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SIXTH ITEM ON THE AGENDA

Reports of the Committee on Freedom of Association

384th report of the Committee on Freedom of Association

The consideration of the attached document was deferred to the present session of the Governing Body from its 332nd Session (March 2018).

INTERNATIONAL LABOUR OFFICE

Governing Body

332nd Session, Geneva, 8–22 March 2018

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Institutional Section

INS

ELEVENTH ITEM ON THE AGENDA

Reports of the Committee on Freedom of Association

384th Report of the Committee on Freedom of Association

Contents

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 8, 9 and 16 March 2018, under the chairmanship of Mr Takanobu Teramoto.

2. The following members participated in the meeting: Ms Valérie Berset Bircher (Switzerland), Mr Ali Hussein Alshawi (Iraq), Mr Etim Aniefiok Essah (Nigeria), and Ms Sara Graciela Sosa (Argentina); Employers' group Vice-Chairperson, Mr Alberto Echavarría and members, Ms Renate Hornung-Draus, Mr Juan Mailhos, Mr Hiroyuki Matsui and Ms Jacqueline Mugo; Workers' group Vice-Chairperson, Mr Yves Veyrier (substituting for Ms Catelene Passchier), and members, Mr Jens Erik Ohrt, Mr Kelly Ross and Mr Ayuba Wabba. The members of Argentinian and Colombian nationality were not present during the examination of the cases relating to Argentina (Cases Nos 3078, 3220 and 3229) and Colombia (Case No. 3144).

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3. Currently, there are 176 cases before the Committee in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 23 cases on the merits, reaching definitive conclusions in **20** cases (**ten** definitive reports and **ten** reports in which the Committee requested to be kept informed of developments) and interim conclusions in **three** cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

Examination of cases

4. The Committee appreciates the efforts made by governments to provide their observations on time for their examination at the Committee's meeting. This effective cooperation with its procedures has continued to improve the efficiency of the Committee's work and enabled it to carry out its examination in the fullest knowledge of the circumstances in question. The Committee would therefore once again remind governments to send information relating to cases in paragraph 6, and any additional observations in relation to cases in paragraph 9, as soon as possible to enable their treatment in the most effective manner. Communications received after 23 April 2018 will not be able to be taken into account in the Committee's examination.

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

5. The Committee considers it necessary to draw the special attention of the Governing Body to Case No. 3203 (Bangladesh) because of the extreme seriousness and urgency of the matters dealt with therein.

Urgent appeals: Delays in replies

6. As regards Cases Nos 2902 (Pakistan), 2923 (El Salvador), 3018 (Pakistan), 3183 (Burundi), 3249 (Haiti), 3255 and 3258 (El Salvador), 3269 (Afghanistan) and 3275 (Madagascar), the Committee observes that, despite the time which has elapsed since the submission of the

complaints or the issuance of its recommendations on at least two occasions, 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

7. The Committee is still awaiting observations or information from the Governments concerned in the following cases: 2318 (Cambodia), 2982 (Peru), 3062 (Guatemala), 3076 (Republic of Maldives), 3081 (Liberia), 3113 (Somalia), 3184 (China), 3212 (Cameroon), 3232 (Argentina), 3260 (Colombia), 3270 (France), 3272 (Argentina), 3278 (Australia), 3280, 3281 and 3282 (Colombia), 3284 (El Salvador), 3285 and 3288 (Plurinational State of Bolivia), 3293 (Brazil), 3294 (Argentina), 3295 (Colombia) and 3296 (Mozambique). 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

8. In Cases Nos 2265 (Switzerland), 2445 (Guatemala), 2508 (Islamic Republic of Iran), 2609 (Guatemala), 2761 (Colombia), 2817 (Argentina), 2830 (Colombia), 2869 and 2967 (Guatemala), 3023 (Switzerland), 3027 (Colombia), 3042 (Guatemala), 3074 (Colombia), 3089 (Guatemala), 3112 (Colombia), 3115 and 3120 (Argentina), 3133 (Colombia), 3135 (Honduras), 3137 (Colombia), 3139 (Guatemala), 3141 (Argentina), 3148 (Ecuador), 3149 and 3150 (Colombia), 3158 (Paraguay), 3161 (El Salvador), 3178 (Bolivarian Republic of Venezuela), 3179 (Guatemala), 3192 (Argentina), 3194 (El Salvador), 3201 (Mauritania), 3211 (Costa Rica), 3212 (Cameroon), 3213 (Colombia), 3215 (El Salvador), 3219 (Brazil), 3221 (Guatemala), 3234 (Colombia), 3251 and 3252 (Guatemala), 3254 (Colombia), 3259 and 3264 (Brazil), 3265 (Peru), 3273 (Brazil), 3277 (Bolivarian Republic of Venezuela), 3279 (Ecuador), 3283 (Kazakhstan), 3286 (Guatemala), 3290 (Gabon) and 3291 (Mexico), the Governments have sent partial information on the allegations made. The Committee requests all these Governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

Observations received from governments

9. As regards Cases Nos 2177 and 2183 (Japan), 2254 (Bolivarian Republic of Venezuela), 3032 (Honduras), 3090 and 3091 (Colombia), 3119 (Philippines), 3127 (Paraguay), 3157 (Colombia), 3165 (Argentina), 3170 (Peru), 3185 (Philippines), 3188 (Guatemala), 3190, 3193, 3195, 3197, 3199 and 3200 (Peru), 3206 (Chile), 3207 (Mexico), 3208 (Colombia), 3210 (Algeria), 3216, 3217 and 3218 (Colombia), 3222 (Guatemala), 3223 (Colombia), 3224 (Peru), 3225 (Argentina), 3226 (Mexico), 3228 (Peru), 3230 (Colombia), 3233 (Argentina), 3235 (Mexico), 3237 (Republic of Korea), 3239 (Peru), 3241 (Costa Rica), 3242 (Paraguay), 3243 (Costa Rica), 3245 (Peru), 3246 and 3247 (Chile), 3248 (Argentina), 3250 (Guatemala), 3253 (Costa Rica), 3256 (El Salvador), 3257 (Argentina), 3261 (Luxembourg), 3266 (Guatemala), 3267 (Peru), 3268 (Honduras), 3271 (Cuba), 3274 (Canada), 3287 (Honduras), 3289 (Pakistan), 3292 (Costa Rica), 3297 (Dominican Republic), 3298 and 3299 (Chile), 3304 (Dominican Republic) and 3310 (Peru), the Committee has received the Governments' observations and intends to examine the substance of these cases as swiftly as possible.

New cases

10. The Committee adjourned until its next meeting the examination of the following new cases which it has received since its last meeting: Nos 3298 and 3299 (Chile), 3300 (Paraguay), 3301 (Chile), 3302 (Argentina), 3303 (Guatemala), 3305 (Indonesia), 3306 (Peru), 3307 (Paraguay), 3308 (Argentina), 3309 (Colombia) and 3310 (Peru), 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.

Cases in follow-up

11. The Committee examined eight cases in paragraphs 12 to 60 concerning the follow-up given to its recommendations and concluded its examination with respect to **six** cases: Cases Nos 2827 (Bolivarian Republic of Venezuela), 2915 and 2999 (Peru), 2973 (Mexico), 3064 (Cambodia), and 3154 (El Salvador).

Case No. 3064 (Cambodia)

12. The Committee last examined this case, in which the complainant denounced lack of effort to ensure the adoption of a new trade union law and the increase in the use of fixed-duration contracts in the garment industry undermining freedom of association and collective bargaining, at its March 2016 meeting [see 377th Report, paras 200–214, approved by the Governing Body at its 326th Session]. On that occasion, the Committee made the following recommendations [see 377th Report, para. 214]:

(a) The Committee firmly expects that the Government will take all necessary steps to expedite the adoption of the draft Trade Union Law and requests the Government to provide a copy of the latest draft of the law to the CEACR for examination of its application of ratified Conventions Nos 87 and 98.

(b) The Committee recalls that fixed-term contracts should not be used deliberately for anti-union purposes and that, in certain circumstances, the employment of workers through repeated renewals of fixed-term contracts for several years can be an obstacle to the exercise of trade union rights. Observing the complainants' concerns that fixed-term contracts have had an important negative impact on trade union rights and that this issue was recognized by the GMAC and several trade unions which agreed to reach a separate agreement on the matter, the Committee encourages the Government to take all appropriate measures to promote these negotiations between the parties with a view to arriving at an agreement on the use of fixed-term contracts and to follow-up the situation so as to ensure that workers in the garment industry are able to exercise their trade union rights freely. The Committee requests the Government to keep it informed of any developments in this regard.

13. The Government provides its observations in communications dated 30 May and 25 October 2016. In particular, the Government indicates that the Law on Trade Unions (LTU) was promulgated on 17 May 2016, after a long drafting process which sought to ensure conformity with ratified ILO Conventions Nos 87 and 98 and included a series of bipartite, tripartite, multilateral and public consultations, having also benefited from technical advice from the ILO and with the aim of serving the common interests of employers and workers. The Government notes that, in accordance with the Committee's recommendations, a copy of the LTU was submitted to the Committee of Experts on the Application of Conventions and Recommendations (CEACR). The Government further indicates that it is in the process of developing regulations to implement the LTU and believes that the social partners will actively participate in promoting the effective implementation of the LTU. As to the use of fixed-term contracts, the Government affirms that it stands ready to strengthen the

implementation of the labour law to ensure that fixed-term contracts are not used for ill purpose.

