Committee's next examination.*

- (c) *The Committee once again urges the Government to take all necessary steps to ensure, without further delay, the execution of the final ruling of Sindh Labour Appellate Tribunal, thus to secure the reinstatement of the workers in question and compensation for lost wages and any damages suffered. In the case of the union member who died while awaiting the enforcement of the judgment, the Committee urges the Government to ensure that his heirs receive adequate compensation. The Committee requests the Government to provide detailed information on the steps taken in this regard.*
- (d) *The Committee urges the Government to provide detailed information on the progress of the proceedings concerning the workers who were allegedly denied access to the workplace after the events of March 2013. The Committee firmly expects that the Sindh High Court's decision will be rendered without further delay and that it will be fully executed and requests the Government to provide a copy of the final judgment once it is delivered.*
- (e) *The Committee once again urges the Government to institute an independent inquiry into the following allegations without further delay and to keep it informed of all steps taken in this regard and the outcome of the investigation: (i) the harassment of union members; (ii) the acts of violence on 25 February and 13 March 2013 against several union members, General Secretary Ghulam Mehboob and workers participating in a strike; and (iii) the subsequent brief arrest of union officers and members and filing of criminal charges against 47 of them.*
- (f) *The Committee urges the Government to take measures to encourage and promote free and voluntary negotiations between the employer and the union at the hotel, with a view to peaceful resolution of outstanding matters and for the determination of workers' terms and conditions of employment through binding collective agreements and requests the Government to keep it informed of the measures taken in this regard.*

CASE NO. 3166

DEFINITIVE REPORT

**Complaint against the Government of Panama
presented by
the National Union of Workers of Construction and
Similar Industries (UNTRAICS)**

Allegations: Interference by the Government in trade union elections to gain control of the Autonomous Trade Union Confederation of Panamanian Workers (CGTP)

589. The complaint is contained in a communication of 1 July 2015 signed by the National Union of Workers of Construction and Similar Industries (UNTRAICS).

590. The Government sent new observations in communications dated 17 February, 17 May and 1 June 2016.
591. 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 complainant's allegations

592. In its communication of 1 July 2015, the complainant organization alleges that the elections for the new executive committee of the Autonomous Trade Union Confederation of Panamanian Workers (CGTP – the confederation to which the complainant is affiliated), which were held on 15 May 2015 during the ninth ordinary congress of the CGTP, were undemocratic because of interference by the public authorities, through high-ranking government officials. In this regard, the complainant organization reports that: (i) Mr Samuel Rivera, the Secretary-General of the Ministry of Labour and Workforce Development, who at the time of the CGTP elections was temporarily holding the office of Deputy Labour Minister under Decree No. 78 of 12 May 2015, participated in the trade union elections as a candidate on the list that emerged victorious and was elected as an officer (Executive Secretary) of the CGTP national executive committee; and (ii) another Ministry of Labour official, Mr Rolando Gálvez, a safety inspector at the Ministry of Labour and Workforce Development, was imposed on the CGTP as Organizational and Statistics Secretary. The complainant organization considers that these acts of interference, and the introduction of other high-ranking civil servants who were formerly trade union officials but are now employed by the Government, demonstrate that the Government has sought to exert influence over the CGTP, undermining its independence and autonomy. Moreover, the complainant indicates that article 25 of the CGTP constitution provides that any CGTP officer who is appointed to a political position or position of authority in any government institution must request leave of absence from the executive committee to occupy such a position and the officer's deputy will take over his/her duties.
593. The complainant organization indicates that the documentation of the ninth ordinary congress of the CGTP was registered on 3 June 2015 at 12.30 p.m. by the president of the ordinary congress – who, according to the complainant, is not empowered to do this under the CGTP rules, let alone to submit the documentation to the Department of Social Organizations at the Ministry of Labour, which answers to the Office of the Secretary-General of that Ministry, where Mr Rivera officiates. The complainant also explains that the person who headed the victorious list of candidates in the elections, Ms Nelva Reyes, holds union office as the General Secretary of the Democratic Teachers' Association of Panama, but bizarrely she appeared in the documentation as being accredited with the Federation of Peasant Farmers (FITA). The complainant indicates that, despite these flaws and irregularities, the Ministry of Labour and Workforce Development completed the relevant process and approved the new executive committee in the surprisingly short time of eight and a half hours, which is incomprehensible to the complainant given the size of the case file and the number of documents that the Department in question receives on a daily basis. The complainant indicates that it challenged the elections in the courts – questioning the direct interference of the Government through high-ranking officials in order to place the CGTP at the service of the Government – and that, as a result of this action, government officials published statements tarnishing the image of the complainant organization (the complainant submits a press article criticizing its position on the elections, signed by a former CGTP General Secretary who, according to the complainant, is now a government adviser). Lastly, the complainant indicates that it informed the President of the Republic in writing of the alleged violations of freedom of association.

B. The Government's reply

- 594.** In its communications of 17 February and 17 May 2016, the Government responds to the allegations made by the complainant organization.
- 595.** The Government indicates that there was no interference by the government authorities in the election of the new executive committee of the CGTP. The Government reports that, while it is true that Mr Rivera is the Secretary-General of the Ministry of Labour and Workforce Development, it is also true that he has been a CGTP member since 1987 and that in 1990 he was elected Finance Secretary, a post that he still holds. The Government indicates that in July 2014 Mr Rivera was appointed Secretary-General of the Ministry of Labour and Workforce Development; that since then his involvement in CGTP activities has decreased; and that on 14 and 15 May 2015, the dates of the elections of the ninth congress of the CGTP, Mr Rivera requested to be relieved of his public office from the Ministry in order to present the finance report to the CGTP congress. The Government also states that, in accordance with the provisions of article 25 of the CGTP by-laws, by a request of 8 June 2015, Mr Rivera asked the Board of the CGTP to relieve him of his position as Executive Secretary of the trade union in order to hold public office. The Government provides the document according to which, on 2 July 2015, the Secretary-General of the CGTP relieved Mr Rivera of his trade union office as requested. As regards the allegation that Mr Gálvez was imposed on the CGTP, the Government indicates that since 2 July 1992 he has been a member of the Union of Workers of the Panamanian Plastics Industry (SITIPP), which is affiliated to the CGTP and that, just as Mr Rivera, Mr Gálvez requested and was relieved from his position in the trade union to hold public office.
- 596.** As regards the registration of the documentation of the ninth ordinary congress of the CGTP by the congress President, the Government states that: (i) congress sessions are governed by an executive body and, once the discussion of the documents is complete, an electoral tribunal is established which is responsible for conducting the electoral process, as set out in the union rules; (ii) Mr Efrén Delgado (independent), Mr Victor Concepción (non-member officer) and Mr Ángel López (non-member officer) were responsible for the running of the congress; (iii) two lists of candidates were presented for the elections of the ninth congress, at which the list headed by Ms Nelva Reyes emerged victorious, and the outcome was registered with the Ministry of Labour and Workforce Development once the official record had been signed; (iv) it is incorrect that the Department of Social Organizations answers to the Office of the Secretary-General of the Ministry, since it is under the Directorate-General of Labour; and (v) as regards the time taken to certify the new executive committee, the documentation was duly presented and the Ministry was therefore obliged to register it in order to avoid differences between trade unions.
- 597.** The Government indicates that the defeated list of candidates challenged the elections in the First Labour Court of the First Sector, which issued ruling No. 248 of 26 June 2015, rejecting the appeal as inadmissible. The Government adds that an appeal was filed with the Higher Labour Court of the First Judicial District, which upheld the rejection of the appeal by the First Labour Court in a ruling of 30 July 2015. The court decisions forwarded by the Government show that both judicial bodies considered that the complainants had not met the legal requirements for challenging the acts of a trade union confederation, and so the appeal was rejected without entering into the substance.

C. The Committee's conclusions

- 598.** *The Committee observes that the complaint concerns allegations of interference by the Government in trade union elections to gain control of the CGTP. The Committee observes that the complainant organization indicates, without being contradicted by the Government, that at least two government officials participated in the ninth congress and in the elections*

of the CGTP and that the Secretary-General of the Ministry of Labour and Workforce Development was appointed Executive Secretary of the CGTP national executive committee. The Committee notes from the Government: (i) the indication that the government officials concerned had been active trade union members for some time and that, as regards the Secretary-General of the Ministry of Labour and Workforce Development, his involvement in CGTP activities had been decreasing since his appointment to the Ministry in 2012; and (ii) the indication that, according to the CGTP by-laws, the Secretary-General of the Ministry sought to be relieved of his union position of Executive Secretary to exercise his public office and the union acceded to his request, so that the Committee understands that he is currently not exercising any trade union office. The Committee also notes from the information provided by the Government that: (i) in the past, the Secretary-General of the Ministry continued to hold the position of Finance Secretary in the CGTP after his appointment to the Ministry; and (ii) during the period for which he was temporarily appointed as Deputy Minister, he requested to be relieved of his public office from the Ministry to participate in the ninth congress of the CGTP, at which he was elected Executive Secretary by virtue of being on the victorious candidate list.

- 599.** *Firstly, the Committee wishes to recall the general principle that the Committee is not competent to make recommendations on internal dissensions within a trade union organization, so long as the government does not intervene in a manner which might affect the exercise of trade union rights and the normal functioning of an organization [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 1114]. Secondly, the Committee wishes to draw attention to the resolution concerning the independence of the trade union movement adopted by the International Labour Conference in 1952, which recalls that it is essential to preserve the freedom and independence of the trade union movement in all countries so that it can pursue its economic and social objectives regardless of any political changes. As regards the allegations of interference, the Committee considers that the participation of high-ranking officials of the public administration in trade union elections or in positions of trade union leadership can undermine the independence of the trade union organizations in question.*
- 600.** *With regard to the case, the Committee observes that, by virtue of the CGTP by-laws, the Secretary-General of the Ministry of Labour and Social Development and the safety inspectors had requested to be relieved of their trade union office to hold public office and that the trade union acceded to these requests, thereby addressing the potential risk of conflict of interest.*

The Committee's recommendation

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

CASES NOS 3110 AND 3123

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

Complaints against the Government of Paraguay presented by

Case No. 3110
the World Federation of Trade Unions (WFTU)

Case No. 3123

**the League of Maritime Workers of Paraguay (LOMP)
supported by
the World Federation of Trade Unions (WFTU)**

Allegations: Violation of the trade unions' prerogative to nominate dockworkers for recruitment in accordance with the law and collective agreements, refusal of collective bargaining and anti-union discrimination (mass dismissals and non-recruitment of trade union members) by the San Francisco SA enterprise, violation of the right to demonstrate and the detention of 11 workers accused of participating in collective actions, and restriction of the trade unions' right to represent their members

- 602.** The Case No. 3110 complaint is contained in a communication of 17 December 2014 from the World Federation of Trade Unions (WFTU). The Case No. 3123 complaint is contained in communications of 26 January 2015 from the League of Maritime Workers of Paraguay (LOMP) and of 3 March 2015 from the WFTU.
- 603.** The Government sent its observations concerning both complaints in a communication of 27 January 2016.
- 604.** Paraguay 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

- 605.** In its communications of 17 December 2014, and 26 January and 3 March 2015, the complainant organizations make the following allegations.

Allegations of violation of the prerogative of trade unions to nominate dockworkers for recruitment in accordance with the law and collective agreements, refusal of collective bargaining, and anti-union discrimination (mass dismissals and non-recruitment of trade union members)

- 606.** The complainant organizations allege that the law requires the intervention of the authorized trade unions to determine which dockworkers are to be recruited, in accordance with article 66(c) of Act No. 1248 of 1936 (which requires that dockworkers be nominated by the executive committee of the respective trade union for recruitment). The complainant organizations allege that: (i) under Executive Decree No. 19260/61, various labour jurisdictions were granted to the trade unions of LOMP; (ii) in the port of Caacupe-mí, the San Francisco SA enterprise outsourced its dock work to evade the legal requirements, using subcontracting and to that end establishing the affiliated company Jeroviá Servicios SA; (iii) private port enterprises, and in particular San Francisco SA and its affiliated company Jeroviá Servicios SA, violate Act No. 1248/36 by hiring workers who are not members of the trade unions authorized for the respective jurisdiction; and (iv) the Prefecture-General

for Shipping and the Directorate-General for National Merchant Shipping, at the instigation of the association of port managers, issue work permits to dockworkers who do not meet the requirements of Act No. 1248/36. In view of this situation, LOMP filed a complaint with the Ministry of Labour, Employment and Social Security, requesting an inspection to determine whether the dockworkers who are hired comply with the legal requirements relating to authorization and whether they are members of the trade unions authorized to provide access to recruitment (LOMP indicates that the Human Rights Committee of the Senate requested a report from the Prefecture-General for Shipping in a note dated 17 December 2014). Accordingly, on 23 December an inspection report was published, which indicated that three attempts had been necessary before the inspection could be carried out and that it had found that the dockworkers concerned were not employed by either San Francisco SA or by the subcontractor Jerovía Servicios SA and other employees of the latter enterprise were working there at the time. The complainants consider that the inspection report and the enterprise's actions provide evidence that it has committed violations: the inspection report found, firstly, that the workers were not members of any of the trade unions authorized to supply the necessary staff, in violation of article 66 of Act No. 1248/36 and, secondly, that in a tripartite meeting held on 27 November 2014 with representatives of LOMP, the representatives of San Francisco SA claimed the right to hire workers of their choosing. The complainants conclude that, by allowing the enterprise to choose its dockworkers and the fact that the Prefecture-General for Shipping authorizes this, the State is violating the legal provisions in force.

- 607.** Furthermore, the complainant organizations refer to a number of collective agreements recognizing the trade unions' right to propose dockworkers for recruitment in the labour jurisdictions for which those trade unions are authorized (in particular, the collective agreement of 1956 between the Trade Union of Maritime Dockworkers and Related Services (SEMA) and the Small and Large-Scale Cabotage Shipowners/Association of River Shipowners (CAF); the collective agreement adopted by a decision of 19 February 1988 between the Association of Shipping Agents (ASAMAR) and the Trade Union of Port Checking Clerks of the Capital (SAPAC, a member of LOMP); and the agreement of 4 May 2004 between SEMA and the Trade Union of Maritime Dockworkers of Zaballos Cué). The complainants report that, although in the past the public authorities, including the judiciary, had recognized the applicability of these collective agreements and the jurisdiction of the trade unions, in recent years there has been a failure to apply the provisions contained in the agreements concerning the role of the trade unions in the selection of workers. In particular, they allege that the Directorate-General for National Merchant Shipping and the Ministry of Labour, Employment and Social Security, through the Prefecture-General for Shipping, allow and even encourage non-compliance with the collective agreement between ASAMAR and SAPAC and that the Supreme Court of Justice revoked the aforementioned collective agreement by Ruling No. 1325 of 7 September 2006 (not allowing the participation of the trade unions in the judicial proceedings – a matter which was the subject of another allegation).
- 608.** The WFTU also alleges that the private port enterprises refuse collective bargaining, even though article 334 of the Labour Code provides that enterprises with more than 20 workers are obliged to enter into a collective agreement governing conditions of work.
- 609.** The WFTU indicates that the owners of the Caacupe-mí port dismissed more than 200 workers simply because they were trade union members and that, while some of these workers managed to get reinstated, the dismissal of the other workers is still effective. LOMP, for its part, alleges the unfair dismissal of 60 workers.
- 610.** The complainant organizations indicate that the employers in the private ports refuse to hire workers who are members of LOMP trade unions (despite being in labour jurisdictions

granted to those trade unions) and that they only hire workers individually on condition that they do not join a union.

Allegations of violation of the right to demonstrate and detention

611. The complainant organizations indicate that LOMP organized a demonstration on 13 November 2014 for workers in their member trade unions to protest against the violations of their members' rights by the San Francisco SA enterprise and its affiliated company, Jeroviá Servicios SA, in dismissing 60 workers. The complainants indicate that eight to ten canoes took up positions on the Paraguay River as a symbolic act of protest, while a demonstration was being held on land opposite the Caacupe-mí port. The complainants indicate that these flimsy canoes did not constitute any obstacle for vessels of any size moving along the Paraguay River; in fact, when the launch from the Prefecture-General for Shipping passed by, the wash was strong enough to overturn one of the canoes. The complainants indicate that, in response to an action filed by the enterprise, the Criminal Judge of Guarantees No. 8 of the capital issued an emergency preventive measure, under a ruling of 15 December of 2014, ordering the workers to refrain from obstructing freedom of movement on the Paraguay River and from preventing the entry and exit of vehicles and persons to and from the port premises, whereupon the Prefecture-General for Shipping intervened to arrest the workers who were protesting. The complainants consider that, under this preventive measure, a decision was taken on the substance of the matter without requiring the claimant to pay the bond for costs, as provided for by law. The complainants add that, as a result of the complaint filed by the enterprise, an order was given for the detention of 11 workers – whose names are listed in the complaint by LOMP – who were placed in preventive detention on the basis of article 214 of the Criminal Code of Paraguay (concerning dangerous interference in shipping) and are facing a six-year prison sentence. The complainants add that, following an appeal against the preventive detention measure, the 11 workers were put under house arrest, which still prevents them from working or supporting their families. The complainants consider that the preventive measures violate freedom of association.

Allegations of restriction of the right of trade unions to represent their members

612. The complainant organizations allege that repeated rulings of the Constitutional Chamber of the Supreme Court of Justice curtail trade union freedom by restricting the trade unions' ability to represent their members. The complainants refer to three rulings in particular:

- (i) Ruling No. 1812 of 20 December 2004 concerning a claim for the payment of wages to SEMA members, brought against a shipping enterprise domiciled outside Paraguay that occasionally employed a national enterprise to manage unloading and other services. In this ruling, the Supreme Court of Justice concluded that the "law does not authorize trade unions to represent their members vis-à-vis the judicial authorities without an express mandate" and that "the ensuing deregulation may be deemed to be arbitrary and to distort the purpose of the trade union, but it is currently the legal provision in force, whereby the law does not confer direct procedural competence on the trade unions to represent their members before the courts, requiring the maximum authority of the trade union – the assembly – to grant an express mandate to bring legal actions" and that the trade union did not provide any kind of instrument conferring such authorization. The complainants allege, however, that the court had received the minutes of SEMA's general assembly, which were incorporated into a valid public instrument (pp. 29–33), and this shows that the assembly decided to file an appeal but

that the Court had not seen the document. The complainants allege that, as a result of this ruling, the payment of money owed to the workers was prevented;

- (ii) Ruling No. 1325 of 7 November 2006, referred to above, declaring articles 9 and 29 of the collective agreement – which had previously recognized the trade unions’ right to nominate workers for recruitment – to be unconstitutional on the grounds that it could undermine possible pay increases for non-unionized workers. According to the complainant organizations, although the assembly’s minutes conferring an express mandate had been submitted under aforementioned Ruling No. 1812, the Supreme Court of Justice ruled that the trade union concerned (SAPAC) was not authorized to file a claim for the payment of wages (accrued prior to the declaration of unconstitutionality) and that each individual union member should file his own claim, which, according to the complainants, was impossible as a claim could only be filed for the total amount that was alleged to be unpaid; and
- (iii) Ruling No. 1449 of 15 October 2012 regarding the claim for reimbursement of US\$126 million to workers who had contributed to the defunct National Workers’ Bank. The Court, while again recognizing that the ensuing deregulation could be deemed to be arbitrary and to distort the purpose of the trade union, rejected the claim on the basis of the doctrine underlying aforementioned Ruling No. 1812, finding that the trade unions did not have an express mandate from their members to bring the legal action or the necessary legal capacity (in this regard, the complainant organizations claim that the trade unions had submitted the requisite powers of attorney to file the claim). The complainants add that, as a result of this decision, the money owed was never reimbursed.

B. The Government’s reply

613. In its communications of 27 January 2016, the Government submits the observations of the enterprise and of the public authorities concerned.

Allegations of violation of the prerogative of trade unions to nominate dockworkers for recruitment in accordance with the law and collective agreements, refusal of collective bargaining, and anti-union discrimination (mass dismissals and non-recruitment of trade union members)

614. In its observations, the enterprise denies the allegations and indicates the following: (i) the San Francisco SA enterprise is responsible for private operations in Caacupe-mí port, while the Jerovía Servicios SA enterprise is responsible for outsourcing certain services, and they have both been inspected by the Ministry of Labour, Employment and Social Security, which found that they comply with the labour regulations; (ii) there was a contractual relationship for the provision of services between Jerovía Servicios SA and various trade unions (Trade Union of Maritime Dockworkers of Zeballos Cué and SEMA from the Caacupe-mí district, both members of LOMP); (iii) the trade unions themselves acted as employers, in other words, they provided services through their registered workers; (iv) the enterprises did not dismiss any workers since the latter were not their employees; (v) in November 2014, as a result of a dispute between the trade unions and the enterprises relating to service contracts, LOMP and the trade unions took industrial action entailing the closure of the Paraguay River and of land access points to Caacupe-mí port; (vi) the enterprise terminated the service contracts with the trade unions, alleging serious non-compliance on their part – including the consequences of the industrial action taken by the trade unions; (vii) on 4 February 2015, a tripartite conciliation meeting was held at the Ministry of Labour, Employment and Social Security in which: (a) the trade unions indicated that 60 rather than 200 people had been

dismissed; (b) the enterprise explained that it had not filed the criminal proceedings against the workers for their involvement in the industrial action (they had been filed by the Public Prosecutor's Office) and that it would not oppose any requests to lift the detention measures; (c) the possibility of restoring the original conditions prior to the dispute was discussed and the enterprise declared its willingness to employ any workers who might be interested, but stated that recruitment could not be imposed purely according to whether or not a dockworker belonged to a specific trade union organization, whereupon the parties agreed that the only requirement would be the registration of dockworkers with the Prefecture-General for Shipping; and (d) the tripartite meeting resulted in an agreement between the parties to work in good faith to resolve the situation of the 11 workers who were being prosecuted, to initiate negotiations to re-establish the contractual relations governing the delivery of services and to drop all judicial, extrajudicial and trade union actions, as a sign of good faith; (viii) however, the negotiations were not successful, given that the trade unions did not drop the judicial actions that they had filed; (ix) as regards the alleged refusal to hire union members, the enterprise states that: (a) the statement is incorrect and LOMP's true intention is to restrict recruitment to trade union members; (b) LOMP filed a legal action seeking to ban the enterprises from hiring non-union members (arguing that the right to work in the area is limited to these unions, to which the enterprises responded that the law guarantees their right to hire staff freely); the enterprise indicates that the legal action was subsequently dropped by LOMP; and (c) it is LOMP which is violating freedom of association by excluding the possibility of hiring workers who are not its members and by restricting the freedom of association of non-unionized workers; (x) as regards the alleged refusal to sign a collective agreement, the two trade unions referred to above are the employers of those they refer to as members, and so there is a legal obstacle to their signing a collective agreement, given that the document cannot be signed by more than one employer; (xi) as regards the allegation of violation by the enterprise of the rule that only trade union members are allowed to work in a given jurisdiction, the enterprise alleges that the rule was established under the previous Labour Code, which included a provision whereby collective agreements could contain a clause under which the employer was obliged only to hire workers who were members of the trade union party to the agreement; according to the enterprise, this is an old provision which runs counter to the Constitution of Paraguay and to the ILO Conventions.

- 615.** As regards the allegation of anti-union discrimination (dismissal of workers and non-recruitment of union members), the Government indicates that, following the complaint concerning the mass dismissal of members of the Trade Union of Maritime Dockworkers of Zeballos Cué and the Trade Union of Maritime Dockworkers and Related Services (SEMA) of the Caacupe-mí district, the representatives of the private port of San Francisco Caacupe-mí and the representatives of the complainant trade unions were called to two tripartite meetings at the Ministry of Labour, Employment and Social Security in September 2014. When the enterprise representative failed to attend the second meeting, the workers' representatives requested a general inspection, which resulted in an inspection order dated 6 October 2014 to review the employment situation of the dockworkers concerned and the employer's compliance with the regulations. At the first two attempts, the inspectors were unable to conduct the inspection owing to the refusal of the enterprise's legal adviser, who claimed that the inspectors could only enter the premises to conduct the inspection if they had a court order. The inspection was carried out at the third attempt, on 10 October 2014. The Government indicates that the inspection found that the workers alleging the violation of their rights were members of the trade union organizations of maritime dockworkers but that they were not employees of the enterprise in question.
- 616.** As regards the allegations of refusal of collective bargaining, the Government provides a list of 15 collective agreements governing conditions of work which were approved for the years 2011 to 2014 and were signed by maritime and river enterprises (the two enterprises operating in Caacupe-mí port referred to above do not appear on the list).

Allegations of violation of the right to demonstrate and detention

617. As regards the allegations of violations of freedom of association and of dispersal of workers participating in protest actions on the Paraguay River on 13 December 2014, the Government submits a note from the Prefecture-General for Shipping, which indicates that: (i) this institution acted within the framework of legality and in compliance with a judicial order of 5 November 2014 issued by the Civil and Commercial Judge of First Instance, ordering the end of the blockade of the Paraguay River at all points; and (ii) the dockworkers were notified in due time and form but they refused to comply with the ruling, whereupon the persons involved were arrested and handed over to the Public Prosecutor's Office.
618. The Government adds that the right to strike is guaranteed for workers in both the public and private sectors and that, in the case referred to in this complaint, the striking workers blockaded the Paraguay River, affecting the free passage and movement of vessels, which was aggravated by the fact that the country is landlocked and the Paraguay River is its main waterway. Accordingly, the Government indicates that article 214 of the Criminal Code was applied, which provides that any person who creates an obstacle endangering the safety of air or rail transport or shipping shall be liable to imprisonment of up to six years.