14. *The Committee notes the information provided by the Government on the adoption of the LTU. It further observes that the LTU: (i) has been examined twice by the CEACR, as to the application of Conventions Nos 87 (in 2016 and 2017) and 98 (in 2016); and (ii) was discussed in June 2017, concerning the application of Convention No. 87, by the Committee on the Application of Standards, which requested to keep it under review, closely consulting employers' and workers' organizations, with a view to finding solutions compatible with said Convention. Recalling the importance of ensuring that the LTU and its application are in full conformity with the principles of freedom of association and collective bargaining, the Committee firmly trusts that the Government will take all necessary action in this regard in close consultation with the social partners.*

15. *The Committee also observes that the Government affirms its commitment to strengthen the implementation of the Labour Law to ensure that fixed-term contracts are not used for ill purpose (the Committee recalls that the complainant had alleged that the provisions of the Labour Law seeking to protect against abusive use of fixed-duration contracts through repeated renewals were not applied in practice). The Committee encourages the Government once again to take all appropriate measures to promote negotiations between the social partners with a view to arriving at an agreement on the use of fixed-duration contracts and to follow up the situation so as to ensure that workers in the garment industry are able to exercise their trade union rights freely.*

Case No. 3154 (El Salvador)

16. The Committee last examined this case at its October 2016 meeting and on that occasion made the following recommendations [see 380th Report, para. 444]:

(a) The Committee requests the Government, should the definitive acquittal of Ms Samayoa be confirmed, to provide information on reimbursement of the deduction corresponding to the period she spent in preventive custody.

(b) As regards the allegations of anti-union discrimination against Ms Samayoa, the Committee requests the Government to carry out an investigation to examine the allegations, inviting the complainant to provide the Government with any details and evidence at its disposal. The Committee requests the Government to keep it informed in this respect.

(c) As regards the allegations of anti-union discrimination against Ms Navarrete de Cantón, the Committee invites the complainant organization to provide the Government with any details and evidence at its disposal to enable the Government to conduct an investigation, failing which the Committee will not pursue its examination of this allegation.

(d) The Committee invites the Government to promote social dialogue between the complainant organization and the health service authorities concerned, with a view to addressing the question of trade union leave and promoting harmonious collective relations.

17. In its communication dated 6 March 2017, the Government indicates that on 13 May 2016, the Suchitoto Court of First Instance dismissed the proceedings against Ms Samayoa. As regards the deduction corresponding to the period she spent in preventive custody, the Government indicates that before it can assess any potential reimbursement, Ms Samayoa must submit a written request for reimbursement along with the respective judicial decision dismissing the proceedings against her. The Government indicates that although Ms Samayoa did not submit a written request, she was reimbursed the equivalent of one day, five hours and 14 minutes of the four days on which her pay was allegedly deducted, having

provided supporting evidence according to the institution's internal administrative mechanisms.

18. As regards the Committee's request to carry out an investigation to examine the allegations of anti-union discrimination against Ms Samayoa, the Government indicates that although its domestic legislation prohibits labour-related investigations at public institutions, on 3 November 2016 an inspection was carried out in exercise of the powers granted to the General Directorate for Labour Inspection under the Workplace Risk Prevention Act. The Government indicates that the inspection report states that infractions relating to occupational safety and health were observed and that a follow-up inspection report dated 3 March 2017 shows that those infractions had been rectified.

19. As regards the action taken by the Government to promote social dialogue between the complainant organization and the health service authorities concerned with a view to addressing the question of trade union leave and promoting harmonious collective relations, the Government indicates that the hospital director had not granted trade union leave because the documentation confirming the composition of the executive committees and the respective identity cards had not been submitted to the hospital. The Government indicates that the hospital director did not know why this documentation had not been submitted to the hospital, and that once the corresponding documentation had been received, trade union leave would be granted. The Government also referred to a set of measures adopted in 2015 to strengthen spaces for dialogue, conciliation, consultation and the resolution of labour issues.

20. *The Committee takes note of the information supplied by the Government in relation to Ms Samayoa and observes that, although the proceedings against her were dismissed, of the four days she spent in preventive custody, she was reimbursed the equivalent of one day, five hours and 14 minutes, having provided supporting evidence according to the institution's internal administrative mechanisms. In that respect, the Committee expects that, according to the Government's indication, if Ms Samayoa were to provide supporting evidence according to the hospital's internal administrative mechanisms (a written request with a copy of the decision dismissing the proceedings against her), she would be reimbursed in full for the deduction corresponding to the period she spent in preventive custody.*

21. *As regards the Committee's request that an investigation be carried out to examine the allegations of anti-union discrimination against Ms Samayoa, the Committee notes with regret that the Government merely indicates that its domestic legislation prohibits labour-related investigations at public institutions and refers only to an inspection relating to occupational safety and health. The Committee recalls that where cases of alleged antiunion 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 of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 835]. The Committee notes, however, that the complainant organization has not provided the Government with information to facilitate the investigation. In these circumstances, the Committee trusts that the complainant organization will provide the Government with the necessary information so that, in case there are pending issues in this regard, the Government will carry out the corresponding investigation.*

22. *The Committee also recalls that it had invited the complainant organization to provide the Government with details and evidence to facilitate the investigation in relation to the allegations of anti-union discrimination against Ms Navarrete de Cantón and that, failing this, the Committee would not pursue its examination of these allegations. Given that the Government does not mention in its communications whether it has received these details*

from the complainant and since the complainant has not submitted any details for the Committee's attention, these allegations will not be examined further.

23. *Finally, as regards the measures to promote social dialogue with a view to addressing the question of trade union leave and promoting harmonious collective relations, the Committee notes that the Government: (i) indicates that trade union leave had not been granted because the corresponding documentation confirming the role of the trade union officials had not been submitted to the hospital and that, once this documentation was submitted, the corresponding trade union leave would be granted; and (ii) cites a set of measures adopted in 2015 to strengthen spaces for dialogue, conciliation, consultation and the resolution of labour issues. Although it observes that most of these measures had been adopted before the complaint was presented, the Committee trusts that these measures have helped strengthen harmonious labour relations and that the Government will continue to promote social dialogue between the complainant and the health service authorities concerned.*

Case No. 2512 (India)

24. The Committee last examined this case, which concerns allegations of anti-union discrimination and interference in trade union affairs through the creation of a puppet union, dismissals, suspensions and transfers of trade union members, arbitrary reduction of wages, physical violence and lodging of false criminal charges against trade union members, at its October–November 2015 meeting [see 376th Report, paras 24–41, approved by the Governing Body at its 325th Session]. On that occasion, the Committee recalled that since the beginning of its examination of the case, it has observed that the lack of a clear, objective and precise procedure for determining the most representative union has led to the lack of resolution of the matter and requested the Government once again to actively consider, in full and frank consultations with the social partners, establishing objective rules for the designation of the most representative union for collective bargaining purposes, and to keep it informed in that regard. The Committee further noted with great concern that nearly all legal proceedings concerning the alleged anti-union dismissals remained pending many years after the termination of the plaintiffs' employment and firmly urged the Government to ensure that the judgments of the court of first instance directing reinstatement of workers with continuity of service and back wages are implemented pending the appeal proceedings before the Madras High Court, and to provide it with detailed information on the progress made in that regard. The Committee also urged the Government once again to provide detailed and updated information on all cases of allegedly false criminal charges being brought against members and officials of the Madras Rubber Factory United Workers' Union (MRFUWU), including the case registered against members of the complainant union in the wake of the events of 30 July 2009 in Chennai (CC No. 1223 of 2010), pending before the Court of Chief Metropolitan Magistrate, Egmore, Chennai. Furthermore, the Committee once again requested the Government to give due consideration to the adoption of legislative provisions that further the goal of preventing anti-union discrimination, including by providing for sufficiently dissuasive sanctions against such acts. Finally, the Committee urged the Government to conduct an independent judicial inquiry into the allegations of excessive use of police force during the July 2009 peaceful demonstration organized in Chennai, with a view to clarifying the facts and determining the justification for police action and responsibilities and to keep it informed of the outcome.

25. In its communication dated 6 October 2016, the complainant provides additional information on a number of points. It indicates that the Special Leave Petition (SLP) filed by the management of the Arakkonam factory of MRF Ltd (hereinafter: the factory) and the Arakkonam MRF Workers' Welfare Union (AMRFWWU) against the 2009 judgment of the Madras High Court that had directed the Government of the State of Tamil Nadu (hereinafter: State Government) and the Commissioner of Labour to conduct a verification procedure prescribed under the Code of Discipline for determination of the most

representative union was finally withdrawn in December 2015 but that neither the Government nor the State Government pronounced itself on the need to comply with the Committee's recommendations to take appropriate measures to obtain the employer's recognition of the complainant for collective bargaining purposes. Following the withdrawal of the SLP and the complainant's request to this effect, a verification exercise to determine representative trade unions in the factory was conducted in March 2016. However, the complainant alleges that the verification process presented serious flaws and its results were manipulated so as to lead to the determination of the AMRFWWU as the sole collective bargaining agent for the factory, even though according to the complainant, this union is neither representative nor independent (according to the results, the AMRFWWU has 826 members and the complainant 778 members). In particular, the complainant alleges that: (i) the verification process was conducted by Ms Kalaivani, Joint Commissioner of Labour, Chennai, who is a former employee of one of the factories of the enterprise – the process was thus not carried out by a body offering every guarantee of independence and objectivity and this fact had only been disclosed after the verification process; (ii) despite the complainant's request to conduct the verification process outside the factory and the Commissioner of Labour's designation of such a venue, the verification process was finally conducted in the factory after the AMRFWWU filed a writ petition to the Madras High Court to stay the Labour Commissioner's order; (iii) a notice was displayed on the factory board informing that a direct inquiry in respect of trade union membership would take place but the workers were not otherwise apprised of the details of the personal verification process; (iv) during the process, each worker was shown a sheet with his or her photograph, employment details and a list of the seven unions operating in the factory printed in a very small font in a manner that could create confusion and were required to put a tick next to the union to which they belonged; (v) the sheets were printed and supplied by the management; (vi) the process lacked transparency: none of the complainant's office bearers were allowed to be present during the verification or counting processes; even after objecting to the results and making a request to the Labour Commissioner, the union was not allowed to see the filled-in forms; and even though, on request of the complainant, the process was recorded on video, the footage contains no audio recording; and (vii) the process provided for in the Code of Discipline was not adhered to as unions which had not existed in 2009, as well as those operating in the factory for less than one year were allowed to participate in the verification exercise. The complainant informs that it filed a writ petition to the Madras High Court to challenge the proceedings of the Commissioner of Labour and that the case is currently pending. The complainant further alleges that there is still no national legislation relating to the recognition of trade unions and that as a result of this legislative lacuna, trade unions in many factories in the country that are truly independent and representative are struggling to secure their recognition. According to the complainant, a new law needs to be expeditiously enacted on the matter in accordance with the recommendations of the Committee and should provide for a secret ballot to determine an exclusive bargaining agent, particularly in cases of dual membership of workers.