Allegations of restriction of the right of trade unions to represent their members

619. As regards the court decisions contested by the complainant organizations as limiting the possibility of trade unions to represent their members, the Government observes that these are final rulings that have been implemented and that they were issued by the ordinary courts, as the latter are competent to do under the rule of law.

C. The Committee's conclusions

620. *The Committee decided to consider these two cases together in so far as they involve the same allegations supported by the same international complainant.*

Allegations of violation of the prerogative of trade unions to nominate dockworkers for recruitment in accordance with the law and collective agreements, refusal of collective bargaining, and anti-union discrimination (mass dismissals and non-recruitment of trade union members)

621. *The Committee observes that one of the central issues raised in the complaints concerns the allegation that, under certain items of legislation and collective agreements, it is the prerogative of the trade unions authorized in each jurisdiction to nominate dockworkers to carry out work in the ports concerned (the complainant organizations report that both the enterprise and the public authorities have violated this trade union prerogative). On the other hand, the Committee observes that the enterprise in question alleges that it is the League of Maritime Workers of Paraguay (LOMP) which is violating freedom of association by seeking to impose the selection of workers, exclude the possibility of hiring workers that are not members of its trade unions, and curtail the freedom of association of non-unionized workers. In that regard, the Committee wishes to recall that a distinction should be made between union security clauses allowed by law and those imposed by law, only the latter of which appear to result in a trade union monopoly system contrary to the principles of freedom of association; that problems related to union security clauses should be resolved at the national level, in conformity with national practice and the industrial relations system*

in each country; and that both situations where union security clauses are authorized and those where they are prohibited can be considered to be in conformity with ILO principles and standards on freedom of association [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 363 and 365]. The Committee recalls that union security clauses should be agreed freely and observes that the complaints contain no elements to show that the enterprises concerned have agreed to a union security clause; on the contrary, the observations provided show their opposition to any such clause.

622. The Committee also observes that the complaints contain allegations of anti-union discrimination (dismissals and non-recruitment of union members) and refusal to engage in collective bargaining. In this regard, the Committee observes that, although the complainant organizations refer to the subcontractor as the dockworkers' employer, the enterprise that manages the port indicates that the legal relationship was based on service contracts between the subcontractor and the trade unions, which were the employers. The Committee observes that an inspection was conducted to monitor the enterprise's compliance with the labour regulations and, in particular, to investigate the allegations of anti-union dismissals, but that the inspection did not find any violation and found that the workers that claimed a violation of their rights were members of the trade unions of maritime dockworkers and were not employed by the enterprise against which the complaint had been filed. Moreover, the Committee observes that the enterprise indicates that: (i) since the employment relationship was based on service contracts with the trade unions, there was no possibility of collective bargaining on account of the legal obstacle arising from the fact that the workers were employed by the trade union; (ii) no dismissals were carried out, but rather the service contracts with the trade unions were terminated on the grounds of serious non-compliance by the unions (the enterprise includes in this the blockade of the Paraguay River, which reportedly took place after the dismissals); (iii) the enterprise indicated that it was open to hiring the dockworkers who had lost their jobs; and (iv) the enterprise claims that it does not exclude workers who are trade union members from recruitment, but that it is opposed to the imposition of the recruitment of trade union members only. In these circumstances, the Committee does not have the necessary information to conclude that the issues raised involve acts of anti-union discrimination.

623. Furthermore, the Committee welcomes the conciliation efforts made by the Government to address the dispute between the parties, in particular through the tripartite meeting of 4 February 2015, which, according to the enterprise, yielded the beginnings of an agreement. The Committee invites the Government to continue promoting negotiations between the parties and encourages the parties to continue their dialogue with a view to finding joint solutions in accordance with the principles of freedom of association.

Allegations of violation of the right to demonstrate and detention

624. The Committee observes that the complaints contain allegations of violation of the right to demonstrate and the criminal prosecution and detention of workers for participating in a strike through an act of protest involving the positioning of canoes on the Paraguay River. According to the complainant organizations, this action did not obstruct the passage of any vessel but resulted in the prosecution of 11 workers, who remain under house arrest. The Committee observes that the Government, for its part, alleges that: (i) the striking workers blockaded the Paraguay River, affecting the free passage and movement of vessels, whereupon a judge ordered the end of the blockade at all points on the Paraguay River; and (ii) the dockworkers were notified in due time and form but they refused to comply with the order, whereupon they were arrested and handed over to the Public Prosecutor's Office, and article 214 of the Criminal Code was applied, which provides for imprisonment of up to six years for any person who creates an obstacle that threatens the safety of shipping.

- 625.** *The Committee wishes to recall that, according to Article 8 of Convention No. 87, although, in exercising the rights provided for in the Convention, workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land, the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Convention. In that regard, the Committee wishes to refer to the following principles: that workers should enjoy the right to peaceful demonstration to defend their occupational interests; that preventive detention should be limited to very short periods of time intended solely to facilitate the course of a judicial inquiry; that workers should enjoy prompt and fair trial by an independent and impartial judiciary in all cases, including cases in which trade unionists are charged with political or criminal offences; and that the authorities should not resort to arrests and imprisonment in connection with the organization of or participation in a peaceful strike, since such measures entail serious risks of abuse and constitute a grave threat to freedom of association [see *Digest*, op. cit., paras 133, 78, 109 and 671].*
- 626.** *Noting that the Government does not deny that the strike was peaceful or that 11 workers are still being prosecuted and under house arrest, the Committee requests the Government to keep it informed of the outcome of the judicial proceedings brought against the workers who participated in the protest actions on the Paraguay River and at land access points to the Caacupe-mí port, trusting that the proceedings will be settled as soon as possible and bearing in mind the aforementioned principles of freedom of association. The Committee also invites the authorities to consider lifting the preventive detention measures.*

Allegations of restriction of the right of trade unions to represent their members

- 627.** *The Committee notes with concern the allegations of restriction of the trade unions' right to represent their members, and of the consequences that could arise from the refusal of representation to the trade unions (according to the complainant organizations, failure to win claims for substantial sums of money affecting a large number of workers). The Committee observes that the complainants refer to three rulings by the Supreme Court of Justice, denying the unions the possibility of representation on the grounds that no express mandate had been given by the trade union's assembly (the complainants claim, however, that in at least two of the three cases they had submitted the assembly minutes conferring an express mandate). The Committee also observes that, although the Government does not go into the substance of the issue and merely recognizes the existence of the rulings in question, the Supreme Court of Justice itself, while considering an express mandate to be legally necessary, found in two of the rulings that "the ensuing deregulation may be deemed to be arbitrary and to distort the purpose of the trade union". In this regard, the Committee considers that neither the legislation nor the application thereof should limit the right of employers' and workers' organizations to represent their members, including in cases of individual labour complaints. The Committee invites the Government to examine, in consultation with the social partners, the adequacy of the legislation and of the application thereof in order to ensure that employers' and workers' organizations are able to exercise the right to represent their members.*

The Committee's recommendations

- 628.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *Welcoming the conciliation efforts made, the Committee invites the Government to continue promoting negotiations between the parties and*

encourages the parties to continue their dialogue with a view to finding joint solutions in accordance with the principles of freedom of association.

- (b) *The Committee requests the Government to keep it informed of the outcome of the judicial proceedings brought against the workers who participated in the protest actions on the Paraguay River and at land access points to the Caacupe-mí port, trusting that the proceedings will be settled as soon as possible and bearing in mind the principles of freedom of association. The Committee also invites the authorities to consider lifting the preventive detention measures.*
- (c) *The Committee invites the Government to examine, in consultation with the social partners, the adequacy of the legislation and of the application thereof in order to ensure that employers' and workers' organizations are able to exercise the right to represent their members.*

CASE No. 2982

INTERIM REPORT

Complaints against the Government of Peru presented by

- **the General Confederation of Workers of Peru (CGTP)**
- **the Federation of Civil Construction Workers of Peru (FTCCP) and**
- **the Confederation of Workers of Peru (CTP)**

Allegations: Murder and threats against union leaders and members in the construction sector, inadequacy of the measures taken and ineffectiveness of the investigations, maintenance of the registration of pseudo-unions and the progressive entry of some pseudo-unions into official institutions, to the detriment of the complainant federation

- 629.** The Committee examined this case at its March 2014 meeting and on that occasion presented an interim report to the Governing Body [see 371st Report, paras 670–704, approved by the Governing Body at its 320th Session (March 2014)].
- 630.** The Federation of Civil Construction Workers of Peru (FTCCP) sent additional information in a communication of 9 April 2014. The General Confederation of Workers of Peru (CGTP) sent additional information in a communication of 10 July 2014.
- 631.** The Government sent its observations in communications of 20 May and 14 July 2014.
- 632.** 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. Previous examination of the case

633. At its previous meeting, the Committee made the following recommendations [see 371st Report, para. 704]:

- (a) While it deplores and expresses concern at the seriousness of the alleged acts of extortion and the murder of six trade unionists (and one more reported in a recent allegation), and observes that the present case is within the context of an inter-union struggle, the Committee firmly expects that in the near future the current criminal investigations will lead to the identification of all the perpetrators and instigators of the murders of the three union leaders and three union members in the construction sector, that the responsibilities will be clearly identified and that those found guilty will be severely punished. The Committee requests the Government to keep it informed in this regard, and also on the progress of the criminal proceedings. On the other hand, the Committee welcomes the measures taken by the Government concerning, inter alia, the register of workers and works in the construction sector, and invites the Government to continue taking measures in the framework of the existing tripartite dialogue.
- (b) The Committee requests the Government to provide additional information relating to its explanations and those of the complainant organizations concerning the causes of the violence against union leaders in the construction sector, and suggests that the Public Prosecutor's Office be instructed to conduct a thorough investigation into the reasons for the violence in the construction sector, and that all the necessary penal action is taken based on the findings of the investigations.
- (c) In relation to the allegation of the entry into official institutions of certain pseudo-unions engaged in extortion, the Committee considers that the complainant organizations have not supported their allegations with sufficient information and particulars, and invites them to do so.
- (d) The Committee requests the Government to provide without delay its observations with regard to the recent allegations made by the CTP, dated 29 November 2013, concerning various matters, including the murder of union leader Miguel Díaz Medina, and the accusation that the police have wished to falsely implicate the union of civil construction workers in acts of extortion and blackmail in complicity with criminals.
- (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.

B. Additional information provided by the complainant organizations

634. In its communication of 9 April 2014, the FTCCP refers to recommendation (c) of the Committee based on its previous examination of the case (entry into official institutions of certain pseudo-unions engaged in extortion) and explains that through a 2009 Executive Board Decision the Standing Orders of the National Construction Industry Training Service (SENCICO) were revised, such that its executive board, which until then had included two workers' representatives proposed by the most representative union of the sector (the FTCCP), thereafter included two workers' representatives proposed by the most representative unions of the sector, which meant that one of the FTCCP representatives was replaced by a representative of a pseudo-union. According to the FTCCP, the decision to change the board's composition was taken at the request of the Ministry of Labour, with the sole purpose of allowing onto the board a representative of the construction sector pseudo-unions which were being registered by the Government then in power. Similarly, the FTCCP understands that this modification contravenes Supreme Decree No. 043-2006-PCM, which establishes that modifications of the standing orders of decentralized public entities must be approved by Supreme Decree, and not by Executive Board Decision.

- 635.** With regard to the National Board of the Fund for the Construction of Housing and Recreational Centres for Civil Construction Workers (CONAFOVICER), the FTCCP indicates that although the Government had proposed to change the composition of its Directorate in order to introduce representatives of construction sector pseudo-unions, no follow-up was given to this request, and there is no current initiative to make any changes to its Directorate. In its communication, the FTCCP includes a copy of a letter sent to the Minister of Labour in relation to this matter and indicates that, along with the CGTP and other social partners, it promoted a national-level event to call for a national pact to address violence and organized crime, such as that committed by the union mafias registered by the Ministry of Labour.
- 636.** In its communication of 10 July 2015, the CGTP details the reasons for which the FTCCP did not attend the tripartite forum for dialogue on violence in construction works organized by the Ministry of Labour in June 2014. The CGTP indicates that, although the forum was convened, and took place on 12 June 2014, the FTCCP did not attend as it considered that certain union organizations which had been invited were not legitimate or representative participants. The CGTP explains that the FTCCP, as the union directly affected by the emergence of pseudo-unions, cannot engage in dialogue with them, as this would signify a relinquishing of its firm stance against violence and its determination to re-establish peaceful labour relations. As a result of various conversations between the Ministry and the FTCCP a decision was taken to postpone the dialogue forum until such time as certain actions to generate trust between the parties were completed.

C. The Government's reply

- 637.** In its communication of 20 May 2014, the Government refers to recommendation (a) of the Committee and provides information on the investigations carried out into the murders of the union leaders, Carlos Armando Viera Rosales, Guillermo Alonso Yacila Ubillus and Rubén Snell Soberón Estela. The reports of the Ministry of the Interior, attached by the Government, indicate that, while the suspected murderer of Carlos Armando Viera Rosales has been identified and detained, those responsible for the murders of Guillermo Alonso Yacila Ubillus and Rubén Snell Soberón Estela have not been identified.
- 638.** With regard to recommendation (b), and specifically the recommended comprehensive investigation by the Public Prosecutor's Office into the motives and those responsible for the violence in the construction sector, the Government indicates that the Crime Observatory of the Public Prosecutor's Office had included in its workplan for 2014 a qualitative and quantitative investigation into the cases of extortion and homicide in the civil construction sector.
- 639.** As regards recommendation (d), the Government indicates that the suspected instigator of the murder of union leader Miguel Díaz Medina has been charged and detained. The Government maintains that this murder, as well as the others mentioned by the complainants, has its origins in the disputes between groups belonging to the construction union to control works. The Government considers that the allegations according to which the police have attempted to implicate the union of civil construction workers in acts of extortion and blackmail in complicity with criminals are unfounded and not substantiated.
- 640.** In its communication of 14 July 2014, the Government refers to the information provided by the FTCCP in relation to recommendation (c) (entry into official institutions of certain pseudo-unions) and explains that the configuration of the executive board of SENCICO – that is, its membership, the number of members and its functions – is governed by Legislative Decree No. 147, which establishes the executive board as the highest body of SENCICO and authorizes it, as such, to set the necessary standards for its own optimum functioning, in accordance with the technical, administrative and economic autonomy conferred upon it.

Consequently, according to the Government, the change to the representation of the workers on SENCICO's executive board was made, within its authority, by the executive board itself, as it sets its own standards concerning its composition and operation.

641. For all the above reasons, the Government requests the Committee to set the case aside.

D. The Committee's conclusions

642. *The Committee recalls that, in the present case, the complainant organizations allege murders of trade union leaders and members against the backdrop of a climate of violence, threats and extortion created by criminal mafia groups and pseudo-unions. According to the allegations, police officers have been involved in the situation since the term of the previous Government, and the violence is sometimes a result of confrontations between organized mafia groups seeking control of construction projects. The complainant organizations also allege that the authorities are disinterested and ineffective and that the groups which commit the crimes do so with impunity. The complainant organizations further allege the maintenance by the authorities of the registration accepted by the previous administration of a number of pseudo-unions, and the progressive entry of a number of such groups into official institutions, to the detriment of the FTCCP.*

643. *The Committee takes note of the detailed information from the Ministry of the Interior, transmitted by the Government, on the status of the investigations carried out in relation to the murder of four trade union leaders (recommendations (a) and (d)), from which it is apparent that: (1) the suspected instigator of the murder of Miguel Díaz Medina has been identified and detained (the Committee observes that the Government has not provided information on the judicial process and asks to be kept informed in that regard); (2) the suspected murderer of Carlos Armando Viera Rosales has been identified and detained and the police investigations concluded; the process is now at the judicial stage (in this connection the Committee recalls that in 2012 the complainant organizations indicated that the suspected murderer of Carlos Armando Viera Rosales had been released three months after being detained and, therefore, the Committee requests the Government to clarify whether the suspected murderer is currently detained or has been released, and to provide information on the progress of the judicial proceedings); and (3) it has not been possible to identify the perpetrators of the murders of Guillermo Alonso Yacila Ubillus and Rubén Snell Soberón Estela. The Committee deeply regrets the failure to shed light on the events and circumstances surrounding the murders of Mr Alonso Yacila Ubillus and Mr Snell Soberón. The Committee equally regrets that the Government has not furnished any information whatsoever on the status of the criminal proceedings for the murders of the three union members Luis Esteban Luyo Vicente, Jorge Antonio Vargas Guillen and Rodolfo Alfredo Mestanza Poma. The Committee recalls that the absence of judgments against 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 requests the Government to keep it informed of developments in the criminal proceedings.*

644. *The Committee recalls that, based on its previous examination of the case, it requested the Government to continue to take measures in the framework of the existing tripartite dialogue (recommendation (a)). In this connection, the Government takes note of the information transmitted by the CGTP in relation to the tripartite dialogue forum convened by the Government in June 2014 to address the issue of violence in the civil construction sector. The forum would serve as a space for analysis of the problem and would lead to priority multisectoral and intergovernmental actions that would facilitate eradication of the violence in the sector. The Committee notes that, according to the CGTP, the FTCCP did not attend the dialogue forum because it considered that some of the union organizations invited were*

not legitimate or representative participants. The Committee also notes that, as a result of various conversations between the Ministry and the FTCCP, a decision was taken to postpone the dialogue forum until certain actions designed to build trust between the parties had been completed. While welcoming the Government's initiative to convene a tripartite dialogue forum with a view to eradicating the violence in the construction sector, the Committee notes that the forum had to be postponed owing to a lack of trust between the parties. The Committee emphasizes that the problem of violence in the civil construction sector, and the actions taken to eradicate it, must be considered with reference to social dialogue, and therefore requests the Government to inform it of the actions carried out in order to build trust between the parties and foster tripartite dialogue.

645. *With regard to recommendation (b), and specifically the thorough investigation to be carried out by the Public Prosecutor's Office into the motives and those responsible for the violence in the construction sector, the Committee takes note of the Government's indication that the Crime Observatory of the Public Prosecutor's Office had included in its workplan for 2014 a quantitative and qualitative investigation into the cases of extortion and homicide in the civil construction sector. The Committee regrets that to date the Government has not sent any information whatsoever on this investigation and requests the Government to inform it, without delay, of the results of the investigation and of the follow-up measures which have been taken.*

646. *The Committee recalls that, based on its previous examination, it requested the complainant organizations to furnish more details about the allegation of the entry into official institutions of certain pseudo-unions (recommendation (c)). The Committee notes that, according to the FTCCP, the 2009 modification of the Standing Orders of SENCICO contravenes Supreme Decree No. 043-2006-PCM, which establishes that modifications of the standing orders of decentralized public entities must be approved by Supreme Decree, and not by Executive Board Decision, as occurred in this instance. The FTCCP also alleges that this change to the Standing Orders, which affects its participation on the body's executive board, was made in order to allow a representative of the pseudo-unions onto the board. The Committee takes note of the Government's statements on this matter, according to which the configuration of the board of SENCICO – that is, its membership, the number of members and its functions – is governed by Legislative Decree No. 147, which establishes the executive board as the highest body of SENCICO and authorizes it, as such, to set the necessary standards for its own optimum functioning, in accordance with the technical, administrative and economic autonomy conferred upon it. While it acknowledges that the modification of the Standing Orders has a direct impact on the FTCCP's participation on the executive board of SENCICO, the Committee observes that this modification was allegedly made on the basis of Legislative Decree No. 147, which establishes that the executive board has the authority to change the standards which govern its configuration and functioning. Furthermore, the Committee considers that the FTCCP has not provided enough detail to substantiate the allegation that the motive behind the change to the configuration of the executive board was to allow a representative of the pseudo-unions into the body's management. The Committee notes that according to the FTCCP there is no current initiative to modify the Directorate of the CONAFOVICER. Therefore, the Committee will not pursue its examination of this allegation.*

The Committee's recommendations

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

(a) *The Committee expresses its concern at the lack of judgments against those responsible for the murders of the four union leaders and firmly hopes that in*

the near future the criminal proceedings under way will lead to the identification of all the instigators and perpetrators of the murders, that responsibility will be apportioned and that those guilty will be duly punished. The Committee requests the Government to keep it informed of developments in the criminal proceedings relating to the four union leaders (and to clarify whether the suspected murderer of Carlos Armando Viera Rosales is detained or has been released) and to the three union members.

- (b) While welcoming the Government's initiative to convene a tripartite dialogue forum in June 2014, it notes that the forum was postponed owing to a lack of trust between the parties, and requests the Government to inform it of the actions taken to build trust between the parties and foster tripartite dialogue.*
- (c) The Committee requests the Government to inform it, without delay, of the results of the quantitative and qualitative investigation into the cases of extortion and homicide in the civil construction sector which, according to the Government, the Crime Observatory of the Public Prosecutor's Office should have carried out in 2014.*
- (d) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of this case.*

CASE NO. 3119

INTERIM REPORT

**Complaint against the Government of the Philippines
presented by
the Kilusang Mayo Uno (KMU)**

Allegations: The complainant organization alleges harassment, intimidation and threats against trade union leaders and members by the armed forces in collusion with private companies

- 648.** The complaint is contained in a communication dated 26 March 2015 from Kilusang Mayo Uno (KMU).
- 649.** Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case on two occasions. At its meeting in March 2016 [see 377th Report, para. 7], the Committee issued 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 information or observations requested had not been received in due time. To date, the Government has not sent any information.
- 650.** The Philippines 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

651. In a communication dated 26 March 2015, the complainant organization KMU alleges harassment, intimidation and threats against trade union leaders and members by the armed forces in collusion with private companies.

652. The complainant denounces the failure of the Government to ensure that the rights of trade unions and workers are adequately respected as set forth in ILO Conventions Nos 87 and 98, particularly the Government's failure to eliminate the culture of impunity, of which the country's labour sector is a victim. According to the complainant, despite the promised reforms under the current Government, violations against the rights of workers and trade unions persist, and the climate of impunity produced by assimilating industrial relations with the Government's counterinsurgency programme Oplan Bayanihan has and will continue to have a demonstrable impact on trade union activities such as organizing, representation, assertion of rights, and enforcement of individual and collective contractual agreements.

653. The complainant states that the allegations concern specifically cases that have occurred in Region 11 or Southern Mindanao Region (SMR), and clearly demonstrate that trade union violations in the country continue to occur with impunity and act as a stumbling block to the full exercise of workers' rights to organize, collectively bargain and strike under Conventions Nos 87 and 98.

a. Harassment, intimidation, witch-hunting and grave threats committed by the military and police forces against trade union leaders

a.1. Listing of trade union leaders in the military's order of battle; vilification of union leaders and members and accusing them of being members and supporters of the armed rebel group New People's Army (NPA)

1. *Perlita Milallos, President, Freshmax Workers Union–National Federation of Labor Unions–Kilusang Mayo Uno (FWU–NAFLU–KMU), Compostela, Compostela Valley*

654. The complainant indicates that Ms Milallos led the union in a successful strike against a Korean-owned banana plantation in 2013 and has continued to be active on workers' concerns. The complainant alleges that, on 26 November 2014, elements of the 66th Infantry Battalion of the Armed Forces of the Philippines (AFP) interrogated her in her own residence for nearly three hours and asked her about her activities as a union and community leader. The military told her about the peace and development programmes the Government was planning for Compostela and reiterated that they needed cooperation from the residents and that strikes and pickets did not help. The soldiers informed her that she was listed in the military's order of battle, even claiming that she owned a "codename" in the underground communist movement. The military tried to squeeze information from Ms Milallos about a certain rebel named "Busyong" and threatened her that it knew that one of her sons was a member of the NPA. She vehemently denied these allegations as purely untrue. Furthermore, the soldiers also attempted to bribe her with a monthly stipend, cell phone and cell phone load in exchange for her close cooperation with the Government's counter-insurgency programme.

2. *Rogelio Cañabano, Vice-President of Bigkis ng Nagkakaisang Manggagawa sa Apex Mines–Association of Democratic Labor Organizations–Kilusang Mayo Uno (BINA–ADLO–KMIJ), Maco, Compostela Valley*

655. The complainant alleges that Mr Cañabano experienced a series of harassments by the Philippine military. On 7 August 2014, soldiers belonging to the 71st Infantry Battalion photographed his house and took away a picture of him. On 25 August 2014, soldiers in plain clothes interrogated Mr Cañabano on his whereabouts and union activities, and pressed him to give them a list of all union officers. The following day, the soldiers entered his home and hounded him with the same questions, this time asking him who the organizers of KMU were. On 9 September 2014, soldiers again barged inside the home of Mr Cañabano and interrogated him. The soldiers pressed Mr Cañabano about union activities, and asked for the names of leaders and union members, including names of organizers.