26. The complainant also denounces continued victimization of its active members by the factory management, especially following the union members' participation in a day-long fast to protest against the flawed verification exercise and manipulated results. These alleged incidents include: the initiation of disciplinary proceedings on false charges against R. Pitchandi, G. Venkatesan, G. Kannan, B. Pazhani, V. Dananjeriyan, A. Kailasam, S. Sivakumar, G. Thulasi and V. Dananjeriyan; arbitrary deduction of wages of C. Damodharan and K. Sundarajan; and the discontinuance of light work for S. Pazhani who had suffered a medical disability. The complainant also alleges that the factory management continues to deduct subscriptions from its members in favour of the AMRFWWU.

27. Finally, the complainant expresses the wish to be given the opportunity for an oral hearing by the Committee so that its representatives can directly explain the hardship and plight faced by the workers on account of the failure of the management to recognize the union.

28. The Government provides its observations in a communication dated 18 April 2017. As regards the complainant's allegation that it has not been represented in the settlement between the factory management and the AMRFWWU, the Government reiterates information provided previously that before the signing of the long-term wage settlement, the conciliation officer had given ample opportunities to the complainant, as well as to all unions in the unit, to participate in the conciliation but the complainant chose to withdraw from the process. According to the Government, this demonstrates that the machinery has made all effort for frank and complete consultations during the conciliation process, which was conducted in a fair and proper manner.

29. The Government also reiterates that a precise procedure is in place in the Code of Discipline for determining the most representative union. As regards the recognition of the complainant union, the Government indicates that in accordance with the 2009 decision of the Madras High Court, a verification process was undertaken at the factory and since multiple memberships were found, personal verification was mandatory to determine the union with the largest membership. In reply to the complainant's allegation that the verification process was seriously flawed, the Government provides the following information: (i) the entire verification process was conducted transparently by a committee of officers who followed the procedure of the Code of Discipline to the letter; (ii) before the verification process, a meeting was organized during which the process was explained in detail to the representatives of all six trade unions operating in the factory, as well as the factory management, and standard operating procedures were signed by all participants, including the complainant, and later exhibited on the factory's noticeboard; (iii) all trade union representatives gave consent to conducting the verification process within the factory premises; (iv) the process enabled the workers to speak out freely and frankly, it was videotaped and documented, as had been agreed in the standard operating procedures, thus ensuring transparency; (v) the allegation that trade union names on the sheets were printed in a very small font is a baseless observation; and (vi) the factory provided the printed sheets as the muster roll and details of workers may only be furnished by the management but all workers were personally verified by a team of officers in the presence of the Commissioner of Labour and the police. The Government further indicates that the results of the verification process showed that there were 1,666 union members at the factory in 2015 out of which 826 workers belonged to the AMRFWWU, while the complainant had a total membership of 778 workers. After the announcement of the results, the complainant challenged the process and the case is currently pending before the Madras High Court. The Government also states that while no law on recognition of representative trade unions currently exists in the State of Tamil Nadu, the procedure provided for in the Code of Discipline is strictly observed.

30. Concerning the anti-union dismissals and false criminal charges previously denounced by the complainant, the Government affirms that all disciplinary actions taken against workers were based on acts of misconduct, such as violence, intimidation, assaults and disruption of industrial peace and indicates that it intervened in every such occasion to bring back normality and prevent damage to the industry and the workers. It also reiterates information provided previously on the independent inquiry committee appointed in 2008 to investigate these allegations and explains that it is possible that when the complainant intensified its union activity, its supporters tried to slow down the production or indulge in non-cooperative behaviour to show their protest against the management or assert the dominance of the union. With regard to the new allegations of victimization of workers, the Government provides the observations of the State Government and the factory, who indicate that the management has not victimized trade union leaders or conducted unfair labour practices and that the complainant's allegations are thus baseless and unjustified. According to the information provided, workers do not fear management and have not complained of a malfunctioning check-off system and it is premature to raise a complaint before the Committee on this

matter, since grievance and dispute resolution procedures set out in the Industrial Disputes Act, 1947 have not yet been used. The following concrete information was submitted:

– R. Pichandi was charge sheeted on 8 April 2016 for misconduct, insubordination and idling at work. An inquiry was conducted between May and August 2016 and the management is awaiting the findings from the Inquiry Officer. The inquiry was prolonged for more than eight months at the instance of the worker and the allegation of victimization is therefore baseless. After conclusion of the inquiry, the worker may file an industrial dispute.

– G. Venkatesen was charge sheeted on 14 January 2016 for major misconduct involving process violations. The inquiry has been completed and a second show cause notice has been issued to him in December 2016 proposing an award of dismissal. The worker apologized for his behaviour and the management is reconsidering the proposed punishment, which should thus not be termed as victimization.

– G. Kannan was charge sheeted on 26 June 2016 for major misconduct of process violation. During the inquiry, he was given ample opportunity to prove his innocence but the Inquiry Officer found him guilty. The management is in the process of proposing appropriate punishment.

– B. Palani was issued with show cause notice on 10 May 2016 for the act of misbehaviour with a government official who visited the plant for inspection. An inquiry took place and the worker was adjudged guilty and a second show cause notice has been issued to which the worker provided a written reply, which is under consideration.

– V. Dhananjayan was issued with a show cause notice dated 19 April 2016 for having indulged in major misconduct whereby he removed the side wall spotting sticker with an intention of defrauding and misleading the company. The worker submitted his explanation and the management issued a stern warning letter and closed the matter.

– A. Kailasam was issued with a show cause notice dated 18 April 2016 for not adhering to certain norms (dwell time) and short-circuiting the process which could harm the quality of the product. The worker submitted a written explanation which was examined and the management decided to let him off with a warning letter.

– S. Sivakumar committed a serious lapse of process violation by not adding the appropriate chemical input to a specific mixing which prompted the management to issue a show cause notice dated 4 August 2016. The inquiry is still pending due to the lingering attitude of the worker.

– G. Thulasi has no disciplinary action pending against him.

– V. Dhananjayan has been issued with a show cause notice dated 9 August 2016 for tyre scrap due to split fabric. He provided a reply and the inquiry is in process.

– C. Damodharan and K. Sundarrajan have not been subjected to the alleged arbitrary deduction of wages.

– Since workers are expected to perform in various job allocations as decided by their supervisors, the question of withdrawing a light job from S. Pazhani does not arise.

31. With regard to the allegation of excessive use of police force in response to a peaceful protest organized in Chennai on 30 July 2009, the Government indicates that the police only took action once violence erupted and created a serious threat to law and order. The Government

states that the complainant also admitted that the protest was violent by indicating that a number of workers and one child were injured. The Government further affirms that the police force used was not excessive, that it is satisfied with the timely action of the police in response to the chaos, violence and danger to the public and that there is thus no need for a judicial inquiry.

32. Finally, the Government indicates that the complainant had on many occasions instigated workers in several enterprises to indulge in illegal activities, to violate judicial orders and not to arrive at amicable settlement and instead deliberately take issues to the court. In the Government's opinion, the complainant's preference for litigation instead of conciliation aims at disturbing industrial peace, whereas several forums are available for the amicable settlement of labour issues.

33. *The Committee takes due note of the detailed information provided by the Government and the complainant. With regard to the alleged continued non-recognition of the complainant by the employer, the Committee observes that the Special Leave Petition filed by the management and the AMRFWWU against the 2009 judgment of the Madras High Court that had directed the State Government and the Commissioner of Labour to conduct a verification procedure prescribed under the Code of Discipline for determination of the most representative union was withdrawn in December 2015; that the Commissioner of Labour conducted the verification exercise in March 2016 which concluded that, as of 2015, the AMRFWWU counted 826 members and the complainant 778 members; and that the complainant filed a writ petition to the Madras High Court challenging the proceedings and the case is currently pending. The Committee further observes that while according to the complainant, the procedure was seriously flawed in several aspects and led to manipulated results falsely establishing the largest membership of the AMRFWWU, the Government affirms that the entire verification process was conducted transparently by a committee of officers who followed the procedure of the Code of Discipline to the letter and that all trade unions operating in the factory gave their written consent to the modalities of the process. The Committee further notes that while the complainant denounces that there is no national legislation with respect to determination of a trade union's representative status and that, as a result of this legislative lacuna, trade unions in many factories are struggling to secure their recognition, the Government states that even if there is currently no such law in the State of Tamil Nadu, the Code of Discipline provides for a procedure which is strictly observed. Taking note of the information provided, the Committee is bound to recall that, as of the beginning of its examination of this case, it has observed that the lack of a clear, objective and precise procedure for determining the most representative union has led to the lack of resolution of this matter, and regrets to observe once again that this matter continues to create conflict within the enterprise and is not conducive to harmonious labour relations. In view of the persistence of this issue and the concerns expressed by the complainant as to the consequences of the mentioned legislative lacuna on the functioning of trade unions, the Committee once again requests the Government to actively consider, in full and frank consultations with the social partners concerned, establishing objective rules for the designation of the most representative union for collective bargaining purposes, if necessary through the adoption of a legislative instrument, and to keep it informed in this regard.*