3. *Musahamat Farm 2 Workers’ Labor Union–National Federation of Labour Unions–Kilusang Mayo Uno (MWLU–NAFLU–KMU), Pantukan, Compostela Valley, its officials, namely Esperidion Cabaltera, Richard Genabe, Dionisio Gonazales, Jovito Socias, Geraldine Suico, Cenon Arcepulo and Bernardita Almero*

656. The complainant alleges that officers of the Musahamat Farm 2 Workers’ Labour Union of Pantukan, Compostela Valley were harassed and made to pose as rebel surrenders on 29 August 2014. This incident occurred following a torching incident at the Musahamat Farm 1 premises on 22 August 2014 by members of the NPA. Furthermore, the complainant alleges that the military connived with the company management to call the union to a meeting where five heavily armed soldiers of the 71st Infantry Battalion were waiting and interrogated them for four hours. Paraphernalia and tarpaulin of the Communist Party of the Philippines–New People’s Army–National Democratic Front (CPP–NPA–NDF) were placed in front of the union officers and they were videotaped and audiotaped while undergoing questioning by the soldiers. Soldiers are still seen inside the company compound of Musahamat Farms, Inc.

4. *Radio Mindanao Network Davao Employees Union–National Federation of Labour Unions–Kilusang Mayo Uno (RDEU–NAFLU–KMU), Davao City*

657. The complainant states that, due to unfair labour practice and refusal to bargain, radio workers of Radio Mindanao Network (RMN) Davao went on strike for 41 days beginning 2 October 2014. The complainant alleges that, during the strike and months prior to the strike conducted by RDEU–NAFLU–KMU, radio commentators belonging to the management persistently vilified the officers of the union and the federation NAFLU–KMU, including red-tagging the union as a front of the CPP–NPA–NDF. KMU SMR Secretary-General, Romualdo Basilio, was also vilified and demonized by radio commentators in the programme “Koskos Batikos”.

- a.2. Death threats, blacklisting and other forms of harassment

5. *Vicente Barrios, Chairperson of KMU-SMR and President of Nagkahiusang Mamumuo sa Suyapa Farm–National Federation of Labour Unions–Kilusang Mayo Uno (NAMASUFA–NAFLU–KMU)*

658. The complainant states that Mr Barrios is a union leader who has survived two assassination attempts in 2005 and 2006 and braved several threats to his life and intimidation. Mr Barrios’

struggle and that of the workers of Compostela became the subject of the ILO high-level mission in 2009 but until now, the case remains unsolved.

659. The complainant alleges that Mr Barrios' struggle with the multinational fruit company Sumitomo Fruits has made him a consistent target of harassment thereafter. After a month-long struggle against union busting, Mr Barrios and members of two packing plants in Compostela, Compostela Valley were locked in a dispute with the fruit company in 2012 but were able to return to work and promised their backwages as per the compromise agreement between the company's contractors and the two unions affected. The compromise agreement was not fulfilled by one of the contractors. On 25 January, when workers conducted a picket to press for payment of backwages, the contractor fired his gun once and pointed it at Mr Barrio threatening his life. The incident was settled at the level of the barangay (township) but as the labour dispute between the fruit company and the packing plants around Compostela intensifies, Mr Barrios' life continues to be in grave danger.

b. Filing of trumped-up charges against trade union leaders and members due to their involvement and active participation in legitimate economic and political activities of the trade unions

6. *Artemio Robilla and Danilo Delegencia, President and Board member, respectively, of Maragusan DOLE Stanfilco Workers' Union–National Federation of Labour Unions–Kilusang Mayo Uno (MDSLU–NAFLU–KMU)*

660. The complainant indicates that Mr Robilla and Mr Delegencia were named in a warrant of arrest for alleged murder of supervisor Notalio Mamon of DOLE–STANFILCO on 3 February 2014. Murder and robbery cases were filed before the Provincial Prosecutors Office with NPS Docket No. XI-01-INV-14B-00064. The two union officials have been indicted on the crime but have filed a motion for reconsideration and the deferment of the issuance of the warrant of arrest. According to the complainant, the charges of murder and robbery are utterly false and politically motivated, and both leaders have been unwavering defenders of workers' rights in Maragusan, a heavily militarized area in Compostela Valley where the connivance of big business and state armed forces has served to viciously repress the workers' right to organize and freedom of association. The union officials were instrumental in helping illegally dismissed workers claim retirement benefits which DOLE–STANFILCO refused to pay in 2013, in violation of the Labour Code.

661. In the light of the ongoing violations, the complainant expresses the hope that: (i) military and government officials responsible for cases of union repression, especially harassment and intimidations of union leaders, will be prosecuted; (ii) the trumped-up criminal cases filed against union leaders will be dropped; (iii) the military will pull out immediately and unconditionally from company premises and workers' communities; (iv) military interference in union activities and labour issues will end because such intervention hinders productive dialogue between employers' and workers' communities; (v) vilification campaigns by the military against Kilusang Mayo Uno will stop; and (vi) the assimilation of industrial relations to counterinsurgency programme Oplan Bayanihan will end. The complainant hopes that the Government will adhere to the core labour Conventions it is signatory to and the view that the full exercise of the right to organize and unionize suggests a healthy democracy and is not destructive to economic and political stability, and that social justice will eventually be attained, enabling workers and people to enjoy their fundamental rights to speak, to be heard, to associate, to collectively bargain and to conduct concerted actions.

B. The Committee's conclusions

662. *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.*
663. *Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], 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.*
664. *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 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 presenting, for objective examination, detailed replies concerning allegations made against them [see First Report, para. 31].*
665. *The Committee notes that, in the present case, the complainant organization alleges harassment, intimidation and threats against trade union leaders and members by the armed forces in collusion with private companies.*
666. *The Committee notes, in particular, the complainant's allegations, accompanied by supporting documentation, that: (i) with regard to Perlita Milallos, President of the Freshmax Workers Union–NAFLU–KMU, on 26 November 2014, elements of the 66th Infantry Battalion of the Armed Forces of the Philippines, interrogated her at home for three hours, asking about her union activities, stressing that they needed cooperation rather than strikes and pickets, informing her that she was listed in the military's order of battle, claiming to know that she was part of the underground communist movement and her son was a member of the NPA (claims that she denies), attempting to squeeze information and bribe her to cooperate with the Government's counter-insurgency programme; (ii) with regard to Rogelio Cañabano, Vice-President of Bigkis ng Nagkakaisang Manggagawa sa Apex Mines–Association of Democratic Labor Organizations–KMU, on 7 August 2014, soldiers belonging to the 71st Infantry Battalion took photographs of his house and of him, on 25 and 26 August and 9 September 2014, soldiers entered his home, interrogated him on his whereabouts and union activities and pressed him to give a list of all union officers and the names of KMU organizers; (iii) with regard to Esperidion Cabaltera, Richard Genabe, Dionisio Gonazales, Jovito Socias, Geraldine Suico, Cenon Arcepulo and Bernardita Almero, officers of the Musahamat Farm 2 Workers' Labour Union of Pantukan, on 29 August 2014, following a torching incident by members of the NPA, military connived with the company to call the union to a meeting where heavily armed soldiers of the 71st Infantry Battalion interrogated the union officers at the workplace for four hours, taping them with paraphernalia of CPP–NPA–NDF placed in front of them. Soldiers are still seen inside the company; (iv) with regard to the Radio Mindanao Network Davao Employees Union (RDEU)–NAFLU–KMU, before and during a strike of radio workers in October 2014, radio commentators belonging to the management persistently vilified the union's officers, the federation NAFLU–KMU and the KMU–SMR Secretary-General, Romualdo Basilio as belonging to the CPP–NPA–NDF, for which a complaint was filed by Mr Basilio against the Association of Broadcasters of the Philippines; (v) with regard to Vicente Barrios, Chairperson of KMU–SMR and President of Nagkahiusang Mamumuo sa Suyapa Farm (NAMASUFA)–NAFLU–KMU, in the framework of a lengthy labour dispute between the multinational fruit company Sumitomo Fruits and two packing plants, during a picket to press for observance of the compromise agreement concluded after a lockout, a*

contractor fired a gun once and pointed it at Mr Barrios threatening him on 25 January 2014. Mr Barrios' life continues to be in grave danger as the labour dispute intensifies; and (vi) with regard to Artemio Robilla and Danilo Delegencia, President and Board member of Maragusan DOLE Stanfilco Workers' Union–NAFLU–KMU, on 3 February 2014, an arrest warrant was issued and false and politically motivated charges of murder and robbery of supervisor Notalio Mamon of DOLE–STANFILCO were filed against the two union leaders who had been instrumental in helping illegally dismissed workers claim retirement benefits which DOLE–STANFILCO had refused to pay in 2013; the Provincial Prosecutors Office indicted them for murder.

- 667.** *The Committee notes with concern that the allegations in this case present similarities to allegations previously examined by the Committee in the framework of Case No. 2528. It also notes that all alleged acts have occurred in the region of Mindanao, especially Compostela Valley and Davao City.*
- 668.** *Firstly, concerning the various acts of harassment and intimidation of the above union officials, the Committee wishes to generally recall that acts of harassment and intimidation carried out against workers by reason of trade union membership or legitimate trade union activities, while not necessarily prejudicing workers in their employment, may discourage them from joining organizations of their own choosing, thereby violating their right to organize. In particular, in relation to the alleged threat at gunpoint in the context of a picket, of Mr Barrios (the death threats and assassination attempt of whom have previously been the subject of Case No. 2528), the Committee recalls that the environment of fear induced by threats to the life of trade unionists has inevitable repercussions on the exercise of trade union activities, and the exercise of these activities is possible only in a context of respect for basic human rights and in an atmosphere free of violence, pressure and threats of any kind. With respect to the alleged lengthy interrogations of union leaders by the military, the Committee recalls that measures depriving trade unionists of their freedom on grounds related to their trade union activity, even where they are merely summoned or questioned for a short period, constitute an obstacle to the exercise of trade union rights and 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**, *op. cit.*, paras 44, 60, 63 and 786]. As regards specifically the alleged vilification of union officials assimilating them to the CPP–NPA–NDF, the Committee recalls that, although the exercise of trade union activity or the holding of trade union office does not provide immunity as regards the application of ordinary criminal law, workers should have the right, without distinction whatsoever, in particular without discrimination on the basis of political opinion, to join the organization of their own choosing. They should have the right to establish the organizations that they consider necessary in a climate of complete security irrespective of whether or not they support the social and economic model of the Government, including the political model of the country [see **Digest**, *op. cit.*, paras 212 and 213].*
- 669.** *The Committee requests the Government to take all necessary measures to guarantee the security of Vicente Barrios, Perlita Milallos, Rogelio Cañabano and the other harassed trade union officials named above. Recalling that, in the framework of Case No. 2528, the allegations of harassment and intimidation had been referred to the National Tripartite Industrial Peace Council (NTIPC) Monitoring Body for discussion and issuance of recommendations, the Committee also requests the Government to take the necessary measures to ensure the full and swift investigation and resolution of the current allegations of acts of harassment and intimidation of trade union leaders and members of unions affiliated to the KMU.*

- 670.** *Stressing once again that, while the military clearly has a key role to play in ensuring law and order in the country, blanket linkages of trade unions to the insurgency has a stigmatizing effect and often places union leaders and members in a situation of extreme insecurity [see also 356th Report, Case No. 2528, para. 1182], the Committee requests the Government to take all necessary measures in the future to ensure respect for the principles enunciated above. Recalling that, in 2009, the Committee of Experts on the Application of Conventions and Recommendations was able to note that, in keeping with the high-level mission's recommendations, the Executive Secretary, speaking on behalf of the President, stated that, with the repeal of the anti-subversion law, those opposing the Government were no longer regarded as subversive or targeted in this regard and any such persecution would not be tolerated, the Committee expects that the Government will take the necessary accompanying measures, including the re-issuance of appropriate high-level instructions, to ensure the strict observance of due process guarantees in the context of any surveillance and interrogation operations by the army and police in a way that guarantees 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 [see also 356th Report, Case No. 2528, para. 1184]. As to the alleged listing of trade unionists in the so-called "order of battle", having previously noted with concern in the framework of Case No. 2528 that the Armed Forces of the Philippines (AFP) did maintain "order of battle" lists featuring trade unionists which had led to the commission of acts of violence against them, the Committee reiterates that such measures go against the duty to take all appropriate measures to guarantee that, irrespective of trade union affiliation, trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind [see also 356th Report, Case No. 2528, para. 1179]. Recalling that all practices involving the blacklisting of trade union officials or members constitute 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], the Committee requests the Government to indicate the measures taken to suppress "order of battle" lists which are likely to lead to the commission of acts of violence against trade unionists on the basis of their purported ideology.*
- 671.** *Secondly, as regards the alleged presence of military in and around the workplace, the Committee expects that the Government will take the necessary accompanying measures, including the issuance of appropriate high-level instructions, to bring to an end prolonged military presence inside workplaces which is liable to have an intimidating effect on the workers wishing to engage in legitimate trade union activities and to create an atmosphere of mistrust which is hardly conducive to harmonious industrial relations [see also 356th Report, Case No. 2528, para. 1184].*
- 672.** *Thirdly, as to the allegation that the criminal charges brought against Artemio Robilla and Danilo Delegencia leading to their indictment for murder, were false and linked to the exercise of legitimate trade union activities, the Committee notes that the Committee of Experts on the Application of Conventions and Recommendations was able to note in 2015 the Government's indications that the criminal charges brought against Artemio Robilla and Danilo Delegencia are under a new investigation, and that the DOLE and the Department of Justice issued Joint Clarificatory Memorandum Circular No. 1-15 to clarify the provisions of the DOLE-DILG-PNP-DND-AFP Joint Guidelines on the Conduct of the AFP/Philippine National Police (PNP) Relative to the Exercise of Workers' Right to Freedom of Association, Collective Bargaining, Concerted Actions and Other Trade Union Activities, which makes clear that before filing information in court on cases arising out of or related to labour disputes, prosecutors must secure clearance from the DOLE or the Office of the President, and that this requirement for clearance applies to cases arising out of the exercise of workers' freedom of association, collective bargaining and other trade union activities. The Committee welcomes the above initiative of the Government to provide safeguards against false criminal charges against trade union members and to avoid*

detention of workers on the basis of their union activities. As regards the concrete allegation concerning the two union officials, the Committee is not in a position to determine, on the basis of the information brought before it, whether these cases concern trade union activities, and requests the Government to submit further and as precise information as possible concerning the legal or judicial proceedings instituted as a result of the charges and the result of such proceedings.

The Committee's recommendations

673. *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 by means of an urgent appeal, to present its comments and observations on this case. The Committee urges the Government to provide its observations on the complainant's allegations without further delay.***
- (b) *With respect to the alleged acts of harassment and intimidation of several union officials in the Southern Mindanao region, especially Compostela Valley and Davao City, the Committee:***
 - (i) *requests the Government to take all necessary measures to guarantee the security of Vicente Barrios, Perlita Milallos and the other harassed trade union officials named above, and ensure respect in the future for the principles enunciated in its conclusions;***
 - (ii) *recalling that, in the framework of Case No. 2528, the allegations of harassment and intimidation had been referred to the NTIPC Monitoring Body for discussion and issuance of recommendations, requests the Government to take the necessary measures to ensure the full and swift investigation and resolution of the current allegations of acts of harassment and intimidation of trade union leaders and members of unions affiliated to the KMU;***
 - (iii) *requests the Government to take the necessary measures in the future to ensure respect for the principles enunciated in its conclusions and expects that the Government will take the necessary accompanying measures, including the re-issuance of appropriate high-level instructions, to ensure the strict observance of due process guarantees in the context of any surveillance and interrogation operations by the army and police in a way that guarantees 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;***
 - (iv) *as to the alleged listing of trade unionists in the so-called "order of battle", requests the Government to indicate the measures taken to suppress "order of battle" lists which are likely to lead to the commission of acts of violence against trade unionists on the basis of their purported ideology.***

- (c) *As regards the alleged presence of military in and around the workplace, the Committee expects that the Government will take the necessary accompanying measures, including the issuance of appropriate high-level instructions, to bring to an end prolonged military presence inside workplaces which is liable to have an intimidating effect on the workers wishing to engage in legitimate trade union activities and to create an atmosphere of mistrust which is hardly conducive to harmonious industrial relations.*
- (d) *As to the allegation that the criminal charges brought against Artemio Robilla and Danilo Delegencia were false and linked to the exercise of legitimate trade union activities, the Committee is not in a position to determine, on the basis of the information brought before it, whether these cases concern trade union activities, and requests the Government to submit further and as precise information as possible concerning the legal or judicial proceedings instituted as a result of the charges and the result of such proceedings.*
- (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.*

CASE NO. 3111

DEFINITIVE REPORT

**Complaint against the Government of Poland
presented by
the Independent Self-Governing Trade Union “Solidarnosc”
(NSZZ “Solidarnosc”)**

Allegations: The complainant organization alleges that the definition of parties to a collective dispute as contained in the national laws restricts the collective bargaining rights and the right to strike of some workers and denounces an excessive exclusion from the right to strike of some civil service employees. The complainant also denounces the fact that national laws do not provide for general strikes or strikes relating to socio-economic issues

- 674.** The complaint is contained in a communication from the Independent Self-Governing Trade Union “Solidarnosc” (NSZZ “Solidarnosc”) dated 14 January 2015.
- 675.** The Government forwarded its response to the allegations in a communication dated 3 June 2015.
- 676.** 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), as well as the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Workers’ Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

- 677.** In a communication dated 14 January 2015, the complainant organization NSZZ “Solidarnosc” denounces a lack of proper implementation by the Polish Government of ILO Conventions Nos 87 and 151 into Polish legislation (Act on Trade Unions of 23 May 1991, and the Act on Collective Labour Disputes of 23 May 1991). The complainant alleges that the Government: (i) violates Convention No. 87 by limiting parties on the employers’ side of a collective dispute and of the strike to the employer within the meaning of the Labour Code, and Convention No. 151 through the lack of provisions that would recognize “public authorities” as a party of the dispute for civil servants; (ii) violates Convention No. 87 through the lack of legal regulations allowing trade unions to organize strikes on socio-economic issues and general strikes; and (iii) violates Convention No. 151 through depriving some of the employees in the state governing bodies and local government, courts and prosecutor’s offices of the right to strike.
- 678.** The complainant provides a legislative overview indicating that, in accordance with article 59(3) of the Constitution of the Republic of Poland, trade unions have the right to organize strikes and other forms of protest within the limits specified in the Act on Trade Unions, and may conduct collective disputes based on the provisions of the Act on Collective Labour Disputes. A collective labour dispute of workers with an employer or employers may concern working conditions, wages or social benefits as well as workers’ rights and freedoms of employees or other groups who have the right to organize in trade unions (section 1 of the Collective Labour Disputes Act). An employer within the meaning of this Act is an entity referred to in section 3 of the Labour Code (section 5 of the Collective Labour Disputes Act). If the parties fail to reach agreement, the final stage of the industrial dispute is a strike. A strike is a collective work stoppage by workers and is the last resort (section 17(1) and (2)). A warning strike can be organized but only once and for a period not longer than two hours (section 12). In defence of the rights and interests of workers who do not have the right to strike, the union of another establishment can organize a solidarity strike not exceeding one half of a working day (section 22). Any work stoppage due to a strike that affects positions, equipment and machinery, where interruption of work would constitute a danger to human lives or health or to the security of the State is prohibited (section 19(1)): it is unacceptable to organize a strike in the Agency of Internal Security, the Intelligence Agency, the Military Counter-intelligence Service, the Military Intelligence Service, the Central Anti-Corruption Bureau, in units of the police, armed forces of the Republic of Poland, prison service, frontier guard, custom service as well as units of the fire brigades (section 19(2)); and the right to strike is not granted to employees in state governing bodies and local government, courts and prosecutors’ offices (section 19(3)). A strike affecting one establishment is announced by the trade union organization with the consent of the majority of voting employees if the vote was attended by at least 50 per cent of employees at the workplace (section 20(1)); a strike affecting more than one establishment is declared by the trade union body indicated in the by-laws after having been approved by the majority of those workers voting in the establishments in which the strike is to take place, as long as in each of these establishments at least 50 per cent of workers attended the vote (section 20(2)); notice of the strike must be given at least five days in advance (section 20(3)).
- 679.** As regards point (i), the complainant states that referring the Collective Labour Disputes Act to the definition contained in section 3 of the Labour Code means that, in Poland, a party to a collective dispute on the employer side can only be an organizational unit or a natural person, who employs workers. The complainant denounces that, due to the narrowing of the definition of a party to a collective dispute and strike to the employer within the meaning of the Labour Code, it often happens that trade unions cannot initiate a dispute (for example, for a wage increase) with the entity actually deciding on the financial issues of the profession. For example, the university or school itself is considered to be the employer of persons engaged by the university or school, although financial issues of public institutions

such as universities and schools are decided by, depending on the subject, the Minister of Science and Higher Education, the Minister of Education or the Minister of Finance. Until recently, the Minister of Science and Higher Education could be a party to a multi-establishment collective agreement of public universities; however, national legislation repealed the relevant provision at the end of 2014. The complainant indicates that it is not currently possible to initiate a collective dispute or even to negotiate a collective agreement with the appropriate minister, as the legislation shifts the burden of decision in all employment matters, including financial matters, to the university (the employer within the meaning of the Labour Code). On issues concerning employment law, the speaker on behalf of the university as the employer is the vice-chancellor of the university, and the speaker on behalf of the school as the employer is the headmaster, although they both work within the financial limits set by the Ministry of Science and Higher Education and the Ministry of Finance (or in the case of a public school, by the Minister of Education and the Minister of Finance). The complainant believes that directing economic demands of workers to the vice-chancellor of the university or to the school principal is pointless, because they have no real power over financial decisions.

- 680.** Furthermore, the complainant denounces that it is often impossible to conduct a collective dispute in the private sector with the entity economically responsible in practice, for example, against the actual employer or parent company. In Poland, there are many companies that merge in order to concentrate capital. Hence, it is not always the employer within the meaning of the Labour Code (employing entity) that is the actual employer or the employer deciding on the financial situation of the persons working in a particular branch of a company. The complainant adds that the legal solution adopted in the Collective Labour Disputes Act was created for the needs of the individual employment relationship and does not correspond to the specificity of collective labour relations; it has been criticized in the national labour law doctrine as it results in requests concerning the interests of workers being addressed to employers with no decision-making powers.
- 681.** The complainant reiterates that the objections come down to the fact that, on the one hand, public authorities cannot constitute a party to a collective dispute or strike in Poland (neither the Government nor the Minister nor the local government), and, on the other hand, parties to a collective dispute or strike cannot be other entities economically responsible for, or granting entitlements to, certain professions. According to the complainant, a party to a labour dispute and strike should always be the financially responsible entity or the entity actually conferring powers on certain professions, for example, a public authority such as a government, competent minister, local or provincial government, among others, or another responsible entity, for example, the parent company.
- 682.** As regards point (ii), the complainant states that the abovementioned problem of the competent (real) parties to a collective dispute and strike is of great practical importance, since the recognition solely of the employer within the meaning of the Labour Code as a party to a collective dispute, causes consequences in the form of limiting labour dispute matters to issues at the enterprise level. Section 1 of the Collective Labour Disputes Act provides that a collective dispute of workers with the employer or employers may relate to working conditions, wages and social benefits, union rights and freedoms of employees or other groups, who have the right to organize in trade unions. In light of this statutory provision, unions cannot – within the limits of a collective dispute – express their dissatisfaction with socio-economic issues towards the entity really responsible for the workers’ professional, social and economic situation. The employer in the narrow sense of “employing entity” does not determine the socio-economic situation affecting the working conditions and social conditions of the workers. National law does not provide for situations where unions may start disputes and carry out strikes against a public authority on the grounds of socio-economic issues. The complainant concludes that the lack of adequate regulations concerning organization of strikes on socio-economic issues is in fact a ban on

strikes against the economic policy of the State and is a serious violation of the freedom of association.

- 683.** Furthermore, the complainant contends that while, under the Collective Labour Disputes Act, trade unions can initiate strikes including warning strikes, solidarity strikes, enterprise strikes and multi-employer strikes, national legislation does not use the term “general strike”. The complainant understands the term “general strike” as a strike involving, in particular, different employers of a certain industry, region or even the entire country, in order to support or defend favourable legislative solutions, or to protest against plans and decisions taken by public authorities, which bring about adverse social consequences or consequences for certain professions.
- 684.** As regards point (iii), the complainant refers to section 19(1) of the Collective Labour Disputes Act which prohibits any work stoppage due to a strike that affects positions, equipment and machinery, where interruption of work would constitute a danger to human lives or health, or to the security of the State. The complainant underlines that, at the same time, national legislation does not specify a particular position or even a procedure that would be helpful in determining the list of positions on which the interruption of work would be a threat to life, health or security of the State. Section 19(2) prohibits strikes at the Agency of Internal Security, the Intelligence Agency, the Military Counter-intelligence Service, the Military Intelligence Service, the Central Anti-Corruption Bureau, and in units of the police, armed forces of the Republic of Poland, prison service, frontier guard, custom service, as well as units of the fire brigades. Lastly, section 19(3) provides that the right to strike is not granted to employees in state governing bodies and local government, courts and prosecutors’ offices. The complainant organization questions the compliance with ILO standards of the restrictions on the right to strike in relation to certain employees in public administration, since national law denies this right to a wide range of people with the status of employee, including those who have been employed not in civil servant positions but under contracts of employment for auxiliary and servicing activities in state governing bodies, local government, courts and prosecutors’ offices.
- 685.** In the complainant’s view, the prohibitions in section 19(1) and (3) of the Collective Labour Disputes Act must be regarded as excessive. Pursuant to article 59(4) of the Polish Constitution, the scope of freedom of association for trade unions and employers’ organizations and other trade union rights may only be subject to such statutory limitations as are permitted by international agreements binding on the Republic of Poland. The complainant considers that the right to strike should be guaranteed to a wide group of workers and limitations on this right can only be exceptional (that is, in the case of public servants exercising authority in the name of the State or of workers in essential services in the strict sense of the term), whereas section 19(3) of the Act denies the right to strike to all employees in state governing bodies and local government, courts and prosecutors’ offices.
- 686.** Consequently, the complainant organization denounces that national legislation does not implement ILO fundamental standards on freedom of association, especially in relation to the right to strike, as it does not provide for: collective labour disputes and strikes with the government, minister, local government, or entity responsible for economic, social or professional affairs, other than the direct employer; strikes on socio-economic issues and general strikes; and the right to strike for some employees in state governing bodies and local government, courts and prosecutors’ offices. In this regard, the complainant denounces that the necessary legislative amendments have still not been made, and the Government has still not implemented the recommendations made by the Committee in 2012 in the framework of Case No. 2888 with regard to the right to organize of persons performing work under civil law contracts and the self-employed.