34. *Concerning the allegations of anti-union dismissals and cases of false criminal charges being brought against members and officials of the MRFUWU, the Committee observes the Government's indication that any disciplinary actions taken against workers were based on acts of misconduct, such as violence, intimidation, assaults and disruption of industrial peace and that it intervened in every such occasion to bring back normality and prevent damage to the industry and the workers, including through the establishment of an independent inquiry committee in 2008. While taking note of this information, the Committee recalls that, during its last examination of the case, it noted with great concern that nearly all legal proceedings concerning dismissals were still pending many years after the*

termination of the plaintiffs' employment (24 cases were pending before the Madras High Court and nine were pending before the Industrial Tribunal, Chennai) and observes that neither the Government nor the complainant provide any concrete information in this regard. The Committee wishes to underline that cases concerning anti-union discrimination should be examined rapidly, so that the necessary remedies can be really effective and recalls that the longer it takes for such a procedure to be completed, the more difficult it becomes for the competent body to issue a fair and proper relief, since the situation complained of has often been changed irreversibly, people may have been transferred, etc., to a point where it becomes impossible to order adequate redress or to come back to the status quo ante [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 821]. In view of the above, the Committee urges the Government to take the necessary measures to ensure that, where this has not yet been done, the judicial proceedings that were pending during its last examination of the case [see 376th Report, paras 26, 31–32 and 40] are concluded without further delay, and to provide detailed information on their status, including their outcome and remedies and sanctions imposed. Concerning the cases of allegedly false criminal charges being brought against members and officials of the MRFUWU, the Committee notes that the Government does not provide any specific information in this regard and urges it once again to provide detailed and updated information on all such cases, including the case registered against 42 members of the complainant union in the wake of the events of 30 July 2009 in Chennai (CC No. 1223 of 2010) [see 376th Report, paras 27 and 40]. The Committee once again requests the Government to give due consideration to the adoption of legislative provisions that further the goal of preventing anti-union discrimination, including by providing for sufficiently dissuasive sanctions against such acts and to inform it of any action taken or envisaged in this regard.*

35. *The Committee further notes that the complainant denounces continued victimization of its active members, especially after the union's protest against the allegedly flawed verification process with respect to trade union representativity, as well as deduction of subscriptions from its members in favour of the AMRFWWU. It observes that, according to the employer and the Government, these allegations are baseless as disciplinary action was taken solely for reasons of professional misconduct of the concerned workers and after an inquiry and that the complainant's overall preference for litigation instead of amicable dispute resolution aims at disturbing industrial peace. In view of the contradictory views expressed, the Committee considers it useful to recall that no person shall be prejudiced in employment by reason of trade union membership or legitimate trade union activities, whether past or present [see* ***Digest****, op. cit., para. 770] and to underline the importance it attaches to the development, maintenance and promotion of harmonious industrial relations by all parties. The Committee trusts that all pending inquiries will be speedily concluded and that any disciplinary action aimed at victimizing trade union members and any arbitrary deduction of trade union subscription fees found will be rapidly remedied.*

36. *The Committee recalls that the complainant also denounced the use of excessive police force in response to a peaceful procession organized in Chennai on 30 July 2009, which requested the implementation of the recommendations of the Committee, and that this resulted in serious injuries to several workers and one child. The Committee notes that, in response to this allegation, the Government indicates that the police only took action once violence erupted during the procession and created a serious threat to law and order, that the force used was appropriate in response to the danger to the public and that there is thus no need for a judicial inquiry. While taking due note of the information provided, the Committee wishes to emphasize that trade union rights include the right to organize public demonstrations and recalls that in cases in which the dispersal of public meetings by the police has involved loss of life or serious injury, the Committee has attached special importance to the circumstances being fully investigated immediately through an independent inquiry and to a regular legal procedure being followed to determine the*

*justification for the action taken by the police and to determine responsibilities [see **Digest**, op. cit., para. 49]. Observing that the Government and the complainant have opposing views as to the source of violence during the protest and regretting that more than eight years after the alleged incident this issue remains pending, the Committee trusts that the Government will take any necessary measures to ensure full respect for the abovementioned principle and the rapid undertaking of an independent inquiry in the future in the event of complaints of excessive intervention by the forces of order.*

Case No. 2973 (Mexico)

37. During its previous examination of the case, at its meeting in October 2013, the Committee requested the Government to keep it informed of the outcome of the application for judicial review filed by the United Trade Union of Academic Workers of CONALEP of the State of Jalisco (SUTACEJ) in respect of a ruling in favour of the Legitimate Academic Workers' Union of CONALEP in the State of Jalisco (SILTACEJ) (the complainant) [see 370th Report, para. 587].

38. In their respective communications of 4 February and 23 May 2014, SILTACEJ and the Government reported that the Third Collegiate Labour Tribunal of the Third Circuit had upheld the ruling under review on 22 November 2013, thus revoking the indirect *amparo* (protection of constitutional rights) proceedings (No. 641/2013) filed by the Secretary-General of SUTACEJ. In addition, in its communication of 6 December 2016, the Government reported that the General Directorate of the National Technical Vocational Training College (CONALEP) in Jalisco had informed the Ministry of Labour and Social Welfare (STPS) in April 2014 that it had signed an agreement with SILTACEJ enabling the latter to access CONALEP campuses.

39. *The Committee takes due note of the information provided by the complainant and the Government. Observing that the court proceedings related to this case have ended favourably for the complainant, and that the complainant has furthermore signed an agreement with CONALEP on access to the latter's campuses, the Committee will not pursue its examination of this case.*

Case No. 2915 (Peru)

40. The Committee examined this case for the final time at its March 2014 meeting [see 371st Report, March 2014, paras 121–124]. On that occasion, the Committee requested the Government to indicate whether the trade union members who worked at San Marcos Higher National University (UNMSM) and whose contracts were not renewed had filed administrative appeals or appeals with the judicial authority on trade union grounds.

41. In its communication of 5 June 2014, the complainant organization indicates that: (i) the non-renewal of contracts severely violates freedom of association, as several trade union officials have been dismissed under that pretext; (ii) in June and December 2012, the UNMSM also dismissed 13 other workers, whose names had not been identified in the original complaint; (iii) workers employed under an administrative service contract do not have the right to receive compensation for length of service and have been excluded from the right to an education allowance; (iv) although the UNMSM did grant union leave to the executive board of the National University Workers' Union (SITRAUSM) between 2011 and August 2013, the executive board elected in August 2013 has not been granted union leave, while the leaders of the other three trade unions operating in the University have been granted such leave; and (v) the two lists of claims (2012 and 2013) are still being processed by the Ministry.

42. In its communications of 7 and 22 August 2014, the Government indicates that, as it had informed the UNMSM, the trade union members whose contracts had not been renewed were employed under administrative service contracts. They were dismissed because their contracts had expired, and they had not filed any administrative appeal relating to the non-renewal of their contracts. In addition, the Government indicates that, while a reinstatement order relating to Mr Daniel Jorge Trujillo Huamaní (one of the trade union members whose contract was not renewed) has been handed down, it has not been implemented because Mr Trujillo Huamaní has not presented himself at the University, which has been brought to the attention of the judge who heard the case. With regard to collective bargaining, the Government indicates that the list of claims for the period 2012–13 submitted by SITRAUSM is still with the Ministry of Labour in an arbitration process, as SITRAUSM opted for voluntary arbitration to process the list of claims and a president for the arbitration tribunal remains to be nominated by the parties.

43. In its communication of 16 September 2014, the Government informs that: (i) the former UNMSM workers (who the complainant organization alleges were dismissed in June and December 2012) were employed under administrative service contracts and are protected from arbitrary dismissal as they were still in an employment relationship until their contracts expired; (ii) after union leave was granted to the leaders of SITRAUSM, it became clear that the membership of SITRAUSM had been misrepresented, as the leaders had indicated that they represented private-sector workers, whereas in reality they were employed under an administrative service contract, which led to an incorrect registration of the trade union. For that reason, the general secretary and the secretary of SITRAUSM were convicted by Lima Criminal Court No. 42 for lack of veracity in an administrative act to the detriment of the Ministry of Labour; and (iii) pursuant to that sentence, the UNMSM withdrew the union leave that had been granted and requested the Ministry of Labour to regularize the registration of SITRAUSM, which had generated irregularities and delays in the collective bargaining process.

44. *The Committee takes due note of the information communicated by the complainant organization and the Government. With regard to the trade union members whose contracts were not renewed by the UNMSM, the Committee takes note of the fact that, according to the Government, no administrative appeal has been filed and that while a reinstatement order relating to Mr Trujillo Huamaní has been handed down, it has not been implemented because Mr Trujillo Huamaní has not presented himself at the University, which has been brought to the attention of the judge who heard the case.*

45. *With regard to the indication from the complainant organization that, in the months of June and December 2012, the UNMSM dismissed 13 other workers, whose names had not been identified in the original complaint, the Committee takes note of the Government's indication that they were employed under administrative service contracts and that their employment relationship was maintained until their contracts expired. Furthermore, the Committee observes that the complainant organization does not allege that the workers were members of SITRAUSM or that their contracts had not been renewed as a result of their trade union activities.*

46. *With regard to the granting of union leave and the negotiation of the lists of claims, the Committee observes that the most recent information provided in this regard by the complainant organization and the Government was submitted in 2014. In addition, the Committee observes that, according to the Government, both matters have been linked to irregularities relating to the inclusion of SITRAUSM in the register. In the light of the foregoing, trusting in the fact that the registration of SITRAUSM has been regularized and that it has therefore been granted union leave, and that the processing of the claims has restarted, the Committee will not continue its examination of the case.*

Case No. 2999 (Peru)

47. In its previous examination of the case, at its March 2014 meeting, the Committee requested the complainant organization and the Government to indicate whether the union official, Gustavo Roger Ospinal Rivadeneyra, was covered by any of the regularization plans for workers dismissed from enterprises related to ESSALUD, and whether any legal action had been initiated against his dismissal [see 371st Report, para. 743].

48. In its communication of 16 September 2014, the Government attached a report from ESSALUD (dated 5 September 2014) which stated that: (i) Mr Ospinal Rivadeneyra was not registered as an employee of ESSALUD and neither did he have an employment relationship with it; and (ii) ESSALUD consulted the Civil Constitutional and Labour Law Unit of the General Office for Legal Affairs of the Central Legal Advice Bureau and was informed that Mr Ospinal Rivadeneyra is not involved in any legal proceedings by or against ESSALUD.

49. *The Committee takes due note of this information. In the light of this information, and noting that the complainant organization has not provided the information requested, the Committee will not pursue its examination of this case.*

Case No. 2827 (Bolivarian Republic of Venezuela)

50. At its March 2013 meeting, the Committee made the following recommendations on the matters still pending [see 367th Report, para. 1309, adopted by the Governing Body at its 317th Session (March 2013)]:

(a) With regard to the allegations that, on 23 June 2010, in Guárico State, a group led by the regional manager of INCES and various bosses travelling with him forced the national executive board of SINTRAINCES to move out of the INCES Guárico Socialist Training Centre that they had been visiting on that day for the purpose of hearing complaints from workers in the region, the Committee considers that, with the information provided by the complainant trade union, which indicates that the regional manager of INCES Guárico is responsible for the alleged incidents and the date, the Government should be able to get in touch with this manager and send his observations, and requests it to do so without delay.

(b) With regard to the allegation that the complainant trade union was given permission to hold an assembly of workers on 9 June 2010, but that on that day the workers were prevented from entering the auditorium and were subsequently told to refrain from attending another assembly on 18 June 2010 away from INCES premises, or face sanctions, the Committee, taking into account the request of the Government, requests the complainant trade union to provide additional information so that the Government can respond to the allegations, and in particular to indicate whether the alleged incidents were reported to the national authorities.

(c) The Committee requests the Government to keep it informed of the decision that is handed down in the disciplinary proceedings against union officials José Alexander Meza and David Gregorio Duarte and underlines the importance of taking due account of the principle whereby no worker or union official should be the target of sanctions or prejudicial measures as a result of their participation in legitimate trade union activities.

51. In its communications dated 12 June 2013 and 31 January 2014, the National Union of Workers of the National Institute for Socialist Training and Education (SINTRAINCES) (the complainant trade union in this case): (i) provides the additional information requested to support the allegation of the prohibition against participation in the assemblies of 9 and 18 June 2010, including the circular of 17 June 2010 from INCES indicating that the workers were not authorized to participate in the trade union meeting, with a warning of possible sanctions; (ii) alleges that, since the submission of the complaint in 2010 and in relation with its activities, INCES has been engaging in anti-trade union practices, referring in particular to a campaign to disqualify the leaders and members of SINTRAINCES (including

harassment through messages on social networks inciting hatred against the president of SINTRAINCES and the occupation of its building headquarters on 6 August 2013 by workers apparently prompted by the president of INCES) and the establishment of a parallel trade union with close ties to the employing institution (SINCONTRAS-INCES); and (iii) indicates that although discussions to negotiate collectively were initiated in January 2012, the INCES authorities made the discussion of the collective agreement conditional on the participation of the other trade union promoted and financed by the employing institution. Due to the pressure placed on it, SINTRAINCES had to accept the participation of this other trade union (despite the fact that the vast majority of the workers had objected to this dual participation), which had a negative effect on securing improvements to the clauses as the parallel trade union backed all the objections raised by the employing institution.

52. The Government provides its observations in communications dated 15 May and 17 October 2014 and 9 October 2015.

53. With regard to the allegation of the illegal removal of leaders and the failure to authorize assemblies, the Government indicates that it met with the INCES authorities, indicating to them that they should authorize the access of the trade union leaders to the facilities and the participation of workers in the assemblies organized by the trade unions as long as they do not affect the normal functioning of the institution. The Government specifies that it has no information that a similar situation has since occurred.

54. With regard to the allegations of interference through another trade union, the Government maintains that it does not intervene in, or give its views on, the mutual accusations of both organizations and that it is a matter of an inter-union dispute. The Government recalls that the previous collective agreement was negotiated jointly by SINTRAINCES and SINCONTRAS-INCES and that this was made possible owing to an agreement between them (as there are no legal mechanisms to impose bargaining by two or more organizations).

55. With regard to the disciplinary proceedings brought against the union officials José Alexander Meza and David Gregorio Duarte, the Government states that INCES launched an inquiry to determine the nature of a labour offence regarding activities unrelated to freedom of association. The Government indicates in this respect that: (i) the proceedings brought against José Alexander Meza were dismissed; and (ii) with regard to David Gregorio Duarte, INCES dropped the proceedings and the worker therefore remains active in his post.

56. In its last communication, the Government underlines that in 2014, SINTRAINCES proposed a collective agreement to be discussed with INCES. This proposal was accepted by the Labour Inspectorate and, following appropriate discussions, negotiations were completed on 22 September.

57. *The Committee notes that, according to the Government: (i) the alleged disciplinary proceedings did not result in any measure being taken against the trade union leaders; (ii) measures were taken to ensure that the INCES authorities authorized the access of the trade union leaders to the facilities and the holding of assemblies by the institution's trade unions; and (iii) in 2014, the complainant organization negotiated a new collective agreement with the employing institution. In these circumstances, the Committee will not pursue its examination of this case.*

Case No. 2917 (Bolivarian Republic of Venezuela)

58. At its November 2014 meeting, the Committee, underlining the importance of the principles relating to consultation and social dialogue, reiterated its earlier recommendation [see

373rd Report, para. 52, approved by the Governing Body at its 322nd Session (October–November 2014)]:

> … Regretting that the Commission entrusted with drafting the new Basic Act on Labour and Workers (LOTTT) excluded the most representative workers' and employers' organizations, the Committee requests the Government to submit to tripartite dialogue with the most representative organizations of workers and employers the provisions of the LOTTT respecting freedom of association and collective bargaining criticized by the Committee of Experts with a view to bringing those provisions into full conformity with ILO Conventions Nos 87 and 98 and to keep it informed of developments in this respect. The Committee requests the Government to comply in future with the principles relating to consultation and social dialogue set out in its conclusions.

59. In its communication dated 20 February 2015, the Government indicates that the assertion that it had excluded the most representative workers' and employers' organizations from the commission entrusted with drafting the Basic Act on Labour and Workers (LOTTT) is false. The Government reiterates that the worker members on that commission were nominated by the Bolivarian Socialist Workers' Confederation (CBST), as the largest and most representative workers' organization. Moreover, with regard to the employers, the Government reports that the president of FEDEINDUSTRIA had participated in the commission, and that FEDECAMARAS had declined to participate in commissions established by the then President of the Bolivarian Republic of Venezuela. Finally, the Government affirms that all the provisions of the LOTTT, including those referring to freedom of association and collective bargaining, are the subject of constant review through continuous dialogue with all trade union organizations. In addition, the Government emphasizes that the provisions of the LOTTT introduced very few substantive changes in respect of previous laws' content, including the Labour Law of 1936, which was drafted with technical assistance from the ILO.

60. *The Committee takes note of the information from the Government. While noting that the Government affirms that the provisions of the LOTTT relating to freedom of association and collective bargaining are the subject of constant review through continuous dialogue with all trade union organizations, the Committee observes that the Government provides no details about the dialogue and the constant review to which it refers, nor does it clarify who participated nor the results. The Committee also regrets that the Government does not indicate that it has taken any actions to follow up on its previous recommendation through tripartite dialogue. The Committee urges the Government to set up without delay a mechanism to engage in a tripartite dialogue with all of the most representative workers' and employers' organizations, the provisions of the LOTTT in relation to freedom of association and collective bargaining in the light of comments made by the ILO's supervisory bodies. The Committee requests the Government to keep it informed in that regard – detailing the dialogue mechanisms, the participating organizations and the results.*

* * *

61. 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	November 2017
1865 (Republic of Korea)	March 2009	June 2017
2086 (Paraguay)	June 2002	March 2017
2096 (Pakistan)	March 2004	November 2017
2362 (Colombia)	March 2010	November 2012

Case	Last examination on the merits	Last follow-up examination
2434 (Colombia)	March 2009	November 2009
2528 (Philippines)	June 2012	November 2015
2603 (Argentina)	November 2008	November 2012
2637 (Malaysia)	March 2009	November 2017
2652 (Philippines)	March 2010	November 2015
2684 (Ecuador)	June 2014	June 2017
2700 (Guatemala)	March 2011	March 2016
2710 (Colombia)	November 2011	June 2017
2715 (Democratic Republic of the Congo)	November 2011	June 2014
2723 (Fiji)	June 2016	March 2017
2743 (Argentina)	March 2013	November 2015
2750 (France)	November 2011	March 2016
2755 (Ecuador)	June 2010	March 2011
2797 (Democratic Republic of the Congo)	March 2014	–
2850 (Malaysia)	March 2012	June 2015
2856 (Peru)	March 2012	November 2017
2871 (El Salvador)	June 2014	June 2015
2882 (Bahrain)	October 2016	November 2017
2889 (Pakistan)	March 2016	–
2916 (Nicaragua)	June 2013	November 2015
2925 (Democratic Republic of the Congo)	March 2013	March 2014
2960 (Colombia)	March 2015	–
2977 (Jordan)	March 2013	November 2015
2988 (Qatar)	March 2014	June 2017
2994 (Tunisia)	June 2016	–
3003 (Canada)	March 2017	–
3011 (Turkey)	June 2014	November 2015
3019 (Paraguay)	March 2017	–
3020 (Colombia)	November 2014	–
3036 (Bolivarian Republic of Venezuela)	November 2014	–
3039 (Denmark)	November 2014	June 2016
3040 (Guatemala)	November 2015	November 2017
3041 (Cameroon)	November 2014	–
3046 (Argentina)	November 2015	–
3047 (Republic of Korea)	March 2017	–
3054 (El Salvador)	June 2015	–
3055 (Panama)	November 2015	–
3083 (Argentina)	November 2015	–
3095 (Tunisia)	November 2017	–
3100 (India)	March 2016	–
3103 (Colombia)	November 2017	–