B. The Government's reply

687. In a communication dated 3 June 2015, the Government wishes to first make reference to the constitutional sources of the right to strike and the right to organize. Article 59(1) and (2) of the Constitution of the Republic of Poland stipulates that the right to organize of trade unions, socio-occupational organizations of farmers and employers' organizations shall be ensured, and that trade unions and employers and their organizations shall have the right to bargain collectively, particularly for the purpose of resolving collective labour disputes, and to conclude collective labour agreements and other arrangements. In turn, pursuant to article 59(3), trade unions shall have the right to organize workers' strikes or other forms of protest subject to limitations specified by statute. For protection of the public interest, statutes may limit or forbid the conduct of strikes by specified categories of employees or in specific fields. The scope of the freedom of association of trade unions and employers' organizations and of other freedoms of association may only be subject to such statutory limitations as are admissible in accordance with international agreements to which the Republic of Poland is a party (article 59(4)). The Government stresses that the right to strike differs from the right to organize of trade unions and the right to collective bargaining: while the scope of the right to organize and the right to collective bargaining is broad, the right to strike is subject to limitations defined by law, taking into consideration the specificities of strikes.

(i) *Party to a labour dispute*

688. Regarding the issue of defining the party to a labour dispute, the Government states that the resolution of labour disputes is regulated by the Collective Labour Disputes Act. By means of this Act the legislator has fulfilled the obligation under article 59(3) of the Constitution of the Republic of Poland to define the limitations applicable to the freedom to protest. These criteria determine the admissibility in a situation in which, pursuant to the force of law, one protected interest (the right of an entrepreneur to conduct profit-oriented economic activity and the protection of his property rights) is being renounced for the sake of another interest (the right of workers to fight for improving their employment situation).

689. The Government indicates that, in light of section 1 of the Collective Labour Disputes Act, a dispute may concern: employment conditions, payment conditions, social benefits, and the rights and freedoms of association. The term "labour dispute" is defined as a dispute between employees and an employer or employers. The party to a labour dispute, apart from employees represented by a trade union, may thus exclusively be an employer or employers. Under section 5 of this Act, a definition of an employer was adopted which is identical to the definition laid down in section 3 of the Labour Code. This legal structure is based on a largely universal governance model, and the capacity, on their own behalf, to employ workers constitutes the fundamental criterion, on the basis of which a legal or natural person is considered an employer. The merit of the term used in section 3 of the Labour Code is that the management, executive board or other body performing tasks governed by the provisions of labour law for the employer shall be able to discharge – for the benefit of employees – the obligations assumed by them by determining specific employment and payment conditions in their employment contracts.

690. The Government believes that, according to the above definition of the party to a labour dispute, there is no doubt that the employers of workers employed in organizational units which are part of the central or local government administration, are these units, represented by their directors who make decisions concerning specific employment and payment conditions offered to people employed by them, which implies that both a competent minister or other central government administration body and a local government body are excluded from the scope of the definition laid down in section 3 of the Labour Code, and, consequently, section 5 of the Collective Labour Disputes Act. The Government emphasizes

that the exclusion of public authorities from the direct participation in labour disputes constitutes a mindful and deliberate choice of the national legislator made in 1991 while enacting the Collective Labour Disputes Act, and that it remains within the legislative leeway of Parliament to opt for legal solutions that may bring about expected social and economic effects in the most appropriate manner. The Collective Labour Disputes Act was subject to an evaluation by the Polish Constitutional Tribunal, which, in its judgment of 24 February 1997, ruled that section 5 of the Collective Labour Disputes Act, under which the definition of “employer” does not provide for the participation of a minister or president of a communal association board (*gmina*) as a party to a labour dispute – separate from the direct employer – in disputes concerning employees of state-budget units administered by central or local authorities, is in compliance with articles 1 and 85 of constitutional rules left in force by section 77 of the Constitutional Act of 17 October 1992 on the mutual relations between the legislative and executive institutions of the Republic of Poland and on local self-government. Although a new Constitution was adopted in the meantime, the thesis behind this judgment remains valid.

691. According to the Government, the example provided by the complainant of a minister responsible for higher education who may not become a party to the dispute concerning an increase in salary, despite the fact that he or she makes decisions concerning the higher education institution’s finances, does not entirely correspond to legal reality. The annulment of the competence of the minister responsible for higher education to establish a multi-enterprise collective labour agreement (section 152 of the Act of 27 July 2005 on Higher Education), was related to the change of financial management principles applied by public higher education institutions. Under section 100 of the above Act, higher education institutions manage their financial affairs independently based upon a finance and operation plan, and the operating costs of public higher education institutions, the discharge of their liabilities, funding for their development and any other needs shall be covered by the revenues referred to in section 98(1) of this Act. The responsibility in this regard lies with the rector of a higher education institution, and it is the rector who – by enacting real powers pertaining to employers’ finances – represents the employer in labour relations towards employees of a higher education institution. The rector of a public higher education institution is responsible for managing its financial affairs and for managing – as an employer – funds allocated for employee salaries. Therefore, the rector is an appropriate party to any potential labour dispute concerning salary-related issues. Incidentally, it should be added that the possibility of establishing a multi-enterprise collective labour agreement for employees of such higher education institutions still exists; however, powers in this regard are now entrusted to an employers’ organization comprising those higher education institutions which employ workers for whom such an agreement would be established.

692. Referring to the alleged impossibility for trade unions to express their dissatisfaction in socio-economic matters in the form of a labour dispute, the Government recalls that an agreement had been concluded on 29 May 1992 between the Council of Ministers and the complainant on the rules for proceedings in resolving disputes between the state administration and NSZZ “Solidarnosc”. Pursuant to its preamble, the reason for the conclusion of this Agreement was that the rules contained in the trade union legislation did not allow for the resolution of many issues of concern for large labour groups. Moreover, the recently adopted Collective Labour Disputes Act did not apply to disputes with the state administration, and there was a lack of legal foundations for conducting social dialogue with the Government with a view to resolving social conflicts generated by reforms carried out in Poland. Under this Agreement, in the case of nationwide disputes of an inter-sectoral nature, the principal or central public administration bodies (Council of Ministers, ministers or directors of central offices) and the National Commission of NSZZ “Solidarnosc” could have been parties to a dispute. However, in the case of disputes concerning an entire sector or occupation, parties to a dispute could have been ministers or directors of central offices competent in relation to the subject of a dispute and – on the trade union’s part – national

sectoral secretariats empowered by proxy to represent national authorities of the union. The subject matter of a dispute could exclusively cover matters within the scope of trade unions' competences envisaged by law, provided that the rules of proceedings had not been specified in the legislation. The Agreement provided for the rules of proceedings for amicable dispute resolution – negotiations, mediation and arbitration – without granting the relevant union the right to organize a strike, which due to the scope of the dispute would have had to take the form of a general strike. The entry into force of the Act of 6 July 2001 on the Tripartite Commission for Social and Economic Affairs and on voivodship social dialogue commissions provided a legal basis for the achievement of the objectives for which the Agreement had been concluded. Pursuant to the provisions of this Act, the Tripartite Commission constituted a forum for social dialogue conducted with a view to reconciling the interests of workers, employers and the public interest. The Commission aimed to achieve and maintain social peace and was empowered to conduct social dialogue on salaries, social benefits and on other social or economic issues. Each party of the Commission had the right to submit matters with high societal and economic impact for further elaboration within the Commission, if such a party was convinced that resolving a particular matter was significant for maintaining social peace. The Government indicates that, at present, work is being conducted on the draft Act on the Social Dialogue Council and on other social dialogue institutions, on the basis of which the Tripartite Commission is to be replaced by the Social Dialogue Council as a forum for the tripartite cooperation between workers, employers and the Government. It is envisaged that social dialogue will continue within the Council with a view to reconciling the interests of workers, employers and the public interest.

- 693.** As to the alleged lack of formal empowerment of public authorities as a party to a labour dispute, the Government states that the Collective Labour Disputes Act neither protects these authorities against participation in disputes, nor constitutes a declaration of neutrality of the State in collective relations. The practice in collective relations applied in Poland to date proves that governmental authorities are not excluded from participating in such matters. Employees and their representatives, when explicitly and publicly articulating their demands, direct their claims subsequently to public authorities in the form of open letters and petitions, among other things. In turn, employers in the broadly understood state-budget units aim at safeguarding as many budget resources as possible so as to meet the demands of employee representatives.
- 694.** Referring to the alleged violation by limiting parties on the employers' side to a labour dispute to employers within the meaning of the Labour Code and the suggestion of the complainant to provide for the possibility of conducting a labour dispute with the actual employer (in enterprises that are merged with the objective of concentrating capital or in companies with separate branches), the Government stresses that the diversity of businesses, including organizational structures, justifies the prudence of the national legislator in regulating this issue. The possibility of establishing legal persons that are solely responsible for fulfilling their obligations is an important element of the freedom of economic activity. However, pursuant to article 20 of the Constitution, the basis of the economic system of the Republic of Poland shall include solidarity, dialogue and cooperation between social partners, which means that the national legislator must, on the one hand, realize the principle of economic freedom and, on the other hand, ensure labour protection and establish an appropriate legal framework for dialogue and cooperation between social partners at every level of social and economic life, including at the establishment level. The adoption of a concept that the party to a labour dispute and to a strike should always be an entity which bears financial responsibility or is actually, for example, the parent company, carries a risk of completely bypassing in a dispute the employer referred to in section 3 of the Labour Code and section 5 of the Collective Labour Disputes Act. This would undermine the legitimacy of the use by entrepreneurs of instruments of commercial or civil law which regulate the issue of subjectivity, and allocating responsibilities. Moreover, the Government

refers to the possibility under the legislation in force to conduct a multi-establishment dispute that goes beyond the scope of activities carried out by one employer. Additionally, jurisprudence should also be taken into account, which, in cases of abuse of the concept of the employer management model, ensures appropriate interpretation of already existing legislation.

(ii) General strikes

695. According to the Government, nothing precludes the organization of strikes involving different employers in a particular sector, region or country. Pursuant to section 20 of the Collective Labour Disputes Act, a multi-establishment strike shall be declared by a trade union body indicated in the statute following the approval of the majority of voting employees in each establishment in which the strike is to take place, provided that in each of these establishments at least 50 per cent of employees participate in voting. Therefore, it is possible to conduct a strike involving employers in a particular sector, region or the entire country, provided that the demands formulated in the dispute remain directly related to the activities carried out by the employers involved in the dispute.

696. As regards the complainant's request to introduce a "general strike", that is, "a strike involving different employers in a particular sector, region or the entire country with a view to supporting or defending more favourable legislative solutions, or against negative professional or social consequences of plans and decisions implemented by public authorities", the Government believes that it would only be possible to meet such demands through legislative action, which would go beyond the scope of the competence of the employers involved in the dispute. The Government concludes that the introduction of a general strike in the form requested by the complainant may have an adverse impact on employers, who would have to bear the costs related to downtime periods, while at the same time having no impact on the stance of the addressee of demands (the public authorities). Individual employers cannot influence the legislative action of a government or the plans and decisions taken by public authorities, and thus should not bear the negative consequences of the economic policy pursued by the State. In the Government's view, supporting or defending legislative action should take place in the forum specifically established for this purpose (the Tripartite Commission, or the Social Dialogue Council which is to replace the Tripartite Commission). If trade unions want to express public dissatisfaction with disadvantageous professional or social consequences of public measures, they may exercise their right to organize an assembly with a view to jointly expressing their position concerning a subject matter (Act of 5 July 1990 on Assemblies). With regard to the possibility of organizing a strike related to socio-economic issues, the Government highlights that workers have the right to express their dissatisfaction with socio-economic issues. To this end, they can avail themselves of the possibility provided for in Polish law of organizing assemblies, which can be carried out in different forms (demonstrations, pickets or protests).

(iii) Right to strike in the civil service

697. With regard to the limitation of the right to strike, the Government recalls that, in accordance with article 59(3) of the Constitution of the Republic of Poland, the public interest is the criterion entitling the legislator to limit or exclude the right to strike with regard to specified categories of employees. The scope of freedom of association of trade unions and employers' organizations may only be subject to such statutory limitations as is admissible in accordance with international agreements to which Poland is a party. The Government states that, while the ILO Conventions do not explicitly regulate the right to strike, the ILO supervisory bodies recognize its existence on the basis of the interpretation of the provisions of Convention No. 87, underlining at the same time that the right to strike is not an absolute right and that

national law may exclude the possibility of exercising this right in exceptional circumstances or establish conditions or limitations of its exercise with regard to public servants who act as representatives of public authorities or to workers employed in services of a fundamental nature (that is, the non-performance of which would threaten the life, health or personal security of the whole population or part of it); the ILO supervisory bodies further point out that the limitation or exclusion of the right to strike for specified categories of employees should be accompanied by appropriate measures for defending their interests in the form of a conciliation procedure or amicable settlement, as well as in the form of an arbitration procedure.

- 698.** The Government indicates that the statutory prohibition of the right to strike is introduced by section 19 of the Collective Labour Disputes Act and has a two-fold nature: it is either determined by the subject matter (section 19(1) and (2)), or by the subject (section 19(3)). Section 19(1) does not directly establish the prohibition of strikes in a specified organizational unit but prohibits the work stoppage due to strikes that affects positions, equipment and installations where the interruption of work constitutes a hazard to human lives or health or to security of the State. This implies the division of workers into those who can refrain from work and those who do not have such a right. The factor determining the existence of prohibition is – in this case – the final result of the work stoppage. This regulation is neither dependant on the sector or branch to which the establishment belongs, nor on its management form or ownership. Section 19(2) provides for a strike ban according to the scope of activity. This provision exhaustively lists units of uniformed services in which strikes are prohibited, and is to be interpreted pursuant to the principle of literal interpretation. Therefore, workers in establishments within the organizational structure of the cited militarized authorities shall not be treated in the same way as workers in establishments conducting auxiliary and service operations for them.
- 699.** The Government adds that, under section 19(3) of the Collective Labour Disputes Act, all employees of public authorities, central and local government administration, courts and prosecutors' offices are deprived of the right to strike. One of the employee categories deprived of the right to strike is, in line with these provisions, members of the civil service corps, which is a specific form of the public service. Unlike in some countries – where the civil service corps covers almost the whole public sector including, among others, teachers, health care and local government employees – its scope is rather limited in Poland, and covers only about 121,400 persons employed in government administration offices (about 2,300 offices). Pursuant to section 78(3) of the Civil Service Act, members of the civil service corps are not allowed to participate in strikes or in actions of protest that would interfere with the regular functioning of an office; they are thus allowed to participate in certain actions of protest. Moreover, in line with section 22 of the Collective Labour Disputes Act, the trade union of another establishment may declare a solidarity strike to defend the rights and interests of workers who do not have the right to strike. The Government highlights that the civil service corps is formed by officials employed in organizational units with a great importance for the performance of state activities. Additionally, some persons employed in the civil service carry out services relevant to society, the continuity of which has to be ensured. The Government concludes that the exclusion of the right to strike for members of the civil service corps under section 19(3) seems to be justified by public interest and falls within the catalogue of permissible exclusions formulated by the ILO supervisory bodies.
- 700.** Persons employed in courts and prosecutors' offices constitute another category of employees deprived of the right to strike under section 19(3) of the Collective Labour Disputes Act. Due to the legislative principles of division and balance of powers, including the judicial power exercised by courts and tribunals, workers employed in courts are subject to special regulations. Many cases dealt with by courts are such that the lack of, or delay in taking, a decision could cause considerable perturbations in the functioning of the State,

local government units, individual legal entities and natural persons. In view of the above, the public interest was given priority over the interests of persons employed in the so-called public service. In this respect, the Government highlights that the wording of section 19(3) shows that it was considered that the functioning of a court necessitated the functioning of the entire institution, both of the judges or officers of justice and of the court workers.

- 701.** The Government further underlines that the fact that employees listed in section 19(3) of the Collective Labour Disputes Act are deprived of the right to strike does not imply that they are not allowed to conduct a labour dispute. Trade union organizations representing the interests of these categories of employees may initiate a labour dispute and conduct it, provided that it does not result in a strike. Pursuant to section 16, the party to the labour dispute, which represents the interests of employees, may, instead of exercising the right to commence a strike, attempt to settle the dispute by submitting it to a social arbitration committee. Section 17 stipulates that a strike shall be the last resort and shall only be declared after all possibilities for dispute settlement under the Act have been exhausted (submitting demands, negotiations and mediation). The Act has also equipped trade unions with the means of exerting pressure on employers in the course of legal labour disputes, other than strikes: under section 25, after the procedure provided for in Chapter 2 (negotiations) has been exhausted, forms of protest other than strikes shall be authorized in order to defend the rights and interests listed in section 1 (conditions of work, wages or social benefits, as well as union rights and freedoms of employees or other groups of persons), provided that they do not endanger human lives or health and do not involve a work stoppage, subject to respect of the legal order; it is expressly stipulated that employees who do not have the right to strike shall also be entitled to the above, thus also members of the civil service corps.
- 702.** The Government reiterates that trade unions representing workers deprived of the right to strike are entitled to use the same procedures established in the Collective Labour Disputes Act, that is, negotiations, mediation and arbitration, as trade unions that represent workers who enjoy the right to strike. According to the Government, Convention No. 151 does not lay down the catalogue of obligations or functions carried out by public employees that would justify the restriction of the exercise of freedom of association (including the right to strike). This catalogue is to be drafted by a national legislator, when deciding to what extent it is justified to restrict collective rights of public employees, so as to ensure that the exercise of these rights would not conflict with the protection of public interest. The Government therefore believes that the Polish legislator had the right to consider that it was necessary for the public interest to exclude the right to strike with respect to all members of the civil service corps, rather than only with respect to high-level employees. It should be taken into account that the civil service corps is formed by officials employed in organizational units with a great importance for the performance of state activities. The performance of these activities seems to be impossible to guarantee when excluding the right to strike only with regard to certain groups of office employees, as it requires full availability of not only high-level (managerial) employees but also of the whole apparatus of officials as well as workers ensuring the operation of an office.
- 703.** With regard to the complainant's statement that the Government has so far not extended the right of association in trade unions to persons carrying out work on a basis other than the employment relationship, the Government provides an overview of the steps taken and the work being pursued with a view to preparing necessary legislative changes with respect to the right to organize of persons working under civil law contracts and the self-employed.

C. The Committee's conclusions

- 704.** *The Committee notes that, in the present case, the complainant organization alleges that the definition of parties to a collective dispute as contained in the national laws restricts the collective bargaining rights and the right to strike of some workers and denounces an*

excessive exclusion from the right to strike of some civil service employees. The complainant also denounces the fact that national laws do not provide for general strikes or strikes relating to socio-economic issues. The Committee also notes the Government's general statement that the right to strike differs from the right to organize and the right to collective bargaining in that it is subject to limitations defined by law, taking into account the specificities of strikes.

Definition of the party to a collective labour dispute

- 705.** *With regard to the definition of parties to a collective labour dispute, the Committee notes the complainant's allegations that: (i) the reference in section 5 of the Collective Labour Disputes Act to the definition of "employer" in section 3 of the Labour Code means that the party on the employers' side to a collective dispute and strike can only be an employer, that is, an organizational unit or a natural person, who employs workers; (ii) due to this narrow definition of the party to a dispute, public sector unions often cannot initiate a dispute (for example, on wage increases) with the entity actually deciding on the financial issues of the profession, since public authorities cannot constitute a party to collective disputes in Poland; (iii) for instance, the rector is deemed to be the employer of persons employed at higher education institutions whereas the financial issues of such institutions are decided by the relevant minister; (iv) it is often impossible to conduct a collective dispute in the private sector with the entity economically responsible in practice; and (v) collective bargaining rights and the right to strike are violated by limiting them to the direct employer pursuant to the Labour Code, as a party to a collective labour dispute and strike should always be the actual financially responsible entity or the entity actually conferring powers on certain professions, for example, the relevant public authority (Government, competent minister, local or provincial government, among others), or the entity responsible for economic, social or professional affairs, for example, the parent company.*
- 706.** *The Committee notes the Government's indications that: (i) the definition of "employer" in section 3 of the Labour Code corresponds to a largely universal governance model, with the capacity to employ workers constituting the fundamental criterion on the basis of which a legal or natural person is considered an employer, and the merit being that the management, executive board or similar body may discharge the obligations assumed by the employer by determining specific employment and payment conditions of employees; (ii) the employers of workers employed in organizational units which are part of the central or local government administration, are these units, represented by their directors who make decisions concerning employment and payment conditions, which implies that public authorities (for example, the competent minister, central government administration body or local government body) are excluded from the scope of the definition; (iii) the Constitutional Tribunal ruled that section 5 of the Collective Labour Disputes Act, under which the definition of "employer" does not allow for the participation of a minister or president of a communal association board as a party to a labour dispute concerning employees of state-budget units administered by central or local authorities, is in line with the Constitution; (iv) as to the example supplied by the complainant, the rector of a public higher education institution who is responsible for managing its financial affairs, including funds allocated for employee salaries, is the appropriate party to a labour dispute concerning salary-related issues; (v) governmental authorities participate indirectly in collective disputes: employees and their representatives, when publicly articulating their demands, direct their claims subsequently to public authorities in the form of open letters, petitions, and so forth, and employers in state-budget units aim at safeguarding budget resources to meet the demands of employee representatives; (vi) the diversity of private sector businesses, including organizational structures, justifies the prudence of the national legislator, since the adoption of a concept that the party to a dispute should always be an entity which bears final financial responsibility carries a risk of bypassing the employing entity in a dispute; (vii) moreover, jurisprudence ensures, in cases of abuse of the concept*

of the employer management model, appropriate interpretation of existing legislation; and (viii) under the legislation in force, it is possible to conduct a multi-establishment dispute going beyond the scope of one employer.

- 707.** *The Committee notes that the definition of employer in section 3 of the Labour Code, according to which an employer is an organizational unit or an individual, provided that it employs employees, applies to both the public and the private sectors and is valid for the Collective Labour Disputes Act.*
- 708.** *The Committee is of the view that, in the framework of a collective labour dispute, it is neither realistic nor necessary to always deal on the employer side with the entity bearing the ultimate financial or economic responsibility or with the highest employer representative, be it in the public sector (for example, the competent minister) or in the private sector (for example, the parent company). At the same time, the Committee recalls that, according to Paragraph 13 of the Workers' Representatives Recommendation, 1971 (No. 143), workers' representatives should be granted without undue delay access to the management of the undertaking and to management representatives empowered to take decisions, as may be necessary for the proper exercise of their functions. In view also of the obligation of both the employer and the trade union to negotiate in good faith and make every effort to reach an agreement as well as the importance of the right to strike as one of the essential means for workers and their organizations to defend their economic and social interests, the Committee considers that it should be ensured that the party to a collective labour dispute on the employer side has the authority to make concessions and take decisions concerning wages and terms and conditions of employment, so that the pressure brought to bear during the various stages of a collective labour dispute is effectively directed to an appropriate entity.*
- 709.** *The Committee notes the Government's reference to the capacity of the judiciary to correct any cases of abuse in regard to the concept of "employer" and the possibility to conduct a multi-establishment dispute to include entities other than the direct employer. The Committee, also referring to its comments below concerning section 19(3) of the Collective Labour Disputes Act, requests the Government to take the necessary steps to ensure that the party to the collective labour dispute on the employer side can be clearly identified and has the authority to make concessions and take decisions concerning wages as well as terms and conditions of employment.*

General strikes and strikes on socio-economic issues

- 710.** *With regard to general strikes and strikes on socio-economic issues, the Committee notes the complainant's allegations that: (i) the recognition solely of the employer within the meaning of the Labour Code as a party to a collective dispute and section 1 of the Collective Labour Disputes Act, causes consequences in the form of limiting labour dispute matters to issues at the enterprise level; (ii) unions cannot within the limits of a collective dispute express their dissatisfaction at socio-economic issues towards the entity really responsible for the workers' professional, social and economic situation, nor carry out strikes against a public authority on the ground of socio-economic issues; (iii) national legislation is not in line with the principles of freedom of association as it does not allow for "general strikes" as a strike involving in particular different employers of a certain industry, region or even the entire country, in order to support or defend favourable legislative solutions, or to protest against plans and decisions taken by public authorities, which bring about adverse social consequences or consequences for certain professions.*
- 711.** *The Committee notes the Government's indications that: (i) section 20 of the Collective Labour Disputes Act provides for multi-establishment strikes; (ii) the introduction of general strikes may have an adverse impact on employers, who would have to bear the costs related*

to downtime periods, while at the same time having no influence on the stance of the addressee of demands (legislative action or plans and decisions taken by the public authorities); (iii) supporting or denouncing legislative action should take place in the forum specifically established for the purpose of achieving and maintaining social peace by conducting social dialogue on social or economic issues of concern and reconciling the interests of workers, employers and the Government (the Social Dialogue Council which is to replace the Tripartite Commission); (iv) if trade unions want to express public dissatisfaction with disadvantageous professional or social consequences of public measures, they may exercise their right to organize an assembly to jointly express their position concerning a subject matter; and (v) similarly, with regard to the possibility of organizing a strike related to socio-economic issues, workers may avail themselves of the possibilities provided for in national legislation concerning assemblies (demonstrations, pickets or protests).

- 712.** *The Committee observes that a collective dispute between employees and an employer or employers may only relate to working conditions, wages, social benefits, union rights and freedoms of employees or other groups of persons who enjoy the right to organize, and that a strike is a collective labour stoppage by employees for the purpose of settling a dispute concerning the abovementioned matters (sections 1 and 17 of the Collective Labour Disputes Act). Observing also that multi-establishment strikes are regulated in section 20 read in conjunction with section 1 of the Collective Labour Disputes Act, the Committee recalls in this respect that the occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking of which are of direct concern to the workers. Furthermore, organizations responsible for defending workers' socio-economic and occupational interests should be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and standards of living [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, paras 526 and 527]. While noting with interest the establishment of the Social Dialogue Council, a new tripartite institutional forum replacing the Tripartite Commission for Social and Economic Affairs, the Committee observes that the guarantee of freedom of assembly and tripartite social dialogue is important even if not sufficient to ensure respect for the principles enunciated above. The Committee requests the Government to take the necessary measures in order to ensure that workers' organizations are able to express, if necessary, through protest actions, more broadly, their views as regards economic and social matters affecting their members' interests.*

Restrictions on the right to strike in section 19 of the Collective Labour Disputes Act

- 713.** *With regard to the right to strike in the civil service and in certain positions, the Committee notes the complainant's allegations that: (i) the restrictions on the right to strike in section 19(1) of the Collective Labour Disputes Act are excessive, given that national legislation does not enumerate the specific positions nor establish a procedure to determine the list of positions on which strikes are prohibited as the interruption of work would be a threat to life, health or security of the State; and (ii) the restrictions on the right to strike in relation to certain employees in public administration in section 19(3) are excessive, since national law denies this right to a wide range of persons, including those who have not been employed in civil servant positions but under contracts of employment for auxiliary and servicing activities in state governing bodies, local government, courts and prosecutors' offices. The Committee also notes the complainant's view that, in light of article 59(4) of the Polish Constitution, pursuant to which the scope of freedom of association for trade unions*

and employers' organizations and other trade union rights may only be subject to such statutory limitations as are permitted by international agreements binding on Poland, the right to strike should be guaranteed to a wide group of workers and limitations should only be exceptional (that is, in case of public servants exercising authority in the name of the State or of workers in essential services in the strict sense of the term).

714. *The Committee notes the Government's indications that: (i) the factor determining the existence of a strike prohibition under section 19(1) of the Collective Labour Disputes Act, regardless of the branch, is the final consequence of the work stoppage (hazard to human lives or health or to security of the State) this implies the division of workers into those who can refrain from work and those who do not have such a right; (ii) one of the employee categories deprived of the right to strike under section 19(3), is the members of the civil service corps, which is a specific form of the public service; unlike in some countries – where the civil service corps covers almost the whole public sector, including teachers, health care and local government employees – its scope is rather limited in Poland covering only about 121,400 persons employed in government administration offices (about 2,300 offices); (iii) the civil service corps is formed by officials employed in organizational units with a great importance for the performance of state activities including services relevant to society, which cannot be guaranteed with a strike ban limited to certain groups of office employees, as it requires full availability of the whole apparatus of officials as well as workers ensuring the operation of an office; (iv) the exclusion of the right to strike for members of the civil service corps seems to be justified by public interest and falls within the catalogue of permissible exclusions formulated by the ILO supervisory bodies; (v) as regards persons employed in courts and prosecutors' offices, many cases dealt by courts are such that the lack of, or delay in taking, a decision could cause considerable perturbations in the functioning of the State, local government units and legal and natural persons – the public interest was thus given priority over the interests of persons employed in courts or prosecutors' offices (including both judges or officers of justice and the court workers); (vi) unions representing workers deprived of the right to strike are entitled to use the same procedures in the Collective Labour Disputes Act, that is, negotiations, mediation and arbitration, as other trade unions; (vii) pursuant to section 78(3) of the Civil Service Act, members of the civil service corps are not allowed to participate in actions of protest that would interfere with the regular functioning of an office – they are thus allowed to participate in certain actions of protest; (viii) under section 25 of the Collective Labour Disputes Act, after unsuccessful negotiations, forms of protest other than strikes are authorized to exert pressure on employers in the course of a labour dispute, including for employees who do not have the right to strike; and (ix) under section 22, the trade union of another establishment may declare a solidarity strike to defend the rights and interests of workers who do not have the right to strike.*

715. *The Committee observes that section 19(3) of the Act on Collective Labour Disputes denies the right to strike to the members of the civil service corps and to employees in courts and prosecutors' offices, and that section 19(1) prohibits any work stoppage due to a strike that affects positions, equipment and machinery, where interruption of work would constitute a danger to human lives or health or to the security of the State. The Committee recalls that the right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population). The Committee further emphasizes that too broad a definition of the concept of "public servant" is likely to result in a very wide restriction or even a prohibition of the right to strike for these workers, and that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State [see **Digest**, *op. cit.*, paras 575 and 576]. The Committee invites the Government to consider establishing a procedure for determining which public servants enumerated in section 19(3) of the Collective Labour Disputes Act*

and in section 2 of the Civil Service Act are exercising authority in the name of the State and for whom the right to strike could therefore be restricted, as well as for defining minimum services where appropriate. Such a procedure could also be used with respect to section 19(1), in order to determine the cases where an interruption of work would be deemed a hazard under section 19(1) and where the right to strike would thus be prohibited or restricted, as well as to define minimum services where appropriate.

- 716.** Lastly, regarding the complainant's indication that the recommendation made by the Committee in 2012 in the framework of Case No. 2888 to grant the right to organize to persons performing work under civil law contracts and the self-employed, has still not been implemented, the Committee notes with satisfaction that: (i) the Government has taken steps with a view to preparing the necessary legislative amendments; (ii) the Constitutional Tribunal rendered a judgment in June 2015 holding that section 2(1) of the Act on Trade Unions is contrary to the Constitution of the Republic of Poland and that the legislator should extend the right to organize to all persons performing paid work on the basis of a legal relationship; and (iii) a draft act introducing the relevant systemic changes will be submitted for consultation to the newly established Social Dialogue Council.
- 717.** *The Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.*

The Committee's recommendations

- 718.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) Concerning the definition of the party to a collective labour dispute, the Committee requests the Government to take the necessary steps to ensure that the party to a collective labour dispute on the employer side can be clearly identified and has the authority to make concessions and take decisions concerning wages as well as terms and conditions of employment.*
 - (b) As regards general strikes or strikes on socio-economic issues, the Committee requests the Government to take the necessary measures in order to ensure that workers' organizations are able to express, if necessary, through protest actions, more broadly, their views as regards economic and social matters affecting their members' interests.*
 - (c) With respect to the restrictions on the right to strike in section 19 of the Collective Labour Disputes Act, the Committee invites the Government to consider establishing a procedure: (i) for determining which public servants enumerated in section 19(3) of the Collective Labour Disputes Act and in section 2 of the Civil Service Act are exercising authority in the name of the State and for whom the right to strike could therefore be restricted; (ii) for determining the cases where an interruption of work would be deemed a hazard under section 19(1) and where the right to strike would thus be prohibited or restricted; and (iii) for defining minimum services where appropriate.*
 - (d) The Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.*

CASE NO. 3145

DEFINITIVE REPORT

**Complaint against the Government of the Russian Federation
presented by
the Confederation of Labour of Russia (KTR)**

Allegations: The complainant alleges criminal prosecution, conviction and imprisonment of trade union activists Mr Leonid Tikhonov, chairperson of the Russian Trade Union of Dockers' (RPD) primary trade union of workers of the "Vostochny Port" Company, and Ms Natalia Bondareva, chief accountant of the union, for the exercise of trade union activities

- 719.** The complaint is contained in a communication dated 27 May 2015 from the Confederation of Labour of Russia (KTR).
- 720.** The Government of the Russian Federation sent its observations in a communication dated 24 November 2015.
- 721.** The Russian Federation 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

- 722.** In its communication dated 27 May 2015, the KTR explains that Mr Leonid Tikhonov was elected deputy chairperson of the Russian Trade Union of Dockers' (RPD) primary trade union of workers of the "Vostochny Port" Company, in 1997 and elected chairperson in 2002. Ms Bondareva joined the primary trade union on 16 July 2008 and was its chief accountant.
- 723.** The KTR explains that when the company collective agreement for the 2009–11 period expired in November 2011, the employer refused to maintain the same conditions as in the previous collective agreement while the primary trade union wished to maintain them. The primary trade union scheduled a mass meeting for 4 December 2011, to coincide with the election to the State Duma. The KTR alleges that in order to prevent the mass meeting from taking place, the employer agreed to renew the collective agreement with the wording proposed by the workers, but dissatisfied, began to ask the primary trade union for financial and other documents and called for an audit of the primary trade union's financial activities.
- 724.** The KTR indicates that according to section 377(4) of the Labour Code, in cases provided for by the collective agreement, the employer allocates financial resources to a primary trade union for mass cultural, sports and recreational activities. The company collective agreement for the 2009–11 period contained such a provision. Pursuant to paragraph 6.24 of the agreement, the company and trade unions active within it would take on the obligation to organize mass cultural, sports and recreational activities for workers of the company and their families. For that purpose, the employer would transfer, on a monthly basis, to the account of trade unions, funds amounting to 1 per cent of the payroll of union members. According to the complainant, in practice, this commitment was already respected by the

employer for about eight years. During these years, there was a practice of submitting to the employer simple written reports with copies of documents confirming expenditures. Paperwork was done in a relatively simple manner. The funds for mass cultural activities were devoted in particular to the purchase of New Year gifts for workers and their children. However, in recent years, many workers preferred to receive cash instead of gifts. According to the KTR, the practice was known and recognized by the employer.

- 725.** The KTR explains that in 2011, the committee of the primary trade union organization decided to buy souvenirs and prizes for children of trade union members and to give to trade union members themselves an amount of 500 Russian ruble (RUB) as New Year gifts. However, some union shop committees subsequently purchased and gave their members gifts in kind.
- 726.** The KTR further explains that in 2012, a conference of workers, attended by two trade unions active at the company and other workers, decided to call on the employer to increase wages as there had been no increase for more than two years. On 2 June 2012, noting an increase in the port's freight turnover and shareholders' dividends, the primary trade union, with Mr Tikhonov's active participation, held a protest meeting to demand wage increases, increases in bonuses and benefits for long service.
- 727.** The complainant alleges that on 19 June 2012, police officers entered the offices of the primary trade union and, without a search warrant, conducted a search and seized trade union documents. On 22 June 2012, a second search was carried out with a search warrant approved by an investigator and a judge. According to the KTR, during both searches, documents were seized with procedural violation as no inventory was made and entire folders were taken without being registered. On 22 June 2012, criminal proceedings were instituted against Mr Tikhonov and Ms Bondareva. Following an investigation, both trade unionists were formally accused of embezzlement of RUB10,000 in 2009 and RUB359,571 in 2011. The union has repeatedly challenged the actions of the police officials, including in connection with the violation of procedure for conducting searches, to no avail.
- 728.** An audit commission of the RPD audited, from 4 to 6 March 2013, the expenditure by the primary trade union of funds allocated by the company in 2009 and 2011 for cultural activities. The KTR explains that although it was not possible for the audit commission to proceed with a complete verification of the budget due to the fact that all relevant documents had been seized by the police, members of the primary trade union who were interviewed confirmed receipt of RUB500 per person. The money was paid out in the following manner: once the funds were received in the bank, Ms Bondareva and Mr Tikhonov transferred the money to the chairpersons of the shop floor committees and work group organizers (without putting it on record) so that the latter could either purchase gifts or give cash to the workers. The KTR alleges that in court and during the investigation, the chairpersons of the shop floor committees confirmed the receipt of those amounts, but the court did not accept their testimonies because they were trade union activists. The complainant explains that the chairpersons of shop floor committees distributed the money among trade union members but that not all of them produced receipts; some submitted blank cheques that were then filled in by Ms Bondareva herself. Subsequently Mr Tikhonov and Ms Bondareva approved a financial report on the basis of the sale receipts submitted.
- 729.** The KTR argues that the violation of the rules regarding the filing of accounting documentation thus consists of the fact that there were no statements on the transfer of funds to the chairpersons of the shop floor committees and directly to trade union members. It further points out that while for this type of offence provision is made for an administrative liability, the investigation and the court concluded to the misappropriation and embezzlement of funds.

- 730.** According to the complainant, during the investigation, the witnesses were heard with the direct participation of the employer: the security staff of the company took workers one by one to the local police department for questioning or invited them to the port security services offices. Workers were required to give evidence that they had not received New Year gifts from the union in December 2011, including in the form of cash. At the same time, they were warned that they could lose their jobs. While the majority of workers/trade union members did not give in to employer's pressure and confirmed that they did receive a New Year gift in cash, some workers agreed to testify to the contrary. According to the KTR, later, 13 workers, who in the course of investigation had testified that they did not receive the money, refused to testify to that effect in court; however, when the prosecutor pointed out to those workers that they would be prosecuted for perjury they confirmed their initial testimony about the non-receipt of the money.
- 731.** The complainant further alleges that around 300 members of the primary trade union were questioned during the preliminary investigation, but their testimony, confirming the receipt of money was not included in the indictment. During the trial, the defence submitted a motion to summon those persons as witnesses directly in court, but the court refused to grant the petition. In the course of the judicial proceedings, 29 workers questioned as witnesses stated that they did not receive RUB500 from the primary trade union. According to the complainant, the court accepted the testimony of these workers as evidence proving the guilt of Mr Tikhonov and Ms Bondareva and did not take into account the fact that eight of those workers were not members of the primary trade union in December 2011 and thus, were not entitled to receive any gifts. The court excluded the testimony of witnesses confirming the receipt of gifts in cash stating that the witnesses: "are or were activists of the primary trade union, and for this reason, in the opinion of the court, by testifying in court and providing evidence that has been objectively refuted during the trial by testimony of [other] witnesses questioned ... they do not wish to incur negative effects for the defendants."
- 732.** The KTR further points out that the company, i.e. the employer, appeared as the victim in the criminal case and argues that pursuant to the legislation in force, from the moment the funds are transferred to the trade union account they become trade union property and the employer loses the ownership right over the funds. Since the RPD audit commission did not find any misuse of funds, it did not appeal to the police or the prosecutor's office as an injured party.
- 733.** On 15 December 2014, the Nakhodka city court of Primorsky Krai found Mr Tikhonov and Ms Bondareva guilty of committing a crime under section 160(3) of the Criminal Code – embezzlement (stealing of other people's property entrusted to the offender, committed by a person using his official position, and on a large scale). The court found them guilty of embezzling RUB10,000 in 2009 and RUB359,571 in 2011 (approximately €6,709 in total at the May 2015 exchange rate). Mr Tikhonov was sentenced to three years and six months in prison with the prohibition to engage in union activities for three years, while Ms Bondareva was sentenced to one year and two months of imprisonment.
- 734.** The complainant points out that section 160(3) of the Criminal Code provides for a number of alternative possible penalties that may be imposed on a person convicted of this offence:
- a fine ranging from RUB100,000 to RUB500,000 or the salary or other income for a period ranging from one to three years;
 - prohibition to hold certain positions or engage in certain activities for a period of up to five years;
 - forced labour for a period of up to five years, with or without restriction of freedom for a period of up to one-and-a-half years;

- imprisonment for up to six years, with or without a fine of up to RUB10,000 or the salary or other income for a period of up to one month, with or without restriction of freedom for up to one and a half years.

735. The complainant indicates that the court did not motivate the choice of the most severe form of punishment, imprisonment, and did not consider the possibility of giving the trade unionists a less harsh punishment despite the absence of previous criminal convictions and lack of aggravating circumstances. It further points out that this case has caused a major public outcry and that acts of solidarity have taken place in Moscow, St Petersburg, Vladivostok, Yeisk and Wrangell village in the city of Nakhodka. The complainant concludes that in light of the facts above, it is clear that the two trade unionists were prosecuted and condemned for the exercise of lawful trade union activities.

B. The Government's reply

736. In its communication dated 24 November 2015, the Government points out that pursuant to section 5(1) of the Law on Trade Unions, trade unions are independent from the executive authorities, local governments, employers and their associations, political parties and other organizations and are not accountable to them or subject to their control. Furthermore, pursuant to paragraph 6.24 of the company's collective agreement of 25 November 2008, the employer is to finance cultural, sports and leisure activities for workers and members of their families arranged by trade union organizations. This paragraph also stipulates that trade unions must provide a quarterly report to the employer on how this money is spent.

737. The Government indicates that the Ministry of Labour requested and received information from the Ministry of Justice, the Investigative Committee, the Office of the Prosecutor-General and the Ministry of Internal Affairs on the matters raised in the complaint. In this respect, the Ministry of Justice points out that under section 8.1(2) of the Code of Criminal Procedure, judges hear and determine criminal cases in conditions that preclude external influence. Interference by the state authorities, local government authorities, other bodies, organizations, officials or individuals in the administration of justice by judges is forbidden and results in criminal liability with penalties prescribed by law. The Ministry also adds that under article 6 of the European Convention on Human Rights and article 14 of the International Covenant on Civil and Political Rights, everyone, in the determination of any criminal charge against them, is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, based on the presumption of innocence and with the provision to them and their counsel of procedural means to advocate their position; it is impossible to exercise the right to a fair judicial hearing if the court has not heard and not considered on the merits all arguments advanced during the proceedings by the prosecution and the defence and has not granted them equal procedural rights.

738. The Government points out that paragraphs 1 and 2 of article 46 of the national Constitution enshrine the right to a legal defence. Furthermore, a judicial decision can be reviewed on appeal; a procedure, other than judicial, for reviewing court decisions is impermissible as a matter of principle, since that would mean it would be possible to replace judicial decisions with the administrative decisions, which would be an indisputable departure from the vital safeguards of the independence, comprehensiveness and exclusivity of judicial authority. In addition, section 297 of the Code of Criminal Procedure states that a court's verdict and sentence must be lawful, justified and fair. A verdict and sentence is considered lawful, justified and fair if it is decided in accordance with the requirements of the Code and based on the correct application of the criminal law.

739. In relation to the facts exposed by the complainant, the Government argues that an inquiry into the allegation that the wages of dockworkers at the company had not increased during the 2010–12 period demonstrated that this allegation is unsubstantiated. In accordance with

section 134 of the Labour Code, under the terms of the collective agreement, wages were indexed every quarter. Furthermore, with regard to the alleged disputes between the union and the employer regarding financial reporting, the Government indicated that these disputes have been subject to multiple claims filed by Mr Tikhonov with the Far East Transport Prosecutor's Office and the Primorsky territory state labour inspectorate. On examination, no infringement of federal law or the rights of trade union members was found. Equally, no evidence was found to corroborate the allegations regarding the unlawful search of the primary trade union organization's premises on 19 June 2012. The examination of premises, buildings and facilities was authorized by Nakhodka City Court and Ms Bondareva, present during the search, did not make any comments thereon.

- 740.** The Government indicates that a case against Mr Tikhonov was instituted on 22 June 2012, for an offence under section 160(3) of the Criminal Code following a claim by the management that the union leader had stolen money. In light of the evidence gathered, on 29 January 2013, Mr Tikhonov and Ms Bondareva were charged with offences under section 160(3) of the Criminal Code. The following day, criminal case No. 700428 was referred, under section 220 of the Code of Criminal Procedure, to the Nakhodka Transport Prosecutor and then to the court.
- 741.** With regard to the alleged refusal of the court to hear witnesses in favour of the defence, the Government points out that the court did examine and then dismissed the application for a number of witnesses to be heard or for their testimonies to be disclosed. However, after the dismissal, neither party objected to the closing of the judicial investigation.
- 742.** The Government further indicates that on 15 December 2014, Nakhodka City Court found Mr Tikhonov and Ms Bondareva guilty of offences under section 160(3) of the Criminal Code. After changes made to the sentences on appeal on 17 May 2015, Mr Tikhonov was sentenced to three years and four months of imprisonment in a correctional colony with an ordinary regime and prohibited him from holding trade union organizational and administrative posts for three years. Ms Bondareva was sentenced to one year of imprisonment in a correctional colony with an ordinary regime.
- 743.** According to the Government, there were no social demands, rallies, marches, pickets or strikes in connection with this case.

C. The Committee's conclusions

- 744.** *The Committee notes that the complainant in this case alleges criminal prosecution, conviction and imprisonment of trade union activists Mr Tikhonov, chairperson of the RPD primary trade union of workers of the "Vostochny Port" company and Ms Bondareva, chief accountant of the primary trade union, for the exercise of trade union activities. The following facts related by the KTR and supported by the documents transmitted in its communication dated 27 May 2015 are not disputed by the Government.*
- 745.** *Pursuant to paragraph 6.24 of the collective agreement for 2009–11, the company and trade unions active within it undertake an obligation to organize mass cultural, sports and recreational activities for the employees of the company and their families. For this purpose, the employer transfers, on a monthly basis, to the account of the trade unions, funds amounting to 1 per cent of the payroll of the trade unions members. Further, pursuant to this provision, the union has an obligation to report to the employer on how the money is spent. In the absence of the report or if the money is not used for the prescribed objective, the employer has the right to suspend money transfers.*
- 746.** *In October 2013, following an investigation, both trade unionists were formally accused of embezzlement of RUB10,000 in 2009 and RUB359,571 in 2011. From the text of the*

indictment and of the court decision, the Committee understands that RUB10,000 in 2009 were supposedly allocated for a day trip to waterfalls near Steklianuha village, and RUB359,571 in 2011 were allocated for New Year gifts (in cash or in kind) for trade union members. On 15 December 2014, both trade unionists were found guilty of misappropriation/embezzlement (section 160(3) of the Criminal Code) by the Nakhodka City Court and sentenced Mr Tikhonov to three years and six months (three years and four months on appeal) of imprisonment in a correctional colony with an ordinary regime and prohibited him from holding trade union organizational and administrative posts for three years and Ms Bondareva to one year and fourth months (one year on appeal) of imprisonment in a correctional colony with an ordinary regime.

- 747.** *The Committee notes that the KTR claims, however, that the investigation that has led to the conviction of trade unionists was a result of the employer's retaliation following union's activities relating to the collective bargaining which occurred at the end of 2011 and the protest action in support of workers' demands to increase wages on 2 June 2012.*
- 748.** *The complainant further alleges that the two searches of the union's premises on 19 June 2012 were conducted in violation of the procedure in force. According to the KTR, the union has repeatedly challenged the action of the authorities. The Committee notes that the Government disputes this claim and indicates that the search was authorized by the Nakhodka City Court and that no complaints in this respect have been made.*
- 749.** *The Committee notes that in March 2013, an audit commission of the RPD audited the expenditure of the funds allocated by the company to the primary trade union in 2009–11 for cultural activities. The complainant provides a copy of its conclusions. The commission noted that it was not possible to proceed with a complete verification of the budget due to the fact that all relevant documents had been seized by the authorities without leaving copies. It therefore interviewed several members of the union who confirmed that in December 2011, chairpersons of the shop floor committees received money in cash to be distributed among trade union members. The complainant explains that the chairpersons of shop floor committees distributed the money among trade union members but that not all of them produced receipts; some submitted blank cheques that were then filled in by Ms Bondareva herself. Subsequently Mr Tikhonov and Ms Bondareva approved the financial report on the basis of the sale receipts submitted.*
- 750.** *The KTR argues that the violation of the rules regarding the filing of accounting documentation thus consists of the fact that there were no statements on the transfer of funds to the chairpersons of the shop floor committees and directly to trade union members; for this type of offence, the legislation in force foresees an administrative liability. Instead, the investigation and the court concluded to the misappropriation and embezzlement of funds.*
- 751.** *The KTR points out that the employer appeared as the victim in the criminal case and argues that pursuant to the legislation in force, from the moment the funds are transferred to the trade union account they become trade union property and the employer loses the ownership right over the funds. Since the RPD audit commission did not find any misuse of funds, it did not appeal to the police or the prosecutor's office as an injured party. The Committee notes that the city court judge disagreed with this line of argument and concluded that by virtue of section 377 of the Labour Code and provision 6.24 of the collective agreement, the money entrusted to the union for mass activities remains the employer's, who is equally responsible for the organization of mass activities. In these specific circumstances, the Committee considers that this particular aspect of the case does not incur violation of freedom of association principles.*
- 752.** *The Committee further notes from the text of the indictment, transcript of the court proceedings and the judgment itself that none of the witnesses nor the complainants*

themselves could attest to taking part in the trip or confirm that the trip took place in October 2009. It further notes that an absolute majority of witnesses heard by the court have either denied the receipt of New Year gifts in December 2011 or could not confirm their receipt with certainty. The court also questioned expert witnesses and employees of the companies where the gifts in kind have been allegedly purchased. They have corroborated the prosecution's indictment.