Case	Last examination on the merits	Last follow-up examination
3106 (Panama)	November 2016	–
3107 (Canada)	March 2016	–
3110 (Paraguay)	June 2016	–
3121 (Cambodia)	November 2017	–
3123 (Paraguay)	June 2016	–
3126 (Malaysia)	November 2017	–
3131 (Colombia)	June 2017	–
3146 (Paraguay)	June 2017	–
3159 (Philippines)	June 2017	–
3162 (Costa Rica)	June 2017	–
3164 (Thailand)	November 2016	–
3167 (El Salvador)	November 2017	–
3169 (Guinea)	June 2016	–
3182 (Romania)	November 2016	–
3238 (Republic of Korea)	November 2017	–

62. The Committee hopes that these Governments will quickly provide the information requested.

63. In addition, the Committee has received information concerning the follow-up of Cases Nos 2341 (Guatemala), 2488 (Philippines), 2533 (Peru), 2540 (Guatemala), 2566 (Islamic Republic of Iran), 2583 and 2595 (Colombia), 2656 (Brazil), 2673 (Guatemala), 2679 and 2694 (Mexico), 2699 (Uruguay), 2706 (Panama), 2708 (Guatemala), 2716 (Philippines), 2719 (Colombia), 2745 (Philippines), 2746 (Costa Rica), 2751 (Panama), 2752 (Montenegro), 2753 (Djibouti), 2756 (Mali), 2758 (Russian Federation), 2763 (Bolivarian Republic of Venezuela), 2768 (Guatemala), 2789 (Turkey), 2793 (Colombia), 2807 (Islamic Republic of Iran), 2816 and 2833 (Peru), 2840 (Guatemala), 2844 (Japan), 2852 (Colombia), 2854 (Peru), 2870 (Argentina), 2872 (Guatemala), 2883 (Peru), 2896 (El Salvador), 2900 (Peru), 2924 (Colombia), 2934 (Peru), 2937 (Paraguay), 2946 (Colombia), 2948 (Guatemala), 2949 (Swaziland), 2952 (Lebanon), 2954 (Colombia), 2962 (India), 2966 (Peru), 2976 (Turkey), 2979 (Argentina), 2980 and 2985 (El Salvador), 2987 (Argentina), 2991 (India), 2992 (Costa Rica), 2995 (Colombia), 2998 (Peru) 3006 (Bolivarian Republic of Venezuela), 3010 (Paraguay), 3017 (Chile), 3021 (Turkey), 3022 (Thailand), 3024 (Morocco), 3026 (Peru), 3030 (Mali), 3033 (Peru), 3035 (Guatemala), 3043 (Peru), 3051 (Japan), 3058 (Djibouti), 3059 (Bolivarian Republic of Venezuela), 3061 (Colombia), 3065, 3066 and 3069 (Peru), 3072 (Portugal), 3075 (Argentina), 3077 (Honduras), 3085 (Algeria), 3087 (Colombia), 3093 (Spain), 3096 (Peru), 3097 (Colombia), 3101 (Paraguay), 3102 (Chile), 3104 (Algeria), 3114 (Colombia), 3124 (Indonesia), 3128 (Zimbabwe), 3140 (Montenegro), 3142 (Cameroon), 3171 (Myanmar), 3172 (Bolivarian Republic of Venezuela), 3176 (Indonesia), 3177 (Nicaragua), 3180 (Thailand), 3191 (Chile), 3196 (Thailand), 3231 (Cameroon) and 3236 (Philippines), which it will examine as swiftly as possible.

CASES NOS 3078 AND 3220

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

Complaints against the Government of Argentina presented by
– the Union of Employees of the National Judiciary (UEJN) and
– the General Confederation of Labour of the Argentine Republic (CGT RA)

Allegations: The complainants allege that: (i) the public authorities are preventing employees of the national judiciary from exercising the right to bargain collectively; (ii) the UEJN has been unlawfully and arbitrarily excluded from collective bargaining in the judiciary of the Autonomous City of Buenos Aires; and (iii) the UEJN is a victim of interference by the public authorities, both at the national level and in the Autonomous City of Buenos Aires

64. The complaints are contained in a communication dated 5 June 2014 from the Union of Employees of the National Judiciary (UEJN), supported by the General Confederation of Labour of the Argentine Republic (CGT RA), and in subsequent communications from the UEJN dated 10 June 2015, 20 April 2016 and 15 June 2017.

65. The Government sent its replies in communications dated 23 July and 11 September 2014, 10 March 2015, May 2017 and 27 June 2017, as well as two communications dated October 2017.

66. Since similar issues are raised in the two complaints, Cases Nos 3078 and 3220 will be examined together by the Committee.

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

A. The complainants' allegations

Case No. 3078

68. In a communication dated 5 June 2014, the UEJN and the CGT RA allege, at the outset, that the Argentine Government is using internal regulatory instruments to restrict judicial workers' exercise of the right to bargain collectively regarding their working conditions. The organizations report that in order to remedy this situation, draft legislation was submitted to the Chamber of Deputies with a view to the establishment of a uniform collective bargaining regime for the judiciary in the Autonomous City of Buenos Aires and the 23 Argentine provinces. They state that it was approved by the Chamber of Deputies and that although the relevant Senate committees issued a favourable opinion on it and it was placed on the

Senate's agenda on three occasions, it was never considered and, as a consequence, the draft legislation expired pursuant to Act No. 13640.

69. The complainants add that judicial workers do not fall within the scope of Act No. 24185, which regulates the right to bargain collectively in the public sector. They consider that not only does the absence of national legislation guaranteeing the right of employees of the national judiciary to bargain collectively and regulating the exercise of that right affect the interests and working conditions of those employees; it also has an impact on and serves as a deterrent to collective bargaining by judicial workers in all of the provincial jurisdictions since, notwithstanding the country's federal system, the provinces adopt laws and mechanisms through which they agree to be bound by domestic law. The complainants also allege that the Argentine Government cannot invoke the separation of powers under the national Constitution as grounds for not adopting legislation that would grant judicial workers the right to bargain collectively since, in 2013, the Government introduced and Congress adopted Act No. 26861 regulating the hiring of all public servants and other employees of the judiciary and the national public prosecution services.

70. In a communication sent in 2015, drawing attention to Case No. 2881, in which the Committee on Freedom of Association recommended that the Argentine Government should "take measures adapted to national conditions, including legislative measures if necessary, to promote collective bargaining between judiciary authorities and the trade union organizations concerned", and the similar observations of the Committee of Expert on the Application of Conventions and Recommendations with regard to the Collective Bargaining Convention, 1981 (No. 154), the complainants add that by failing to adopt legislation on the right of judicial workers to bargain collectively, the Argentine Government has not followed any of the observations and recommendations of the International Labour Organization (ILO) supervisory bodies and that, despite the supervisory bodies' urging, there has been no progress whatsoever on the issue.

71. The complainants further allege that the Argentine Government and the judicial authorities are interfering with the UEJN both at the national level and in the Autonomous City of Buenos Aires. They maintain that: (i) the emergence of the Union of Judicial Workers of the Autonomous City of Buenos Aires (SITRAJU–CABA), a pseudo-union, has led to the unlawful diversion of 2,000 members of the UEJN; (ii) Ms Vanesa Raquel Siley, General Secretary of SITRAJU–CABA, has links with the political party in power at the time of the events in question; (iii) both at the national level and in the Autonomous City of Buenos Aires, the UEJN has been subjected to threats and persecution by the Attorney-General, Ms Alejandra Gil Carbón, and the President of the Council of the Judiciary of the Autonomous City of Buenos Aires, Mr Juan Manuel Olmos; (iv) this persecution worsened after 18 February 2016, when the UEJN held a demonstration in front of the law courts and demanded additional information on the death of a prosecutor, Mr Alberto Nisman, who had been murdered a month earlier; (v) with the collusion of the President of the Council of the Judiciary, the pseudo-union misappropriated information on the UEJN's members and erased the hard drives of the computers in the latter's offices; and (vi) the aforementioned events occurred at a time when the country's then Minister of Labour, Employment and Social Security, Mr Carlos A. Tomada, who had links with the political party, Frente para la Victoria (Onward to Victory), was encouraging the emergence of "yellow trade unions", having subjected the unions that did not share the official ideology to years of procedural delays while facilitating the registration process for other unions; in that regard, the complainants state that the Union of Judicial Workers (SITRAJU) and SITRAJU–CABA were registered on 14 April 2015 (Ministry of Labour, Employment and Social Security decisions Nos 281/15 and 282/15), just four days after the registration process began. Lastly, the complainants accuse the Government and the judicial authorities of providing direct and indirect support to SITRAJU and SITRAJU–CABA.

Case No. 3220

72. In its communication of 20 April 2016, the UEJN alleges, first, that the Council of the Judiciary in the Autonomous City of Buenos Aires (CMCABA), hereinafter "the local judicial body", arbitrarily excluded it from collective bargaining in the judiciary of the Autonomous City of Buenos Aires even though it had signed a compromise agreement, agreeing to bargain collectively with the UEJN, on 4 December 2014. The complainant maintains that the judicial body excluded it from the collective bargaining process in violation of its trade union rights and, on 6 November 2015, signed a collective labour agreement with the Association of Employees of the Judiciary of the Autonomous City of Buenos Aires (AEJBA), a trade association that is registered only at the local level, and SITRAJU–CABA, against which the complainant states that it has filed several criminal complaints and whose trade union status has been challenged in the courts. The complainant also recalls its allegation that there is no regulation of collective bargaining in any of the geographical areas over which the judiciary has jurisdiction and adds that, to date, there has been no collective bargaining in the sector as required by national legislation. The complainant also reports that the judicial body has conducted "de facto" collective bargaining with trade union entities that, under Argentine law, were not authorized to bargain because they did not have the required trade union status *(personería gremial)*.

73. In a subsequent communication, the complainant mentions a meeting between CMCABA, AEJBA and SINTRAJO–CABA, which was held on 17 April 2017 in order to negotiate the wages and working conditions of judicial workers and to make any necessary changes in the current collective agreement. The complainant states that on the date in question, it arrived prepared to negotiate and was denied entry to the premises on the sole pretext that it was not empowered to bargain collectively. Lastly, the complainant maintains that it has exhausted domestic remedies in so far as it has made unsuccessful requests for cancellation of the registration of SITRAJU–CABA and of the collective agreement.

74. The UEJN further alleges that the local judicial body has committed acts of trade union interference, giving preferential treatment to SITRAJU–CABA and AEJBA. It states that: (i) pursuant to the collective agreement, these two unions were subsidized through contributions from the employer amounting to 0.2 per cent of the total wages paid to employees of the judiciary in the Autonomous City of Buenos Aires in order to defray the costs of their trade union activities; (ii) the President of the Council of the Judiciary, in decision No. 1338/2015, ordered the employer to pay a supplement amounting to 58, 37 and 21 per cent, respectively, of the wages of Mr José Alberto Olmos and Mr Adrián Javier Pafunto, (representing SINTRAJU) and Mr Carlos Daniel Díaz (representing AEJBA) in order to establish the Standing Committee on the Interpretation of Labour Policy and Labour Relations under the collective labour agreement; (iii) the associations that signed the collective labour agreement, but not the complainant, were granted private offices in buildings belonging to the judiciary of the Autonomous City of Buenos Aires; and (iv) each of the signatory entities' trade union representatives were granted ten hours of paid trade union leave per month; in an act of discrimination, the UEJN was not granted such leave.

B. The Government's reply

Case No. 3078

75. In a communication received on 11 August 2014, the Government indicates that by virtue of the separation of powers in the republican system enshrined in the Constitution, it has forwarded the complainant's allegations regarding barriers to collective bargaining in the national judiciary to the Supreme Court. In a second communication dated 3 March 2015, the Government forwards the Supreme Court's statement that it will not rule on this case. In

a communication of May 2017, the Government reiterates that, owing to the country's republican and federal regime and pursuant to the Constitution, "each provincial government may regulate the separation of powers and the competencies of each of those powers in accordance with its own constitution". The Government also mentions sections 1, 121 and 122 of the federal Constitution, which states that the provinces "shall retain all powers not delegated to the Federal Government by this Constitution or expressly reserved by special agreement at the time of their incorporation" and that the provinces are governed by their own local institutions; they elect governors, legislators and other provincial officials without interference from the Federal Government. The Government further states that the country has 23 provincial states and the Autonomous City of Buenos Aires and that each of them has been adopting its own legislation for years in light of its specific characteristics and conditions. On this point, the Government refers to the Committee on Freedom of Association's Case No. 3141, in which the Association of Judicial Officers of Mendoza (AFJM) alleged that the Government of Mendoza province had failed to comply with the relevant Convention and the complainant dropped the complaint after signing a sectoral collective agreement with the provincial government. Lastly, the Government maintains that active wage negotiations have resulted in progress in the judiciaries of the various provinces. In its most recent communication (of October 2017), the Government states that Autarchic Act No. 23853, which regulates the functioning of the judiciary, strengthens the latter's independence; it reiterates that wage negotiations with the judiciary are ongoing in many provinces. In that connection, the Government mentions that: (i) there is already collective bargaining with the judiciary in Río Negro and Santa Cruz provinces and the Autonomous City of Buenos Aires, all three of which have adopted legislation regulating it; (ii) Santiago del Estero province reports that bargaining with the judiciary is being conducted at a round table with the relevant social stakeholders; and (iii) Neuquén and Córdoba provinces report that they have procedures for voluntary bargaining in the judiciary and that all relevant social stakeholders are notified in such cases.

Case No. 3220

76. In a communication dated 27 June 2017, the Government forwards the local judicial body's response to the UEJN's allegations regarding the negotiation of a collective agreement within the Buenos Aires judiciary and interference in favour of other trade unions. With regard to these allegations, the local judicial body categorically denies having discriminated against the UEJN by excluding it from collective bargaining, failing to follow the recommendations of ILO supervisory bodies, interfering with the exercise of trade union rights, showing favouritism to other trade unions and conducting "de facto" collective bargaining with trade union entities that did not have the required trade union status *(personería gremial)*. It states that it is only competent to comment on the situation of the local judiciary since section 129 of the federal Constitution establishes that the Autonomous City of Buenos Aires shall have a system of autonomous government with its own legislative and judicial powers. It maintains that for this reason, the complainant's complaint that judicial workers are unable to bargain collectively at the national level is irrelevant because a collective labour agreement was recently signed at the local level.

77. Concerning the exclusion of the UEJN from collective bargaining, the local judicial body points out that the collective labour agreement was the outcome of joint efforts by itself and the trade unions and that the scope of the agreement includes all workers, regardless of whether they belong to a specific trade union. With respect to the agreement signed on 4 December 2014, the local judicial body explains that it was envisaged that, in addition to the employer, the signatories would be the two most representative trade union entities – which were, at that time, the UEJN and the AEJBA – since the statistics provided by the legal secretary in the Department of Human Resources showed that they had 791 and 914 members, respectively. However, by the time the collective labour agreement was signed on 6 November 2015, the UEJN had become less representative than SITRAJU–CABA, which

had been entered in the Registry of Trade Unions of Workers in the Autonomous City of Buenos Aires on 14 April 2015. Thus, when the collective labour agreement was signed in 2015, the signatories were the AEJBA and SITRAJU, which, again according to data provided by the Department of Human Resources, had 1,439 and 1,021 members, respectively. The UEJN was excluded from the bargaining because it had 195 members (7.345 per cent of all trade union members). The local judicial entity also indicates that, according to information contained in Department of Human Resources memorandum No. 80 of 7 February 2017, the delegates who had represented the UEJN at the signing of the compromise agreement on 4 December 2014 had changed unions and were members of SINTRAJU when the collective agreement was signed.

78. The local judicial body states that in calling the AEJBA "a trade association that is registered only at the local level" and SITRAJU–CABA a "pseudo-union", the UEJN is attempting to limit the participation of other labour groups, the coexistence of trade unions and the formation of new ones even though the complainant has always functioned locally as a sectional trade union and has not even been registered at the local level. It also states that it was the Committee on Freedom of Association that drew the Government's attention to the elimination of distinctions between trade unions and that, by making such a distinction, the complainant violated the principles established by the Committee. It adds that it has always maintained an ongoing dialogue with all trade union groups, regardless of their registration status.

79. The local judicial body states that the ILO supervisory bodies have always considered that recognition of the most representative trade union does not violate the principles of freedom of association, provided that certain objective requirements are met and that the advantages are limited to the granting of certain preferential rights. It also explains that the fact that the AEJBA, SITRAJU–CABA and the UEJN participate at the local level demonstrates respect for the principles of freedom of association and the promotion of trade union pluralism in the judiciary of the Autonomous City of Buenos Aires. It explains that, given that two of the local judiciary's trade unions are registered only at the local level and that only the complainant has trade union status at the national – though not the local – level, priority was given to the most representative unions during the bargaining in question. It states that although section 38 of the Trade Unions Act (Act No. 23551) authorizes the withholding of dues from wages only in the case of unions with trade union status, not those that are registered only at the local level, it withholds dues for all three of the trade unions that operate at the local level. Furthermore, although sections 48 and 52 of the Act provide that only individuals with trade union status shall enjoy trade union immunity, the Autonomous City of Buenos Aires has decided to accord favourable treatment at the local level to all trade union representatives in order to avoid discriminating against any of them.

80. The local judicial body explains that between December 2014 and the date on which the collective labour agreement was signed, for reasons totally unrelated to the agreement, a new trade union entity – which, in many workers' view, better represented them – was established. Thus, the local judicial body acted correctly by taking note of the number of members reported by the trade unions in a timely manner and ensuring that workers and their associations enjoyed freedom of association; the fact that it bargained collectively with entities that were registered only at the local level or did not have trade union status does not constitute a violation of the right to freedom of association.

81. As for the contribution made pursuant to an agreement, the local judicial body indicates that this contribution is not a subsidy, but rather an input pursuant to section 9 of the Trade Unions Act; its purpose is not to defray the costs of trade union activity but, as provided in section 109 of the collective labour agreement, to fund cultural and social activities and support planned new vocational training that will be available to the entire judicial community, regardless of trade union membership or lack thereof.

82. With regard to the supplements paid to members of the Standing Committee on the Interpretation of Labour Policy and Labour Relations under the collective labour agreement, the local judicial body indicates that the Committee's establishment is envisaged in section 22(i) of the Basic Legal Regime Governing Judges, Public Servants and other Employees of the Judiciary, adopted through Council of Ministers decision No. 170/2014, which empowers the Council of the Judiciary to grant specific wage supplements on duly substantiated grounds at a percentage rate specified in the documents establishing the Standing Committee. In that connection, Presidential decision No. 1338/2015 authorized the establishment of a supplement for the Standing Committee's coordinators in light of their additional responsibilities and the novelty of implementation of the first collective agreement. The local judicial body also mentions section 116 of that agreement, which calls for the establishment of the Standing Committee and sets out its functions.