- 753.** *At the same time, the Committee notes with concern the following elements in this case. It notes the complainant's allegation that under the employer's threat of dismissal, witnesses were pressured to testify that they had not received New Year gifts in cash. In this respect, it notes from the transcript of court proceedings that a number of workers left the union between 2012 and 2014 and that some clearly stated in court that this was due to the investigation and "constant questionings".*
- 754.** *The Committee further notes the complainant's allegation that around 300 members of the primary trade union were questioned during the preliminary investigation and confirmed the receipt of money. The KTR argues that during the trial, the defence submitted a motion to summon those persons as witnesses directly in court, but the court refused to grant the petition. It further points out that in the course of the judicial proceedings, 29 workers stated that they did not receive RUB500 from the primary trade union. The Committee understands from the judgment that the court has indeed accepted the testimony of these workers as evidence proving the guilt of Mr Tikhonov and Ms Bondareva and did not take into account the fact that several of those workers have clearly indicated that they were not members of the RPD primary trade union in December 2011 and thus, were not entitled to receive any gifts. Furthermore, the court excluded the testimony of witnesses confirming the receipt of gifts in cash stating that the witnesses: "are or were activists of the primary trade union, and for this reason, in the opinion of the court, by testifying in court and providing evidence that has been objectively refuted during the trial by testimony of [other] witnesses questioned ... they do not wish to incur negative effects for the defendants."*
- 755.** *The Committee further notes that the complainant points out that while section 160(3) of the Criminal Code provides for a number of alternative possible penalties that may be imposed on a person convicted of this offence, it chose the most severe form of punishment, imprisonment, despite the absence of previous criminal convictions and lack of aggravating circumstances.*
- 756.** *In view of the above and despite the extensive information provided, the Committee is not in a position to conclude to the guilt or innocence of the two trade unionists. It considers, however, that taken together, the elements highlighted above may shade the perception of justice and draws the Government's attention to the importance that should be attached to the principle that not only must justice be done, it must also be seen to be done. In the light of its foregoing conclusions, and in the absence of elements of proof which would allow the Committee to conclude that there was a violation of trade union rights, the Committee considers that this case does not call for further examination.*

The Committee's recommendation

- 757.** *In the light of its foregoing conclusions and in the absence of elements of proof which would allow the Committee to conclude that there was a violation of trade union rights, the Committee invites the Governing Body to decide that this case does not call for further examination.*

CASE NO. 2994

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

**Complaint against the Government of Tunisia
presented by
the Tunisian General Confederation of Labour (CGTT)**

Allegations: The complainant organization denounces acts of interference in its internal affairs, the withholding of the dues paid by its members and its exclusion from tripartite consultations held with a view to drawing up a national social contract. Furthermore, it denounces acts of anti-union discrimination carried out against its members by the airline TUNIS AIR

758. The Committee last examined this case at its October–November 2015 meeting and presented an interim report to the Governing Body [see 376th Report, paras 992–1008, approved by the Governing Body at its 325th Session].

759. The Government sent its observations in a communication dated 8 March 2016.

760. Tunisia 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

761. At its October–November 2015 meeting, the Committee made the following recommendations [see 376th Report, para. 1008]:

- (a) The Committee urges the Government to restore the system for the collection of union dues of CGTT members in the public sector, in order to avoid any discrimination and to prevent any impact on the freedom of workers to form or join trade unions.
- (b) The Committee urges the Government to provide further information on its statements regarding the leaders of the CGTT who were penalized following the TUNIS AIR strike in May 2012, so that the complainant organization may respond. More generally, the Committee requests the Government to review, together with the CGTT, the situation of the leaders of that body who were allegedly suspended in violation of the principles recalled and, where appropriate, to ensure that they are provided with appropriate compensation. The Committee requests the Government to keep it informed in this regard.
- (c) The Committee requests the Government and the complainant organization to provide further information on the transfer of Mr Belgacem Aouina, Secretary-General of the CGTT, and to indicate whether he has appealed the decision to transfer him and the outcome, if any.
- (d) The Committee once again reiterates to the Government its long-standing recommendation to take all necessary measures to set clear and pre-established criteria for trade union representation in consultation with the social partners, and to keep it informed of any progress in this regard. The Committee expects all the organizations concerned to

be consulted in this regard and once again reminds the Government that it may avail itself of the technical assistance of the Office, if it so desires.

- (e) The Committee expects the Government to take all necessary measures to respond urgently and thoroughly to its recommendations and, in the event that, in the present case, the allegations refer to problems in a particular enterprise, the Committee urges the Government to make efforts to obtain the comments of the enterprise, via the employers' organization concerned, so that the Committee may examine the case in full knowledge of the facts.

B. The Government's reply

762. In a communication dated 8 March 2016, the Government sent information relating to certain recommendations from the Committee.

763. With regard to the Committee's recommendation to restore the system for the collection of union dues from the Tunisian General Confederation of Labour (CGTT) members in the public sector, the Government reports the publication, on 4 January 2016, of Circular No. 02 concerning the deduction of union dues from public officials in 2016, for submission to several trade union organizations, in the following trade union confederations: the CGTT, the Union of Tunisian Workers and the Tunisian Labour Organization. This circular, which was sent to the various government services, authorizes them to collect the union dues of members of the abovementioned trade union confederations for 2016. The Government adds that the collection of the union dues is carried out following a written and signed request from the official concerned. Lastly, according to the Government, this circular was welcomed by the Secretary-General of the CGTT as a positive step towards equality between the various trade union bodies.

764. Regarding the Committee's recommendation about the situation of the trade union leaders of the CGTT who were penalized following the TUNIS AIR strike, the Government states that it contacted the enterprise concerned and received the following reply in January 2016: of all the trade union leaders concerned, only Mr Fazwi Bel'am, member of the executive committee of the primary trade union, was called before the disciplinary board, and this was for reasons that had nothing to do with his union activities, as he had disrupted the smooth operation of a flight on 24 May 2012 by boarding an aeroplane – in an unscheduled manner – and assaulting the flight controller to take the flight documents from him. Mr Bel'am appeared before the disciplinary board, which suspended him for 25 days.

765. As regards the situation of Mr Belgacem Aouina, Secretary-General of the CGTT, the Government repeats that he was assigned to new duties, without loss of his rank of director, in accordance with the discretionary powers of the Chief Executive Officer. The enterprise does not state whether he has lodged an appeal against this reassignment decision.

766. Finally, in response to the recommendations on the determination of trade union representation, the Government states that it has sought, in consultation with the social partners, a system of trade union representation consistent with the economic and social realities and the industrial relations system of the country. Consequently, in January 2014, the Government organized a tripartite seminar, with the support of the International Labour Office, on the legal aspects of the determination of trade union representation. At the end of the seminar it was agreed to continue consultations on the issue, in the framework of a tripartite committee consisting of representatives of the Government, the Tunisian General Labour Union (UGTT), the Tunisian Industry, Trade and Crafts Union (UTICA), and the ILO Office in Tunis, as well as several experts. This committee held several meetings, ending on 22 December 2015. It is envisaged that the work of this committee will be ratified during a second national seminar. Furthermore, the ILO Office in Tunis has supported the

Government by preparing a comparative study of the experiences of several countries (Chile, France, Morocco, Portugal, Senegal and Spain) and by formulating a number of proposals.

767. The tripartite committee agreed to draft a bill to review and supplement the Labour Code and to include provisions to govern trade union representation. It will adopt a working method to enable it to address the various problems associated with determining criteria for representation (definition of criteria, election method, collective bargaining system, appeals procedure, and so on).

C. The Committee's conclusions

768. *The Committee recalls that, in this case, the allegations by the CGTT relate to acts of interference by the authorities in its affairs, its exclusion from all national tripartite consultations and anti-union acts by certain enterprises against its leaders.*
769. *The Committee recalls that, in its previous recommendations, it had urged the Government to restore the system for the collection of union dues of CGTT members in the public sector, in order to avoid any favouritism towards certain trade unions which might be taking advantage of the system and to prevent any impact on the freedom of workers to form or join trade union organizations. The Committee notes the statement that on 4 January 2016 the Government published Circular No. 02 concerning the deduction of union dues from public officials in 2016 for submission to several trade union organizations, including the CGTT. This circular from the head of government to the various ministries authorizes them to deduct the dues of members of the three trade union confederations cited for 2016. The Government adds that this circular was welcomed by the Secretary-General of the CGTT as a positive step towards equality among the various trade union bodies. The Committee welcomes the Government's circular authorizing union dues check-off for the CGTT in the public sector in 2016, and invites the Government to hold consultations with all the trade union organizations concerned in order to establish a system where all trade union organizations in the public sector can benefit from union dues check-off for their members.*
770. *The Committee had previously requested the Government to provide further information on the situation of CGTT leaders allegedly penalized following the strike at TUNIS AIR (hereinafter, the enterprise) held from 22 to 24 May 2012. The Committee recalls that, when it last examined the case, it noted the Government's information that the enterprise had only penalized those strikers who had committed acts endangering aircraft safety. The Committee notes that, according to the information recently sent by the Government on behalf of the enterprise, only Mr Fazwi Bel'am, a member of the executive committee of the primary trade union, was called before the disciplinary board, and this was for reasons that had nothing to do with his union activities, as he had disrupted the smooth operation of a flight on 24 May 2012 by boarding an aeroplane – in an unscheduled manner – and assaulting the flight controller to take the flight documents from him. According to the enterprise, Mr Bel'am appeared before the disciplinary board, which suspended him for 25 days. The Committee observes that the enterprise does not specify whether he has lodged an appeal against this penalty.*
771. *Furthermore, the Committee notes, in respect of Mr Belgacem Aouina, auditing director and Secretary-General of the CGTT, who was assigned to new duties, that the enterprise reiterates that this reassignment was decided in accordance with the discretionary powers of the Chief Executive Officer. The Committee notes that the enterprise does not specify whether Mr Aouina has lodged an appeal against this reassignment decision. The Committee observes that the complainant organization has not provided the further information that the Committee had asked it to present in support of its allegations of a transfer on anti-union grounds. The Committee considers it useful to recall once again 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. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 799].

- 772.** *On the basis of the information available to it, the Committee will not pursue its examination of the allegations relating to the enterprise penalizing the leaders of the CGTT following the May 2012 strike, unless the complainant organization quickly provides detailed information to substantiate its allegations that certain trade union leaders, mentioned by name, suffered retaliatory action by the enterprise for having legitimately exercised their trade union mandates.*
- 773.** *With regard to its long-standing recommendations to the Government to take all necessary measures to set clear and pre-established criteria for trade union representation in consultation with the social partners, the Committee appreciates the Government's information on the various measures taken since 2014, in particular the establishment of a tripartite committee to examine the matter, the upcoming drafting of a bill to supplement the Labour Code on trade union representation and the process of discussion entered into in the public service and with the social partners on various associated problems. Noting that the Government mentions certain representative employers' and workers' organizations in the context of its consultations, the Committee expects it to prioritize inclusive social dialogue on this important matter, ensuring that it extends the scope of its consultations to include all Tunisian trade union and employers' organizations concerned to enable it to take the various points of view into consideration. The Committee expects that the Government will continue to benefit from the support of the ILO and requests it to keep it informed of any progress made on the issue of the determination of criteria to establish trade union representation.*

The Committee's recommendations

- 774.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee welcomes the Government's circular authorizing union dues check-off for the CGTT in the public sector in 2016, and invites the Government to hold consultations with all the trade union organizations concerned in order to establish a system where all trade union organizations in the public sector can benefit from union dues check-off for their members.*
- (b) *The Committee expects the Government to prioritize inclusive social dialogue in respect of the determination of criteria to establish trade union representation, ensuring that it extends the scope of its consultations to include all Tunisian trade union and employers' organizations concerned to enable it to take the various points of view into consideration. The Committee expects that the Government will continue to benefit from the support of the ILO and requests it to keep it informed of any progress in this regard.*

CASE No. 3095

INTERIM REPORT

**Complaint against the Government of Tunisia
presented by
the Tunisian Labour Organization**

Allegations: The complainant organization denounces anti-union acts which the authorities have committed against it, thereby preventing trade union pluralism in the country

775. The complaint is contained in communications from the Tunisian Labour Organization (OTT) dated 10 June 2014, June 2015 and 6 November 2015.
776. The Government sent its observations in a communication dated 8 March 2016.
777. Tunisia 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

778. In its communications of 10 June 2014, June 2015 and 6 November 2015 respectively, the OTT alleges that it has been subjected to intimidation and anti-union acts by the authorities since it was founded. The complainant denounces this situation which, it claims, constitutes a denial of the provisions of the National Constitution, in particular article 35 thereof, which enshrines trade union pluralism.
779. The complainant denounces the Government's refusal to implement Cabinet Circular No. 35 of 27 January 2014 authorizing the deduction of union dues for the OTT. The complainant states that this refusal has placed it in a difficult financial situation since it cannot cover its operating costs without the union dues of its members. It is only able to cope because of donations from its members. Even so, the water supply to the union headquarters was cut off recently because of an unpaid bill.
780. The complainant denounces in particular hostile acts against it by a rival trade union federation, the Tunisian General Labour Union (UGTT). According to the complainant, the UGTT rejects trade union pluralism and has launched a smear campaign against the OTT and its members in the national media. Violent acts, such as those committed at the Place Mohamad Ali on 4 December 2013, have been wrongly attributed to OTT members. However, the complainant asserts that it is unable to respond to these attacks since it is denied access to the media.
781. The hostile acts are especially noticeable in the education sector, where the minister received a reprimand from the Government for meeting the OTT general secretary. The organization's posters have been torn up and OTT members have been subjected to physical and verbal abuse by UGTT representatives in schools in places such as Mahdia, Kairouan, Tataouine and Tunis. Furthermore, the regional primary education trade unions and education employees and officials in Mahdia have published hostile statements against the OTT and its members. Lastly, the regional education delegate in Mahdia was forced to resign

on the grounds that he had met an OTT delegation. He was then replaced by a pro-UGTT delegate.

- 782.** According to the complainant, the Government is making no effort to find a solution to the UGTT's hostile attitude and its refusal to accept trade union pluralism in the country. On the contrary, the complainant denounces the discriminatory treatment towards its members in the public service, particularly intimidation and measures depriving them of all the promotions and benefits to which they are entitled in law. The complainant further states that it has received numerous reports of acts preventing the members of its local and regional bodies from duly carrying out their activities (torn posters, physical violence, banned union meetings). The ministries responsible for various administrative departments have requested them not only to have no dealings with the OTT but also to ban its union bodies from carrying out their activities. Accordingly, OTT demands made to the relevant officials in various administrative departments in Tunisia have received no response.
- 783.** In its communication dated 6 November 2015, the complainant reports numerous abuses against its representatives in the form of transfers and false accusations. At the Société des transports de Tunisie [Tunisian Transport Company] (TRANSTU), the general secretary of the primary trade union council for TRANSTU employees in Beb Saadoun, Mr Mohamed Ali Thulaithi, and the general secretary of the primary trade union council for light-rail employees, Mr Majdi El-Abdali, were both summoned before a disciplinary board in November 2015, further to which they were suspended for engaging in trade union activities and deprived of all promotions or benefits to which they were entitled. The same anti-union treatment was also inflicted on the OTT's representatives at the Central Bank of Tunisia, namely the general secretary of the primary trade union council for staff and managers of the Central Bank, Ms Najwa Khila Thab, and the deputy general secretary for media relations, Mr Kamal Kamoun, who were summoned before the disciplinary board and suspended for a month. In addition, the deputy general secretary, Mr Yassine Ben Ismaïl, was summoned before the disciplinary board and dismissed outright.
- 784.** Moreover, the Government knowingly adopted regulatory texts that were favourable to the UGTT. The organization quotes as an example Circular No. 34 of 17 January 2014 (a copy was sent with the complaint) concerning the deduction of trade union dues in government departments. The OTT objects to the provision that states that the trade union dues of public employees will be deducted and paid to the UGTT for six months after they leave that federation. However, such a provision creates a discriminatory situation for the new trade union federation which the employees wished to join since the federation would be deprived of their contributions for six months. The OTT states that it lodged an appeal against this circular with the administrative court of Tunis in February 2014 on grounds of abuse of power. The appeal was rejected by the administrative court in April 2014. The OTT also objects that during the appeal proceedings the court allowed the UGTT to submit a written report in response to the appeal whereas the OTT was not party to the proceedings in question.
- 785.** Moreover, the complainant denounces several attempts to murder its general secretary, Mr Lasaad Abid. On one occasion, Mr Abid received a booby-trapped package which immediately caused skin inflammation on contact. The OTT reported these incidents to the judicial authorities and an investigation is in progress.
- 786.** The OTT asserts that it has made requests for a meeting with the head of government with a view to resolving these problems but the latter has always refused such meetings. The OTT's requests for meetings have also been refused by the Minister for Social Affairs. The Government's position invites scrutiny and is evidence of its pro-UGTT stance. The OTT denounces the fact that, despite its official request, it was excluded from the Tunisian delegation to the 103rd Session (June 2015) of the International Labour Conference. Despite

the fact that there are other trade union federations in the country, the Government only invited the UGTT as representative of the workers at the Conference.

- 787.** Lastly, the complainant denounces the fact that the Government's current refusal to take account of its existence and its grievances means that the OTT is absent from all negotiations between the workers and the administration. The only workers' organization accepted by the Government is the UGTT. Hence the OTT, like several other national trade union federations, was not involved in the negotiation and signing in January 2013 of the social contract between the Government, the UGTT and the Tunisian Confederation of Industry, Trade and Handicrafts (UTICA). Nor was the OTT involved in the dialogue that culminated in the conclusion of the agreement of 7 January 2014 between the Government and the UGTT concerning employment mechanism No. 16 (which deals with the regularization of construction workers and labourers); however, this agreement has been rejected by the majority of workers in the sector, since such workers are often in an employment relationship which contains features of temporary work and outsourcing (known as *al-mounawata*) and most of them are represented by the OTT.
- 788.** However, the UGTT no longer makes any secret of its hostility towards trade union pluralism and even claims that it derives its legitimacy as sole negotiator for the workers of the social contract which it alone negotiated and signed with the Government. The Government's silence is an avowal of impotence in the face of the proven capacity of the UGTT to mobilize its members and disrupt the economic activity of the country.
- 789.** The complainant declares that its existence is under serious threat and asks the Committee to urge the Government to recognize trade union pluralism in practice and to stop all forms of intimidation and anti-union acts against its members by acting with strict neutrality towards all trade union federations in the country. The complainant requests ILO assistance to determine the reality of the trade union situation in the country and to find solutions to the problems that it reports.
- 790.** Lastly, the complainant calls for a revision of the labour laws to bring them into conformity with international labour Conventions. It states that the Government should set this process in motion by creating the Higher National Council for Social Dialogue, with the inclusive participation of five representatives of the workers and three representatives of the employers' organizations.

B. The Government's reply

- 791.** In its communication dated 8 March 2016, the Government states that the OTT benefits from the check-off system for trade union dues in respect of public employees who are members for 2016, in accordance with Circular No. 2 of 4 January 2016. Other trade union organizations, namely the Tunisian General Confederation of Labour (CGTT) and the Workers' Union of Tunisia (UTT) have also enjoyed this facility.
- 792.** As regards the lack of recognition of trade union pluralism, the Government states that this belongs to the sphere of inter-union relations and therefore it cannot be held responsible for the situation.
- 793.** As regards the allegations concerning the Government's refusal to negotiate with the OTT, the Government points out that the legal existence of a trade union body does not necessarily mean that it enjoys all rights and benefits deriving from trade union law, since the legislator can regulate its access to rights and benefits and impose limits and restrictions. Hence it is within the legislative framework that the rules governing collective bargaining are established with a view to regulating labour relations. The Government refers to section 38 of the Labour Code, under which collective bargaining, as a benefit deriving from the right

to organize, is subject to the condition that the trade union or trade union organization be “the most representative”, a proviso that the Committee on Freedom of Association authorizes States to establish in their legislation on collective bargaining. Hence the capacity of the employers’ or workers’ organizations to engage in collective bargaining in the public and private sectors is subject to the principle of trade union representativeness, which requires the organizations concerned to be the most representative. The Government observes that the OTT accepts this principle in its complaint.

794. As regards the allegations concerning the conclusion of the social contract, the Government affirms that these negotiations were conducted with a view to concluding an agreement that is only binding on the three parties concerned, namely the Government, the Tunisian General Labour Union (UGTT) and the Tunisian Federation of Industry, Trade and Handicrafts (UTICA). Indeed, these three parties were the only ones that expressed a wish to be bound by the social contract. The Government considered it important to give concrete expression to the rapprochement between the social partners and make progress towards concluding a social contract, in order to speed up the transition to democracy and promote social harmony in a period increasingly dominated by strikes and demands. Moreover, the Government recalls that the process in question was undertaken in collaboration with the ILO and the Governments of Belgium and Norway as part of a project to promote social dialogue in Tunisia.

795. As regards the allegations concerning the existence of irregularities towards members and officers of the OTT (dismissals, discriminatory transfers, suspensions, denial of promotions), the Government indicates that it will forward to the Committee the information that it has requested from the parties concerned (administrative departments and enterprises).

796. Lastly, as regards the OTT’s allegation concerning the impossibility of secondment for its members, the Government refers to chapter 59 of Act No. 112 of 12 December 1983, issuing the General Public Service Regulations and also to chapter 43 of Act No. 78 of 5 August 1985, issuing the General Regulations for employees of public agencies, public industrial and commercial undertakings, and companies whose capital belongs directly or entirely to the State or to local authorities, these being regulations that make no provision for staff secondment. Consequently, the OTT’s request for secondment of its members cannot be met because of the legislation in force.

C. The Committee’s conclusions

797. *The Committee notes that, in the present case, the complainant organization reports serious anti-union acts committed against it by the authorities and by a rival trade union federation ever since it was founded and also the Government’s refusal to include it in the process of collective bargaining in the public service.*

798. *The Committee notes, firstly, the allegations of the OTT concerning the problems arising from the Government’s refusal to transfer to it the trade union dues of the public employees who are its members, to which it is entitled in accordance with Cabinet Circular No. 35 of 27 January 2014. The Committee notes with concern that this refusal has placed the OTT in a difficult financial situation, particularly as regards covering its operating costs. The Committee notes the statement that on 4 January 2016, the Government published Circular No. 2 concerning the deduction of trade union dues for 2016 for public employees to the benefit of several trade union organizations, including the OTT. This Cabinet circular to the various ministries authorizes them to check off the union dues for 2016 of the members of the three trade union federations referred to in the circular. The Committee welcomes the government circular authorizing the deduction of trade union dues for the OTT for 2016 under the check-off system in the public sector and invites the Government to hold consultations with all the trade union organizations concerned with a view to permanently*

establishing a system which ensures that all trade union organizations in the public sector can benefit from the deduction of their members' union dues under the check-off system.

- 799.** *The Committee notes the indication that the OTT filed an appeal for abuse of power against Cabinet Circular No. 34 of 17 January 2014, which it considers shows bias towards the UGTT regarding the deduction of its members' union dues. The OTT objects to the provision which states that the trade union dues of public employees will be deducted and paid to the UGTT for six months after they leave that federation. According to the OTT, such a provision creates a discriminatory situation for the new trade union federation which the employees wished to join since the federation would be deprived of their contributions for six months. The Committee notes that the appeal lodged by the OTT with the administrative court of Tunis in February 2014 was rejected in April 2014. In general, the Committee considers that workers should have the possibility of opting for deductions from their wages under the check-off system to be paid to trade union organizations of their choice, even if they are not the most representative [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 477]. In the present case, the Committee observes that the provision established in Circular No. 34 concerning the UGTT to deduct the trade union dues of a public employee and pay them to a trade union for six months after the employee has left the union in question relates to section 254 of the Labour Code, according to which "any member of a trade union may, unless otherwise stipulated, relinquish his/her membership without prejudice to the union's entitlement to the dues concerned for six months after the employee has left the union". The Committee observes that Circular No. 35 concerning the OTT does not establish a similar provision. The Committee requests the Government to ensure, with a view to equal treatment for all trade unions, that all Cabinet circulars concerning the deduction of trade union dues of public employees give equal treatment to all persons in matters relating to the cancellation of union membership. The Committee urges the Government to provide detailed observations on this matter.*
- 800.** *The Committee notes with concern the allegations regarding discriminatory treatment towards representatives of the OTT in the public service and in public undertakings, including intimidation or the denial of promotions to which they are entitled in law. The Committee notes the list of OTT representatives who, according to the complainant, were subjected to discriminatory penalties in the sectors of banking (Yassin Ben Ismail, Najwa Khila Ben Thabet and Kamal Kamoun), education (Samir El-Zawari and Imad Belkassem), agriculture (Saber Eliyadi) and transport (Mohamed Ali Thulaithi and Madji El-Abdali). The penalties range from suspension of the worker for a specified period to permanent dismissal. The Committee recalls that 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. Furthermore, 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**, op. cit., paras 804 and 808]. Noting the Government's statement that it has asked the administrative departments and enterprises concerned to provide it with information on the irregularities described, the Committee expects the Government to send information as soon as possible on the various measures that have affected the abovementioned OTT members and officers. The Committee urges the Government to take the necessary steps to expedite the investigations relating to the cases of permanent dismissal of trade unionists and, should these dismissals prove to have been on anti-union grounds, to ensure the reinstatement of the trade unionists with the payment of all outstanding wages. If reinstatement is not possible for objective and compelling reasons, adequate compensation must be awarded as reparation for all injury suffered and to prevent any recurrence of such acts in the future.*

- 801.** *In more general terms, the Committee notes with concern allegations relating to anti-union violence towards OTT members and the impossibility for OTT local and regional bodies to function properly (torn posters, physical violence, banned union meetings). The Committee requests the Government to expedite investigations of the administrative departments concerned on the basis of the allegations and, if necessary, to take urgent corrective measures and send its observations in this respect.*
- 802.** *The Committee notes the complainant's allegation that the Government's current refusal to take account of its constitution and demands has resulted in the OTT being absent from all negotiations between the workers and the administration. Hence the OTT, like several other national trade union federations, was not involved in the negotiation and signing in January 2013 of the social contract between the Government, the UGTT and UTICA. The Committee notes that, according to the Government, these negotiations were conducted with a view to concluding an agreement that is only binding on the three parties concerned, namely the Government, the UGTT and UTICA, since in fact only these three parties expressed a wish to be bound by the social contract. The Government adds that it was important to give concrete expression to the rapprochement between the social partners and make progress towards concluding a social contract, in order to speed up the transition to democracy and to promote social harmony in a period increasingly dominated by strikes and demands.*
- 803.** *The OTT also complains that it was not involved in the dialogue that resulted in the conclusion of the agreement of 7 January 2014, between the Government and the UGTT concerning employment mechanism No. 16, despite the fact that, according to the OTT, it represents the majority of workers who are in an employment relationship containing features of temporary work and outsourcing (al-mounawata). The Committee requests the Government to provide detailed observations on this matter and recalls the importance of consulting all trade union organizations concerned on matters affecting their interests or those of their members.*
- 804.** *As regards the OTT's allegations concerning the Government's refusal to register it as part of the Worker delegation to the 103rd Session (June 2014) of the International Labour Conference, the Committee recalls that the question of representation at the Conference comes within the competence of the Credentials Committee and that no objection or complaint was lodged with the Credentials Committee in June 2014 with regard to the composition of the Worker delegation of Tunisia.*
- 805.** *The Committee notes the complainant's allegations concerning hostile acts against it by the UGTT, including a smear campaign against the OTT in the national media and intimidation of its members, particularly in the education sector. In general terms, the Committee considers that a matter involving no dispute between the government and the trade unions, but which involves a conflict within the trade union movement itself, is the sole responsibility of the parties themselves [see **Digest**, op. cit., para. 1113]. The Committee requests the Government to ensure that comments or acts by the authorities do not result in obstruction of the exercise of trade union rights by the OTT or its members.*
- 806.** *Lastly, noting with deep concern the allegations relating to several attempts to murder OTT general secretary Mr Lasaad Abid, the Committee requests the Government to keep it informed of the outcome of the investigation.*
- 807.** *The Committee considers that a number of issues raised in the present case might be resolved more effectively in an environment where every trade union organization could conduct its activities without obstruction and where any privileges granted to certain organizations vis-à-vis others are based on clearly established representativeness. The Committee observes that the Government itself refers to the legislation in force relating to collective bargaining, particularly the need to acquire the status of most representative organization. The*

Committee therefore once again reiterates its long-standing recommendation to the Government to take all necessary steps to lay down clear and pre-established criteria for determining trade union representativeness, in consultation with the social partners, and to keep it informed of any progress made on this matter. The Committee expects all the organizations concerned to be consulted in this respect and reminds the Government once again that it may avail itself of ILO technical assistance, if it so wishes.

The Committee's recommendations

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

- (a) The Committee welcomes the government circular authorizing the deduction of trade union dues for the OTT for 2016 under the check-off system in the public sector and invites the Government to hold consultations with all the trade union organizations concerned with a view to permanently establishing a system which ensures that all trade union organizations in the public sector can benefit from the deduction of their members' union dues under the check-off system.*
- (b) The Committee requests the Government to ensure, with a view to equal treatment for all trade unions, that all Cabinet circulars concerning the deduction of trade union dues of public employees give equal treatment to all persons in matters relating to the cancellation of union membership. The Committee urges the Government to provide detailed observations on this matter.*
- (c) Noting the Government's statement that it has asked the administrative departments and enterprises concerned to provide information on the irregularities described, the Committee expects the Government to send information as soon as possible on the various measures that have affected the OTT members and officers concerned (Yassin Ben Ismail, Najwa Khila Ben Thabet, Kamal Kamoun, Samir El-Zawari, Imad Belkassem, Saber Eliyadi, Mohamed Ali Thulaithi and Madji El-Abdali). The Committee urges the Government to take the necessary steps to expedite investigations relating to the cases of permanent dismissal of trade unionists and, should these dismissals prove to have been on anti-union grounds, to ensure that the trade unionists are reinstated with the payment of all outstanding wages. If reinstatement is not possible for objective and compelling reasons, adequate compensation must be awarded as reparation for all injury suffered and to prevent any recurrence of such acts in the future.*
- (d) The Committee notes with concern allegations concerning the impossibility for OTT local and regional bodies to function properly and requests the Government to expedite investigations of the administrative departments concerned on the basis of the allegations and, if necessary, to take urgent corrective measures and send its observations in this respect.*
- (e) The Committee requests the Government to provide detailed observations in response to the allegation that the OTT is excluded from all negotiations between the workers and the administration, such as those that culminated in the signing of the collective agreement concerning employment mechanism*

No. 16. The Committee recalls the importance of consulting all trade union organizations concerned on matters affecting their interests or those of their members.

- (f) The Committee requests the Government to ensure that comments or acts by the authorities do not result in obstruction of the exercise of trade union rights by the OTT or its members.*
- (g) The Committee requests the Government to keep it informed of the outcome of the investigation into several attempts to murder OTT general secretary Mr Lasaad Abid.*
- (h) The Committee once again reiterates its long-standing recommendation to the Government to take all necessary steps to lay down clear and pre-established criteria for determining trade union representativeness, in consultation with the social partners, and to keep it informed of any progress made on this matter. The Committee expects all the organizations concerned to be consulted in this respect and reminds the Government once again that it may avail itself of ILO technical assistance, if it so wishes.*

CASE NO. 3098

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

Complaint against the Government of Turkey presented by

- **the Turkish Motor Workers' Union (TÜMTİS)**
- **the International Transport Workers' Federation (ITF) and**
- **the International Trade Union Confederation (ITUC)**

Allegations: the complainant organizations allege illegal arrests, detentions and prosecution of several trade union leaders for engaging in trade union activities and abusive use of criminal law to suppress independent trade union movement

- 809.** The Committee last examined this case at its June 2015 meeting, when it presented an interim report to the Governing Body [see 375th Report, paras 532–559, approved by the Governing Body at its 324th Session].
- 810.** The Government sent new observations in a communication dated 2 July 2015.
- 811.** 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. Previous examination of the case

812. In its previous examination of the case in June 2015, the Committee made the following recommendations [see 375th Report, para. 559]:

- (a) The Committee requests the Government and the complainants to provide information on the appeal regarding the 20 November 2012 decision of the High Criminal Court and to indicate whether, given the period of their sentences, the trade unionists in question are now free.
- (b) The Committee requests the Government to provide information on the current status of the TÜMTIS dissolution cases.
- (c) The Committee requests the Government to provide detailed information on the alleged prosecution of TÜMTIS National President Kenan Ozturk and Ankara Branch President Nurettin Kilicdogan for allegedly criticizing the new labour law and holding an illegal demonstration.

B. The Government's reply

813. In its communication dated 2 July 2015, the Government reiterates the information it has previously provided as regards the 2012 legislative amendments which, according to the Government, gave trade unions more freedoms and rights and ensured better protection, including against dissolution, of trade unions, and replaced imprisonment sanctions by administrative fines.

814. With regard to the Turkish Motor Workers' Union (TÜMTIS) dissolution case, the Government indicates that Case 2008/414 filed in the 5th Labour Court of Istanbul by the Istanbul Chief Public Prosecutor was unsuccessful because it was based on legislation which the Ministry no longer had the jurisdiction to implement as Act No. 2821 was repealed. The Government indicates that TÜMTIS is currently operating in the transport sector, and regroups a total of 7,518 members. It has signed 85 collective agreements which benefit 3,250 workers. In 2014, TÜMTIS concluded four new collective agreements regulating working conditions of 84 workers, three more agreements were concluded before 3 May 2015 for the benefit of 171 workers.

815. The Government argues that the case against the TÜMTIS administrators and members was filed in 2007, before Acts Nos 2821 and 2822 were repealed. The verdict of the 11th Ankara High Criminal Court sentencing 14 administrators and members of the Ankara branch of TÜMTIS to imprisonment concerned unlawful trade union activities and therefore the relevant labour legislation in force at that time was rightfully implemented. The Government further argues that this is a criminal case, which does not concern the exercise of legitimate trade union activities and is thus beyond the mandate of the Committee on Freedom of Association.

C. The Committee's conclusions

816. *The Committee recalls that this case concerns the allegations of illegal arrests, detentions and prosecution of several trade union leaders for engaging in trade union activities and abusive use of criminal law after TÜMTIS had conducted an organization campaign at Horoz Cargo.*

817. *The Committee recalls that by a decision of 20 November 2012 of the 11th High Criminal Court, 14 trade unionists were sentenced to prison terms varying from six months to two years. This decision was appealed by the union. Given the period of their sentences, and in the absence of any information to the contrary from the Government and the complainant,*

the Committee understands that the trade unionists are now free. Furthermore noting that neither the Government nor the complainants provided any information on the outcome of the appeal, the Committee will not pursue its examination of this matter.

818. *The Committee further recalls from its previous examination of the case [see 375th Report, para. 558] the allegation that the Public Prosecutor of Istanbul had filed a suit in the 5th Labour Court of Istanbul to dissolve TÜMTIS pursuant to section 58 entitled “Dissolution” of Trade Union Act No. 2821 on the grounds of “establishing a criminal syndicate for the purpose of generating economic profit through trade union”, which, on the one hand, the Government appeared to have confirmed, but at the same time pointed out that this legislation had since become obsolete following the adoption of Trade Unions and Collective Labour Agreements Act No. 6356 on 18 October 2012. The Government further pointed out that if a trade union official commits a crime, only his or her individual responsibility is engaged while the trade union in question is protected against dissolution. Taking into account this legislative change, the Committee requested the Government to provide information on the current status of the TÜMTIS dissolution cases. The Committee notes the Government’s indication that the dissolution case was unsuccessful due to the fact that it was based on legislation which the Ministry no longer had the jurisdiction to implement since Act No. 2821 was repealed. The Committee further notes the Government’s indication that TÜMTIS is currently operating in the transport sector, and represents a total of 7,518 members and has concluded a number of collective agreements.*

819. *Finally, the Committee recalls the complainants’ allegation that in 2013, a case was opened by the National Prosecutor against TÜMTIS National President Kenan Ozturk and Ankara Branch President Nurettin Kilicdogan for criticizing the country’s new labour law and allegedly holding an illegal demonstration. In the absence of any information from the Government and the complainants, the Committee requests the Government to indicate whether any such charges were initiated against the two presidents and, if so, to provide detailed information in this regard.*

The Committee’s recommendation

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

The Committee requests the Government to indicate whether charges were initiated against TÜMTIS National President Kenan Ozturk and Ankara Branch President Nurettin Kilicdogan for allegedly criticizing the new labour law and holding an illegal demonstration and, if so, to provide detailed information in this regard.

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 Associations of Commerce and Production (FEDECAMARAS)

Allegations: Marginalization and exclusion of employers' associations in decision-making, thereby precluding social dialogue, tripartism and consultation in general (particularly in respect of highly important legislation directly affecting employers) and failing to comply with recommendations of the Committee on Freedom of Association; acts of violence, discrimination and intimidation against employers' leaders and their organizations; detention of leaders; 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; and a bomb attack on FEDECAMARAS headquarters

- 821.** The Committee last examined this case at its meeting of May–June 2015, when it presented an interim report to the Governing Body [see 375th Report, paras 560–618, approved by the Governing Body at its 324th Session (June 2015)].
- 822.** The Government sent additional observations in communications dated 9 and 30 October 2015.
- 823.** The International Organisation of Employers (IOE) and the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS) provided additional information in a joint communication dated 20 May 2016.
- 824.** 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

- 825.** In its previous examination of the case at its May–June 2015 meeting, the Committee made the following recommendations on the matters still pending [see 375th Report, para. 618]:
- (a) While expressing its deep concern at the various and serious forms of stigmatization and intimidation by the Bolivarian authorities, groups and organizations directed against

FEDECAMARAS, its member organizations, their leaders and affiliated companies, including threats of imprisonment, statements of incitement to hatred, accusations of conducting economic warfare, the occupation and looting of shops, the seizure of FEDECAMARAS headquarters, etc., the Committee draws the Government's attention to the importance of taking strong measures to prevent such actions and statements against individuals and organizations that are legitimately defending their interests under Conventions Nos 87 and 98, which have been ratified by the Bolivarian Republic of Venezuela.

- (b) The Committee notes with regret that the criminal proceedings relating to the bomb attack on FEDECAMARAS headquarters on 26 February 2008 and the abduction and mistreatment in 2010 of the leaders of that organization, Mr Noel Álvarez, Mr Luis Villegas, Mr Ernesto Villamil and Ms Albis Muñoz (the latter sustained three bullet wounds) have not yet been completed (FEDECAMARAS appealed against the ruling ordering the closure of the case concerning the bomb attack on its headquarters), again expresses the firm hope that they will be concluded without further delay, and requests the Government to keep it informed. The Committee reiterates the importance of ensuring that the perpetrators receive sentences that are in proportion to the seriousness of their crimes, with a view to preventing any recurrence of the latter, and that FEDECAMARAS and the leaders concerned are compensated for the damage caused by these illegal acts. The Committee requests the Government to send its observations on the issues raised by FEDECAMARAS with regard to the bomb attack on its headquarters.
- (c) As regards the allegations of the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders, the Committee requests that those current or former leaders of FEDECAMARAS be compensated in a just manner. At the same time, the Committee refers to the decision of the Governing Body in March 2014, in which it "urged the Government of the Bolivarian Republic of Venezuela to develop and implement the Plan of Action as recommended by the high-level tripartite mission, in consultation with national social partners", which involved, as mentioned by the mission, "the establishment of a round table between the Government and FEDECAMARAS, with the presence of the ILO, to deal with all pending matters relating to the recovery of estates and the expropriation of enterprises and other related problems arising or that may arise in the future", and regrets that the Government stated in its last communication that establishing a dialogue round table on questions of recovery of estates and holding consultations on legislation are not viable. The Committee urges the Government to implement this request along the lines described in the conclusions and to report thereon. Finally, like the high-level tripartite mission, the Committee emphasizes "the importance of taking every measure to avoid any kind of discretion or discrimination in the legal mechanisms governing the expropriation or recovery of land or other mechanisms that affect the right to own property".
- (d) As regards the structured bodies for bipartite and tripartite social dialogue which need to be established in the country, and the plan of action in consultation with the social partners, involving the establishment of stages and specific time frames for its implementation with the technical assistance of the ILO, as recommended by the Governing Body, the Committee notes the Government's indication that it has not yet concluded the process of consultation with different sectors and organizations and requests the Government to ensure that FEDECAMARAS is included in all these processes. The Committee recalls that the conclusions of the mission refer to a round table between the Government and FEDECAMARAS, with the presence of the ILO, and a tripartite dialogue round table, with the participation of the ILO and an independent chairperson. The Committee urges the Government to immediately adopt tangible measures with regard to bipartite and tripartite social dialogue as requested by the high-level tripartite mission. Noting that the Government has not yet provided the requested plan of action, the Committee urges the Government to implement without delay the conclusions of the high-level tripartite mission endorsed by the Governing Body and to report thereon. The Committee urges the Government to promote social dialogue and initiatives taken in this area, such as the meeting held between the authorities and FEDECAMARAS in February 2015, and to immediately implement tripartite consultations.
- (e) The Committee, in line with the conclusions of the high-level tripartite mission, urges the Government to take immediate action to create a climate of trust based on respect for

employers' and trade union organizations with a view to promoting solid and stable industrial relations. The Committee requests the Government to inform it of any measures taken in this regard. The Committee further requests the Government, as a first step in the right direction that should not pose any problem, to enable a representative of FEDECAMARAS to be appointed to the Higher Labour Council.

- (f) The Committee notes with concern the new allegations by the IOE and FEDECAMARAS of 27 November 2014 concerning: (i) the detention of Mr Eduardo Garmendia, President of CONINDUSTRIA, for 12 hours; (ii) the shadowing and harassment of Mr Jorge Roig, President of FEDECAMARAS; (iii) an escalation of the verbal attacks on FEDECAMARAS by high-level state officials in the media; and (iv) the adoption by the President of the Republic, in November 2014, of 50 decree laws on important economic and production-related matters without consultation of FEDECAMARAS. The Committee requests the Government to send complete observations on these allegations.
- (g) The Committee notes with concern new allegations from the IOE and FEDECAMARAS and the observations by the Government of 10 and 12 March 2015 on some of the allegations. The Committee once again requests the Government to complete its response, to indicate the specific allegations against each of the 13 employers or managers from the different sectors who have been detained or placed under precautionary measures by the judicial authorities, and not to limit itself to an indication of the general criminal offences (boycott, hoarding, smuggling, speculation, etc.), and also to provide information on developments in the respective judicial proceedings. The Committee also requests the Government to forward its observations concerning the latest additional information transmitted by the IOE and FEDECAMARAS in their communication dated 19 May 2015. The Committee intends to examine these serious issues in a detailed manner, in full knowledge of the facts, and requests the authorities to consider lifting the precautionary custodial measures imposed on employers and business leaders pending trial.
- (h) The Committee expresses its deep concern, observing the lack of information and any progress on the previous recommendations and firmly urges the Government to take all the requested measures without delay, including with regard to the new allegations of acts of intimidation and stigmatization against FEDECAMARAS, its leaders and members by the authorities, contained in its communication of 19 May 2015.
- (i) The Committee draws the special attention of the Governing Body to the extremely serious and urgent nature of this case.

B. New allegations from the complainants

- 826.** In their communication dated 20 May 2016, the IOE and FEDECAMARAS denounce new violations of the principles of freedom of association and the absence of dialogue from the Government.
- 827.** First, the complainants denounce the enactment in December 2015, without consultation with the social partners, 29 national laws, including the law on job security which allows the labour inspection, under the Government's authority, to determine the qualification of a dismissal as well as the automatic reinstatement of the employee without the guarantee of the right to defence for employers.
- 828.** Second, the complainants allege that through communications Nos 1980 and 1981 from the Ministry of Popular Power for Social Work Process, aimed at FEDECAMARAS on 18 and 24 December 2015 (during the festive period), the Government intended to maintain some semblance of dialogue with FEDECAMARAS when, in reality, the Government does not encourage constructive dialogue and continues to take measures without due consultations. In communication No. 1980 of 18 December 2015, the Government requested FEDECAMARAS to substantiate its application for the annulment of the LOTTT, to which FEDECAMARAS replied in specifying, by letter dated 6 January 2016, that it had not called for the repeal of the law, but referred to the document entitled "Commitment to Freedom: for a regulatory framework for a better future", approved by the 71st Annual Meeting of

FEDECAMARAS – which had already been submitted to the Government – that contained comments on the rules governing employers, including some provisions of the LOTTT, since the latter was approved without consulting employers and workers. In communication No. 1981 of 24 December 2015, the Government declared reiterating its request to FEDECAMARAS, made during previous meetings of 8 and 14 October 2015, to submit proposals on wage policy that would be evaluated in 2016, on the regulations implementing the LOTTT and on job security. However, the complainants allege that the day after the meeting of 14 October and prior to the sending of their communication, the President of the Republic had already announced to the media a new increase in the minimum wage and other legislative reforms on tax, exchange rate and pricing, as well as the new law on job security, without engaging due consultation. Consequently, the complainants allege that the intended effective dialogue does not exist, that the alleged inquiries are made untimely when the measure to consult on has already been adopted or announced, and that the Government has not made up any workplan, nor has it engaged in serious and comprehensive discussions on labour issues, as requested by the supervisory bodies of the ILO.

829. Third, the complainants denounce the unilateral adoption without prior consultation of the Decree of the President of the Republic declaring a state of emergency for economic hardship, suspending constitutional guarantees on economic matters and granting extraordinary powers to the Government, in a context where the President cannot exercise legislative power without the prior consent of the opposition majority in the National Assembly. The complainants denounce the fact that the bases of the Decree put the blame for the crisis on an economic war allegedly led by FEDECAMARAS and national entrepreneurs with foreign governments and international organizations. This Decree, to which FEDECAMARAS expressed adverse position, could justify the takeover of some companies and inventories. The complainants add that although the National Assembly, having engaged in a dialogue with various business and labour sectors including FEDECAMARAS, issued a decision disapproving the Decree, the Supreme Court of Justice confirmed the validity of the latter. The complainants allege that with such decision the Supreme Court undermined the separation of powers and the role of the National Assembly, exceeding its mandate by declaring, without having been asked, the nullity and annulment for unconstitutionality of article 33 of the Organic Law on the state of emergency (which provides for the omission of any decision and the termination of the instance in the event of disapproval of a state of emergency decree by the National Assembly). The complainants consider that the Government consolidates a model of autocratic State, at a time when the country requires mechanisms for effective social dialogue to address the crisis – to which the technical assistance of the ILO could be of great value, but the Government refuses to receive such assistance in the terms recommended in the report of the tripartite high-level mission of 2014. With regard to the establishment of the National Council for a Productive Economy on 19 January 2016, the complainants state that, although some businesses representing the various economic sectors represented in FEDECAMARAS were incorporated under their personal capacity to the Council, there is neither an institutional representation of FEDECAMARAS nor the participation of independent trade unions in the Council. And yet there has been no agreement in the sectorial working groups of the Council which would permit to reach concrete solutions.

830. Fourth, the complainants denounce new acts of intimidation towards FEDECAMARAS, contrary to the recent findings of the Committee on the Application of Standards of the 104th International Labour Conference, which urged the Government to immediately cease all acts of interference, aggression and stigmatization against FEDECAMARAS, its affiliated organizations and their leaders. In particular, the complainants indicate that, on 8 December 2015, the President of the Republic stated publicly that FEDECAMARAS requested the repeal of the LOTTT, the Organic Law on Fair Prices and other regulations that protect people insinuating that the opposition parties and FEDECAMARAS hate the workers. The complainants further allege that, on 30 April and 3 May 2016, the President of

the Republic made accusations of intimidation against FEDECAMARAS and delivered statements instigating hatred against the institution, presenting the leaders as enemies of the workers. The complainants also refer to additional allegations of stigmatizing attacks raised in other cases before the Committee.

- 831.** Fifth, the organizations denounce the approval of a new increase in the minimum wage and the value of the socialist Cestaticket in February 2016, without consulting with FEDECAMARAS and the statement by the President of the Republic that he was not willing to engage in a dialogue with the organization.
- 832.** Sixth, the complainants denounce the failure of the Government to implement the road map proposed to the Governing Body of the ILO in March 2016, and they indicate that, at the date of their submission to the Committee, there has not been any meeting between the Government and FEDECAMARAS.

C. The Government's reply

- 833.** In its communication of 9 October 2015, the Government sent its observations with regard to the Committee's aforementioned recommendations.
- 834.** As regards recommendation (a) (allegation of stigmatization and intimidation by the Bolivarian authorities, groups or organizations directed against FEDECAMARAS, its member organizations, its leaders and affiliated companies), the Government denies that there have been any attacks, persecution, harassment, intimidation or stigmatization against FEDECAMARAS. The Government indicates that, although the complainant organizations accuse the Government of threats of persecution and imprisonment, no FEDECAMARAS members are being detained or persecuted, even though the organization is responsible for actions that have created the climate of intimidation leading to the death of hundreds of people and serious harm to the nation. The Government indicates that some of these actions included participating in, funding and carrying out a coup d'état, an illegal work stoppage by the employers, and sabotage of the oil industry, and it indicates that it has responded to these violent and continued actions by FEDECAMARAS, considering them not to be business-related but motivated by political interests that are opposed to Venezuelan democracy.
- 835.** As regards recommendation (b) (allegations of acts of violence and threats against FEDECAMARAS and its employer members, specifically as regards the abduction and mistreatment of FEDECAMARAS leaders), the Government indicates that, as regards the acts carried out against Mr Noel Álvarez, Mr Luis Villegas, Mr Ernesto Villamil and Ms Albis Muñoz, the trial of Mr Antonio José Silvia Moyega was concluded on 18 September 2015 with him being sentenced to 14 years and eight months' imprisonment for the crimes of brief abduction, aggravated theft of a motor vehicle, criminal conspiracy and attempted homicide in the context of aggravated robbery against the victims. The Government indicates that the convicted person is being held in custody. The Government adds that it was demonstrated that it was a chance act perpetrated by a group of criminals and that it was not carried out against the victims because they were FEDECAMARAS employers' leaders. The Government adds that it will forward any additional information received from the Public Prosecutor's Office in relation to these cases.
- 836.** As regards recommendation (c) (allegations of the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders), the Government again indicates that in all cases of land recoveries, where the persons who occupy the land are able to demonstrate that they have made improvements to it, they are entitled to the respective compensation. The Government adds that, in recent years, under the policy for the recovery of agricultural land, many recoveries have been carried out on

illegally occupied idle land where the occupants were not able to prove ownership, highlighting that only a minute proportion of the recoveries could have affected FEDECAMARAS leaders (the reported cases account for 0.74 per cent of the lands recovered). The Government considers that this demonstrates that it is not a case of retaliation against any employer. As regards Mr Eduardo Gómez Sígala, Mr Rafael Marcial Garmendia and Mr Manuel Cipriano Heredia, the Government again indicates that it was not a case of expropriation but that the lands were recovered because they were idle and the occupiers were not able to demonstrate their ownership; due process was followed and the regulations were complied with (in the case of Mr Garmendia, the recovery was limited to only part of the lands that he occupied, since he had only been able to demonstrate his ownership of another part, which is still in his possession). As regards the cases of Mr Egildo Luján and Mr Vicente Brito, the Government again indicates that the National Land Institute reported that its archives contain no information on any recoveries or expropriations under the names of these leaders.

- 837.** As regards recommendation (d) (bipartite and tripartite social dialogue), the Government reiterates that social dialogue in the Bolivarian Republic of Venezuela is conceived from a broad and inclusive perspective and that participation mechanisms should not be limited to the most representative organizations but should also include the whole spectrum of employers and workers. It indicates that consultation and participation is a constitutional mandate exercised through broad, inclusive, participatory and proactive social dialogue. It reports that consultations are carried out at all levels through participatory, inclusive social dialogue, even though certain organizations seek to exclude other organizations, exclude themselves or fail to attend consultations and working groups as a political strategy, which has not prevented hundreds of member employers' organizations from participating. The Government highlights, as a starting point, the Economic Conference for Peace, in which all the economic and social sectors were called upon to take part and in which 14 different working groups were set up, with the participation of the Government, workers and employers from the whole country with the aim of boosting the national economy. In this regard, the Government indicates that in 2015 the Presidential Commission of Economic Affairs was established as one of the outcomes of the economic working groups, to boost the export of non-traditional products. Furthermore, the Government highlights the work carried out by the regional governments, which have organized many events to promote productive development, bringing together hundreds of employers. The Government also emphasizes that it has used the National Assembly as a platform to encourage meetings with national employers to promote the reactivation of the economy. While highlighting these examples of broad, inclusive, participatory and proactive social dialogue, the Government indicates that the leaders of FEDECAMARAS have themselves gone so far as to indicate their appreciation for this work, according to their statements in the national media. As examples of the work carried out with the employers' sector, with the participation of many enterprises, the Government draws attention to the International Chocolate Fair (October 2015) and the Sustainable Venezuela World Expo (September 2015).
- 838.** Furthermore, in its communication of 30 October 2015, the Government forwards a letter of 23 October 2015 sent by the People's Ministry of Labour to the President of FEDECAMARAS. It refers to two meetings held with FEDECAMARAS and indicates the Government's willingness to enter into broad social dialogue and to establish mechanisms that will give FEDECAMARAS a larger role in the discussion with a view to developing labour policies and labour-related legislation and regulations, requesting in particular the submission of proposals for the development of wage policies and of new implementing regulations for the Basic Act on Labour and Workers (LOTTT).
- 839.** As regards recommendation (e) (actions to create a climate of trust, including the appointment of a representative of FEDECAMARAS to the Higher Labour Council), the Government indicates that the Higher Labour Council was a body created to monitor the

implementation of the LOTT, and the transitional provisions of the LOTT established that it would cease its functions three years after the approval of the act. Having approved the LOTT in May 2012, the Government indicates that the LOTT expired in May 2015 and was no longer applicable.

840. As regards recommendation (f) (allegations concerning detention, shadowing and harassment of leaders, escalation of verbal attacks and adoption of decree-laws without prior consultation of FEDECAMARAS), the Government provides the following information:

- (i) As regards the supposed detention of the former president of the Venezuelan Confederation of Industrialists (CONINDUSTRIA), Mr Eduardo Garmendia, the Government reports that he was not detained but that, on the contrary, he made his own way to the headquarters of the Bolivarian National Intelligence Service (SEBIN), in compliance with a summons that he had received to answer questions on statements he had made in a national newspaper on how the outbreak of chikungunya would affect productivity (the Government indicates that the statements had been made without evidence, as he recognized). The Government points out that Mr Garmendia was treated courteously by the SEBIN officials who questioned him, and it requests the Committee not to pursue its examination of this matter.
- (ii) The Government also indicates that no organization is currently shadowing or harassing former FEDECAMARAS president Mr Jorge Roig; it therefore requests the Committee not to pursue its examination of the allegation.
- (iii) The Government denies the allegation of an escalation of the alleged attacks against FEDECAMARAS and indicates that there are no attacks or instances of persecution, harassment, intimidation or stigmatization against FEDECAMARAS, its leaders and members.
- (iv) As regards the alleged adoption by the President of the Republic, in November 2014, of 50 decree-laws on important economic and production-related issues without consulting FEDECAMARAS, the Government indicates that the discussion of laws and bills comes within the competence of the National Assembly and that national socio-economic policy comes within the competence of the Executive, in coordination with the other branches of government, without limiting the mechanisms for consultation and broad social dialogue that already exist and are implemented with the various sectors. Furthermore, the Government again reports to the Committee that article 236(8) of the Constitution grants the President of the Republic the possibility, subject to authorization under an enabling act, of issuing decrees with the force of law, indicating that enabling acts must be approved by three-fifths of the members of the National Assembly, in order to establish guidelines, objectives and the framework for matters delegated to the President of the Republic.

841. As regards recommendation (g) (allegations of the detention of employers or leaders), the Government makes the following observations:

- (i) In the case of the “Día a Día Practimercados” supermarket chain, the Government reports that on 2 February 2015 an inspection of the supermarket chain was carried out by a presidential commission and the Office of the National Superintendent for the Defence of Socio-Economic Rights (SUNDDE). It found irregularities in the distribution of goods, as a result of which Mr Manuel Andrés Morales Ordosgoitti and Mr Tadeo Arriechi, director-general and legal representative of the chain, respectively, are currently the subject of an investigation procedure by the Public Prosecutor’s Office, the hearing for which was deferred on the request of their private defence.

- (ii) As regards the directors of the Corporación Cárnica company, the Government reports that, on 30 January 2015, SUNDDE officials visited the establishment following complaints that it was selling goods at excessive prices. Irregularities were established during the inspection, leading to the seizure of more than 44 tonnes of hoarded meat products. As a result of this situation, the Government indicates that Ms Tania Carolina Salinas, Ms Delia Isabel Ribas, Ms Anllerlin Guadalupe López Graterol, Mr Ernesto Luis Arenas Pulgar and Mr Yolman Javier Valderrama Santiago are currently being investigated by the Public Prosecutor's Office.
- (iii) As regards the case of the FARMATODO pharmacy chain, the Government indicates that even though irregular situations affecting users had been detected, a hearing was held in the competent court for the review of the precautionary measure against Mr Pedro Luis Angarita and Mr Agustín Álvarez, who are managers of the pharmacy network, in which the Public Prosecutor's Office issued a decree for their unconditional release. The Government therefore requests the Committee not to pursue its examination of this allegation.
- (iv) The Government indicates that there is no record of investigations against the president of the National Association of Supermarkets and Self-Service Stores (ANSA), Mr Luis Rodríguez, whose freedom is unrestricted. The Government therefore requests the Committee not to pursue its examination of this allegation. It adds that, on 2 February 2015, an interview was held at SEBIN headquarters, after Mr Rodríguez had expressed his wish to provide information on the "Día a Día Practimercados" case.

D. The Committee's conclusions

842. *As regards recommendation (a) from its previous examination of the case (allegations of stigmatization and intimidation by the Bolivarian authorities, groups and organizations directed against FEDECAMARAS, its member organizations, its leaders and affiliated companies), the Committee notes with deep regret that the Government is again using its reply to accuse the complainant organization and that it gives no indication that it has taken any measures to prevent acts and statements of stigmatization and intimidation, as the Committee had recommended. The Committee is therefore bound to reiterate its previous recommendation and urges the Government to take the requested measures without delay. A climate of violence, coercion and threats of any type aimed at trade union leaders and their families does not encourage the free exercise and full enjoyment of the rights and freedoms set out in Conventions Nos 87 and 98. All States have the undeniable duty to promote and defend a social climate where respect of the law reigns as the only way of guaranteeing respect for and protection of life [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 58].*

843. *As regards recommendation (b) from its previous examination of the case (allegations of violence and threats against FEDECAMARAS and its member employers, specifically the abduction and mistreatment of FEDECAMARAS leaders Mr Noel Álvarez, Mr Luis Villegas, Mr Ernesto Villamil and Ms Albis Muñoz in 2010), the Committee notes that one of the accused, Mr Antonio José Silva Moyega, was sentenced to 14 years and eight months' imprisonment for the crimes of brief abduction, aggravated theft of a motor vehicle, criminal conspiracy and attempted homicide in the context of aggravated robbery against the victims. The Committee takes note of the Government's statement that it has been demonstrated that it was a criminal act which was not committed against the victims because they were FEDECAMARAS leaders. The Committee requests the Government to send a copy of the aforementioned ruling and to continue providing additional information concerning any penalties imposed on the perpetrators of these crimes and any compensation to FEDECAMARAS and to the leaders concerned for damage caused by those illegal acts. Furthermore, the Committee requests the Government to send its observations concerning*

the points raised by FEDECAMARAS with regard to the bomb attack on its headquarters on 26 February 2008. In this regard, the Committee recalls 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; that a climate of violence, such as that surrounding the murder or disappearance of trade union leaders, or one in which the premises and property of workers and employers are attacked, constitutes a serious obstacle to the exercise of trade union rights; such acts require severe measures to be taken by the authorities; that the killing, disappearance or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events; and that the inviolability of trade union premises is a civil liberty which is essential to the exercise of trade union rights [see *Digest*, *op. cit.*, paras 43, 46, 48 and 178].

- 844.** As regards recommendation (c) from its previous examination of the case (allegations of the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders), observing that the Government reiterates previously submitted information and deeply regretting the absence of any indication of progress, the Committee reiterates its recommendation and urges the Government to take the requested measures without delay. In this regard, the Committee recalls that the confiscation of trade union property by the authorities, without a court order, constitutes an infringement of the right of trade unions to own property and undue interference in trade union activities [see *Digest*, *op. cit.*, para. 190].
- 845.** As regards recommendation (d) from its previous examination of the case (bipartite and tripartite social dialogue), the Government reiterates the information already provided on previous occasions concerning the broad, inclusive, participatory and proactive social dialogue that exists in the country, referring to certain recent initiatives in this regard. The Committee takes due note of the communication sent to the president of FEDECAMARAS and welcomes the provision that it makes to give FEDECAMARAS a larger role in the discussion with a view to developing labour policies and labour-related legislation and regulations, requesting in particular the submission of proposals for the development of wage policies and the new LOTTT regulations. However, the Committee observes that the Government does not provide any indications concerning the implementation of the plan of action recommended by the Governing Body. Regretting the lack of information and progress in this regard, the Committee reiterates its recommendation and urges the Government to take the requested measures without delay.
- 846.** As regards recommendation (e) from its previous examination of the case (actions to create a climate of trust, including the appointment of a representative of FEDECAMARAS to the Higher Labour Council), the Committee notes with regret that the Government merely indicates that the Higher Labour Council ceased its functions in May 2015. The Committee has emphasized 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 [see *Digest*, *op. cit.*, para. 1067]. Regretting the lack of information and expressing its deep concern at the lack of progress, the Committee regrets that the Government has not appointed a representative of FEDECAMARAS to the Higher Labour Council or the social dialogue body fulfilling its functions, and urges the Government to do so as soon as possible.
- 847.** As regards recommendation (f) from its previous examination of the case (allegations concerning detention, shadowing and harassment of leaders, escalation of verbal attacks and adoption of decree-laws without prior consultation of FEDECAMARAS), the Committee notes, firstly, the Government's statements to the effect that: (i) the president of

CONINDUSTRIA, Mr Garmendia, was not detained but summoned, he made his own way to SEBIN headquarters, and he was treated courteously by the officials who questioned him regarding his statements on how the outbreak of chikungunya would affect productivity; and (ii) no organization is shadowing or harassing former FEDECAMARAS president Mr Jorge Roig. Noting the contradiction between the Government's reply and the allegations made by the complainants, the Committee invites the latter to provide the Government and the Committee with additional information, including any evidence they may have, and it urges the Government to carry out any relevant further investigation on the basis of such information.

- 848.** Secondly, the Committee notes the Government's statement denying the escalation of verbal attacks and indicating that there are no attacks or instances of persecution, harassment, intimidation or stigmatization against FEDECAMARAS, its leaders and members. However, the Committee recalls that throughout its examination of this case it has been witness to many serious accusations levelled against FEDECAMARAS by the Government, and it has noted with great concern the many allegations of attacks against this organization, emphasizing that all the allegations create a climate of intimidation against employers' organizations and their leaders, which is incompatible with the requirements of Convention No. 87. In this regard, the Committee regrets that it is bound to recall once again the principle whereby 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*, op. cit., para. 44] and it firmly urges the Government to take the measures that are necessary both in this regard and to promote social dialogue based on respect.
- 849.** Thirdly, as regards the alleged adoption by the President of the Republic, in November 2014, of 50 decree-laws on important economic and production-related issues without consulting FEDECAMARAS, the Committee notes with regret that the Government merely repeats information that it has already provided on the constitutional legal basis empowering the President of the Republic to issue decrees with the force of law, without making any observation concerning their relevance for or impact on social dialogue. The Committee is bound to point out once again 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 that affect the interests of workers' and employers' organizations without a parliamentary debate being held [see, in particular, Case No. 2698, 368th Report, para. 1020]. The Committee underlines that it is important that consultations take place in good faith, confidence and mutual 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. The Government must also ensure that it attaches the necessary importance to agreements reached between workers' and employers' organizations. The Committee has also emphasized the value of consulting organizations of employers and workers during the preparation and application of legislation which affects their interests, and has drawn the attention of governments to the importance of prior consultation of employers' and workers' organizations before the adoption of any legislation in the field of labour law [see *Digest*, op. cit., paras 1071, 1072 and 1073]. Deeply deploring the persistence of this situation, the Committee firmly expects that full consultations will be held in the future with the most representative organizations of workers and employers, including FEDECAMARAS, on draft legislation covering labour or social matters that affect their interests and those of their members.
- 850.** As regards recommendation (g) from its previous examination of the case (detention of employers or leaders), in relation to the case of the supermarket chain "Día a Día Practimercados", the Committee notes the Government's statements indicating that, having

found irregularities in the distribution of goods in this supermarket chain, Mr Manuel Andrés Morales Ordosgoitti and Mr Tadeo Arriechi, director-general and legal representative, respectively, are currently undergoing investigation. Furthermore, as regards the case of the directors of the Corporación Cárnica company, the Committee notes that Ms Tania Carolina Salinas, Ms Delia Isabel Ribas, Ms Anllerlin Guadalupe López Graterol, Mr Ernesto Luis Arenas Pulgar and Mr Yolman Javier Valderrama Santiago are currently being investigated by the Public Prosecutor's Office. Deeply regretting that no further information has been provided as requested regarding the allegations against these seven individuals under investigation, the Committee requests the Government to indicate whether or not they are subject to precautionary or detention measures, to indicate the specific allegations against them, and to provide up-to-date information on the status of the procedures against them. The Committee recalls that the arrest of trade unionists and leaders of employers' organizations may create an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities; and that in cases involving the arrest, detention or sentencing of a trade union official, the Committee, taking the view that individuals have the right to be presumed innocent until found guilty, has considered that it was incumbent upon the government to show that the measures it had taken were in no way occasioned by the trade union activities of the individual concerned [see *Digest*, op. cit., paras. 67 and 94].

- 851.** As regards the case of the FARMATODO pharmacy chain, in which, according to the Government, Mr Pedro Luis Angarita and Mr Agustín Álvarez were released unconditionally, the Committee requests the Government to confirm whether the charges against these individuals have been dropped or, if not, to indicate the specific allegations against them, and to provide information on the progress of the respective judicial proceedings. In view of the complainants' allegation that four of the owners and managers of this pharmacy chain had been arrested, the Committee urges the Government to indicate whether any other individuals are currently under arrest or trial and it invites the complainants to provide the Government and the Committee with any detailed information that they may have on this matter.
- 852.** As regards the case of the president of the National Association of Supermarkets and Self-Service Stores (ANSA) and of the president of the Venezuelan Association of Clinics and Hospitals, the Committee notes the Government's indication that they were both only interviewed at SEBIN headquarters, that there are no restrictions on their freedom, and that the Government therefore requests the Committee not to pursue its examination of these allegations. Noting the contradiction between the Government's reply and the allegations made by the complainants, the Committee invites the latter to provide the Government and the Committee with additional information on this matter, including any available evidence, and urges the Government, on the basis of such information, to carry out any relevant additional investigations and to keep it informed in this regard.
- 853.** The Committee notes with great concern the new allegations of the IOE and FEDECAMARAS dated 20 May 2016, in which it is alleged: (i) the enactment in December 2015, without consultation with the social partners, of 29 national laws, including the law on job security; (ii) semblance of dialogue through communications to FEDECAMARAS by the Government, when it has already announced or adopted the measures concerned; (iii) the unilateral promulgation without prior consultation of the Decree of the President of the Republic declaring a state of emergency for economic hardship; (iv) new acts of intimidation against FEDECAMARAS; (v) approval without consultation of a new increase in the minimum wage and the value of the socialist Cestaticket in February 2016; and (vi) failure by the Government to implement the road map presented to the Governing Body of the ILO in March 2016. The Committee requests the Government to send its observations on these allegations without delay so that the Committee can examine all the relevant elements.

The Committee's recommendations

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

- (a) While once again expressing its deep concern at the various and serious forms of stigmatization and intimidation by the Bolivarian authorities, groups and organizations directed against FEDECAMARAS, its member organizations, their leaders and affiliated companies, including threats of imprisonment, statements of incitement to hatred, accusations of conducting economic warfare, the occupation and looting of shops and the seizure of FEDECAMARAS headquarters, the Committee draws the Government's attention to the urgency of taking strong measures to prevent such actions and statements against individuals and organizations that are legitimately defending their interests under Conventions Nos 87 and 98, which have been ratified by the Bolivarian Republic of Venezuela. The Committee strongly urges the Government to take all necessary measures to ensure that FEDECAMARAS is able to exercise its rights as an employers' organization in a climate that is free from violence, pressure or threats of any kind against its leaders and members and to promote, together with that organization, social dialogue based on respect.*
- (b) As regards the abduction and mistreatment in 2010 of FEDECAMARAS leaders Mr Noel Álvarez, Mr Luis Villegas, Mr Ernesto Villamil and Ms Albis Muñoz (the latter sustained three bullet wounds), while noting the sentencing of one of the accused to 14 years and eight months' imprisonment, the Committee requests the Government to send a copy of the ruling issued and to continue providing additional information concerning any penalties imposed on the perpetrators of these crimes, and concerning any compensation to FEDECAMARAS and to the leaders concerned for damage caused by those illegal acts. Furthermore, the Committee reiterates its request to the Government to send its observations concerning the points raised by FEDECAMARAS with regard to the bomb attack on its headquarters on 26 February 2008.*
- (c) As regards the allegations of the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders, the Committee insists that those current or former leaders of FEDECAMARAS be compensated in a just manner. At the same time, the Committee refers to the decision of the Governing Body in March 2014, in which it "urged the Government of the Bolivarian Republic of Venezuela to develop and implement the Plan of Action as recommended by the high-level tripartite mission, in consultation with national social partners", which in turn refers to "the establishment of a round table between the Government and FEDECAMARAS, with the presence of the ILO, to deal with all pending matters relating to the recovery of estates and the expropriation of enterprises and other related problems arising or that may arise in the future". The Committee regrets that the Government stated in previous communications that establishing a dialogue round table on questions of recovery of estates and holding consultations on legislation are not viable and that, in its latest communication, it merely indicates that it proceeded in compliance with the*

law. The Committee firmly urges the Government to implement this request along the lines described in the conclusions and to report thereon. Lastly, like the high-level tripartite mission, the Committee emphasizes “the importance of taking every measure to avoid any kind of discretion or discrimination in the legal mechanisms governing the expropriation or recovery of land or other mechanisms that affect the right to own property”.

- (d) *As regards the structured bodies for bipartite and tripartite social dialogue which need to be established in the country, and the plan of action in consultation with the social partners, involving the establishment of stages and specific time frames for its implementation with the technical assistance of the ILO, as recommended by the Governing Body, the Committee regrets the lack of information and further progress in this regard. The Committee recalls that the conclusions of the mission also refer to a round table between the Government and FEDECAMARAS, with the presence of the ILO, and a tripartite dialogue round table, with the participation of the ILO and an independent chairperson. The Committee urges the Government to immediately adopt tangible measures with regard to bipartite and tripartite social dialogue as requested by the high-level tripartite mission. Observing that the Government has not yet provided the requested plan of action, the Committee urges the Government to implement fully without delay the conclusions of the high-level tripartite mission endorsed by the Governing Body and to report thereon. The Committee urges the Government to promote social dialogue and initiatives taken in this area, such as the meetings held between the authorities and FEDECAMARAS in February and October 2015, and to implement tripartite consultations immediately.*
- (e) *The Committee, in line with the conclusions of the high-level tripartite mission, urges the Government to take immediate action to create a climate of trust based on respect for employers’ and trade union organizations with a view to promoting solid and stable industrial relations. The Committee requests the Government to inform it of any measures taken in this regard. The Committee regrets that the Government has not appointed a representative of FEDECAMARAS to the Higher Labour Council or the social dialogue body fulfilling its functions, and urges the Government to do so as soon as possible.*
- (f) *The Committee, having noted the Government’s observations concerning the allegations of detention and trial of employers and leaders in various sectors, regrets that once again a full answer has not been provided in relation to the individuals who are the subject of investigation procedures. As regards the cases of Corporación Cárnica and the “Día a Día Practimercados” chain, the Committee urges the Government to indicate the specific allegations against the people under investigation or trial by the judicial authorities, and not merely give an indication of general criminal offences, and to provide information on the progress of the respective judicial proceedings and their compliance with precautionary or detention measures. The Committee again requests the authorities to consider lifting any preventive detention measures imposed on employers’ and business leaders pending trial. As regards the allegation of the detention of the managers of the FARMATODO pharmacy chain, the Committee requests the Government to confirm whether the*

charges against these individuals have been dropped or, if not, to indicate the specific allegations against them and to provide information on the progress of the respective judicial proceedings; and, in view of the complainants' allegation that four of the owners and managers of this pharmacy chain had been arrested, the Committee urges the Government to indicate whether any other individuals are currently under arrest or trial, and it invites the complainant organizations to provide the Government and the Committee with any detailed information that they may have on this matter.

- (g) As regards the allegations of the detention of the president of CONINDUSTRIA, Mr Eduardo Garmendia, the president of ANSA, Mr Luis Rodríguez, and the president of the Venezuelan Association of Clinics and Hospitals, Mr Rosales Briceño, and allegations of shadowing and harassment of the president of FEDECAMARAS, Mr Jorge Roig, given the divergences between the allegations and the Government's reply, the Committee invites the complainants to provide the Government and the Committee with additional information, including any evidence they may have, and it urges the Government, on the basis of such information, to carry out any relevant additional investigations and to keep the Committee informed on this matter.*
- (h) As regards the adoption by the President of the Republic, in November 2014, of 50 decree-laws on important economic and production-related issues without consulting FEDECAMARAS, the Committee regrets that the Government has not made any observation concerning their impact on social dialogue and, deeply deploring the persistence of this situation, it firmly expects that full consultations will be held in the future with the most representative organizations of workers and employers, including FEDECAMARAS, on draft legislation covering labour or social matters that affect their interests and those of their members.*
- (i) The Committee expresses its deep concern at the lack of information and progress on the above issues and urges the Government to take all the requested measures without delay.*
- (j) The Committee notes with great concern the new allegations of the IOE and FEDECAMARAS dated 20 May 2016, in which it is alleged: (i) the enactment in December 2015, without consultation with the social partners, of 29 national laws, including the law on job security; (ii) semblance of dialogue through communications to FEDECAMARAS by the Government, when it has already announced or adopted the measures concerned; (iii) the unilateral promulgation without prior consultation of the Decree of the President of the Republic declaring a state of emergency for economic hardship; (iv) new acts of intimidation against FEDECAMARAS; (v) approval without consultation of a new increase in the minimum wage and the value of the socialist Cestaticket in February 2016; and (vi) failure by the Government to implement the road map presented to the Governing Body of the ILO in March 2016. The Committee requests the Government to send its observations on these allegations without delay so that the Committee can examine all the relevant elements.*

(k) The Committee once again draws the special attention of the Governing Body to the extremely serious and urgent nature of this case.

Geneva, 3 June 2016

(Signed) Mr Takanobu Teramoto
Chairperson

Points for decision:

paragraph 113	paragraph 493
paragraph 131	paragraph 505
paragraph 161	paragraph 572
paragraph 198	paragraph 588
paragraph 212	paragraph 601
paragraph 225	paragraph 628
paragraph 243	paragraph 647
paragraph 271	paragraph 673
paragraph 325	paragraph 718
paragraph 335	paragraph 757
paragraph 356	paragraph 774
paragraph 400	paragraph 808
paragraph 419	paragraph 820
paragraph 466	paragraph 854