83. The local judicial body further states that, contrary to the complainant's claims, the trade unions' noticeboards and offices are not for the exclusive use of SITRAJU–CABA and the AEJBA; section 113 of the collective labour agreement does not specify their physical location, merely stating that they will be provided if the employer is able to do so. It adds that to date, there are no specific offices devoted to trade union activities, nor has the complainant requested such an office. Concerning the ten hours' leave per month that is granted to each of the signatory trade unions' officials, the local judicial body states that the time granted is proportionate to the representativeness of each union.

84. With respect to the complainants' allegations of interference, the local judicial body states that it had nothing to do with the formation, operations or administration of any trade union; it adds that allowing the most representative unions to participate in no way implies State interference. It goes on to say that in order for an action to constitute interference with the exercise of trade union rights, there must be a clear intention to place these unions under the control of an employer or an employers' organization and that there is no evidence whatsoever of such an intention or of favouritism towards a given trade union, particularly as the complainant has supplied no evidence in that regard. In light of the foregoing, the local judicial body maintains that the complaint is factually and legally groundless; that the collective labour agreement is the outcome of a difficult effort by the employer and the signatory trade unions and benefits all employees of the local judiciary, including UEJN members; that the reported actions do not constitute violations of trade union rights; and that the complaint should therefore be dismissed.

85. In its communication of 5 October 2017, the Government forwards an additional response from the local judicial body. At the outset, the latter reiterates its previous observations and, in particular, its denial that the UEJN is registered in the Autonomous City of Buenos Aires and that there has been any attempt to eliminate it. It goes on to deny that it denied the UEJN entry to the meeting held by the CMCABA, the AEJBA and SITRAJU–CABA on 17 April 2017.

C. The Committee's conclusions

86. *The Committee observes that both Case No. 3078 and Case No. 3220 concern, on the one hand, allegations of violation of the right to bargain collectively in the judicial sector and, on the other, allegations of favouritism and interference to the detriment of the UEJN. The Committee notes that some of these allegations concern the status of the administration of justice at the national level while others are limited to the administration of justice in the Autonomous City of Buenos Aires.*

87. *First, with regard to the allegation that the persistent absence of legislation recognizing and regulating the right of judicial workers throughout the country to bargain collectively prevents the workers in question from exercising that right, the Committee takes note of the*

complainants' statement that: (i) the Chamber of Deputies adopted draft legislation regulating collective bargaining uniformly for all of the country's judicial workers; (ii) however, although all of its relevant committees had issued a favourable opinion on it, the Senate decided not to consider this draft; and (iii) not only does the absence of national legislation guaranteeing the right of employees of the national judiciary to bargain collectively and regulating the exercise of that right affect the interests and working conditions of those employees, it also has an impact on and serves as a deterrent to collective bargaining by judicial workers in all of the provincial jurisdictions since, notwithstanding the country's federal system, the provinces adopt laws and mechanisms through which they agree to be bound by domestic law. The Committee also takes note of the Government's statement that: (i) under the Argentine institutional model, the provinces retain all powers not delegated to the Federal Government under the Constitution; (ii) the 23 provincial states and the Autonomous City of Buenos Aires have been adopting their own legislation for years in light of their specific characteristics and conditions; and (iii) active wage negotiations with the judiciary are taking place in a growing number of provinces as evidenced by the collective agreements signed in Mendoza, Río Negro and Santa Cruz provinces and the Autonomous City of Buenos Aires and the negotiations conducted in Santiago del Estero, Neuquén and Córdoba provinces.

88. *The Committee takes note of this information and emphasizes that although it is not for it to comment on the division of legislative powers among the various levels of government, it is competent to ascertain whether the current regulatory framework or lack thereof is hindering access to or exercise of the right to bargain collectively. In that regard, in a previous case concerning Argentina, the Committee recalled that while in the preparatory work for Convention No. 151, it was established that judges of the judiciary do not fall within the scope of implementation of the Convention; nevertheless, the said Convention does not exclude the auxiliary staff of judges. Also, according to Article 1 of Convention No. 154, ratified by Argentina, only armed forces and the police may be excluded from its scope. The Committee further recalled that while the same Article provides that while special modalities of the application of this Convention may be fixed, it deemed that auxiliary staff of the judiciary must have the right to collective bargaining. It therefore requested the Government to take measures adapted to national conditions, including legislative measures if necessary, to promote collective bargaining between the judiciary and the trade union organizations concerned [see Case No. 2881, 364th Report, para. 228]. While taking due note of the significant progress in collective bargaining in the judiciaries of a growing number of provinces and the fact that in several cases, this progress has followed the adoption of provincial legislation in that regard, the Committee notes that there is still no collective bargaining either in the majority of the country's provincial judiciaries or in the national judiciary. It also notes that this absence of collective bargaining is still accompanied by the absence of a regulatory framework for collective bargaining in the sector in the various geographical regions. In that connection, the Committee reaffirms that its recommendations in Case No. 2881 remain fully valid.*

89. *Second, with regard to the alleged exclusion of the complainant from the first instance of collective bargaining in the judiciary of the Autonomous City of Buenos Aires, the Committee takes note of the complainant's statement that: (i) on 4 December 2014, the local judicial body signed an agreement in which it undertook to bargain collectively with the complainant and the AEJBA; (ii) on 6 November 2015, in violation of that agreement, the local judicial body signed a general collective labour agreement with the AEJBA and SITRAJU–CABA, two trade union entities without trade union status (personería gremial); and (iii) on 17 April 2017, a meeting between the local judicial body, the AEJBA and SITRAJU–CABA was held in order to negotiate the wages and working conditions of the workers in question – and that the complainant was denied entry on the grounds that it was not empowered to bargain collectively.*

90. *The Committee also takes note of the local judicial body's reply, which the Government forwarded, in which it denies that it discriminated against the complainant by excluding it and states that: (i) in the agreement of 4 December 2014, it was envisaged that the signatories on the workers' behalf would be the two most representative trade unions in the judiciary of the Autonomous City of Buenos Aires; (ii) when the agreement of 4 December 2014 was signed, the two most representative entities were the complainant and the AEJBA but by 6 November 2015, when the collective labour agreement was signed, the complainant had lost that position and, as a consequence, the agreement was signed by the two trade unions that were the most representative at that time, the AEJBA and SINTRAJU–CABA; (iii) the complainant is seeking to limit the participation of other trade union groups even though it functions locally as a sectional trade union; it is not and never has been registered at the local level; (iv) the local judicial body has always promoted trade union pluralism and since the AEJBA and SITRAJU–CABA are registered only at the local level and the complainant has trade union status only at the national level, it gave priority to the two trade union organizations that were most representative in the judiciary of the Autonomous City of Buenos Aires; and (v) it did not deny the UEJN entry to the meeting held by the CMCABA, the AEJBA and SITRAJU–CABA on 17 April 2017.*

91. *In light of the foregoing, the Committee observes that the second allegation concerns the local judicial body's decision to exclude the complainant from the negotiation and signing of its first collective agreement in favour of two other trade unions that the employer considered more representative at the time even though, the previous year, it had signed with the complainant an agreement stipulating that it would negotiate the collective agreement with "the two most representative trade unions, namely the UEJN and the AEJBA".*

92. *On this point, the Committee draws attention to the following background information: (i) at the time of the events, none of the trade unions had trade union status in the judiciary of the Autonomous City of Bueno Aires, which, under Argentine general law and provincial Act No. 471/2000 – which is applicable to this specific case – is a condition for the entitlement to bargain collectively; (ii) according to the local judicial body, during the year that elapsed between the signing of the initial agreement with the complainant and the signing of the collective agreement with other organizations, a new trade union (SITRAJU–CABA) was formed and rapidly achieved a membership far higher than that of the complainant; and (iii) the judicial body's reply shows that the number of members of each of its three trade unions was calculated by its own Department of Human Resources.*

93. *With regard to determination of the trade unions that are entitled to bargain collectively, the Committee recalls that where, under the system in force, the most representative union enjoys preferential or exclusive bargaining rights, decisions concerning the most representative organization should be made by virtue of objective and pre-established criteria so as to avoid any opportunities for partiality or abuse [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 962]. In this case, the Committee observes that in the absence of trade unions with trade union status, the local judicial body had no pre-established rules for identifying the most representative trade unions with which to negotiate collectively the collective agreement for the sector. The Committee also recalls 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 a priori be carried out by an independent and impartial body [see* ***Digest****, op. cit., para. 351]. While the Committee welcomes the signing of the first collective agreement in the judiciary of the Autonomous City of Buenos Aires, it requests the Government to take the necessary measures to ensure that in future, identification of the representative trade unions with a view to negotiation of the collective agreement in the*

judiciary of the Autonomous City of Buenos Aires is based on objective and pre-established criteria. The Committee requests the Government to keep it informed in that regard.

94. *The Committee takes note of the complainants' third allegation regarding several acts of interference in which the local judicial body is said to have given preference to the signatories of the collective agreement. In that connection, the complainant maintains that: (i) the two signatories were subsidized through contributions from the employer amounting to 0.2 per cent of the total wages paid to employees of the judiciary in the Autonomous City of Buenos Aires; (ii) by a decision of the President of the Council of the Judiciary, the employer was ordered to pay a supplement amounting to a percentage of the wages of the members of the Standing Committee on the Interpretation of Labour Policy and Labour Relations, which is composed entirely of members of the signatory organizations; (iii) these organizations were granted private offices in buildings belonging to the judiciary; and (iv) each of the signatory entities' trade union representatives were granted ten hours of paid trade union leave per month.*

95. *The Committee also takes note of the local judicial body's reply, which the Government forwarded, in which the judicial body indicates that: (i) the so-called contribution pursuant to an agreement that the complainant mentions is an input pursuant to section 9 of the Trade Unions Act and its purpose is to fund cultural and social activities and support training plans that will benefit all staff members; (ii) the supplement paid to members of the Standing Committee on the Interpretation of Labour Policy and Labour Relations is envisaged in section 22 of the Basic Legal Regime Governing Judges, Public Servants and other Employees of the Judiciary, adopted through Council of Ministers decision No. 170/2014, in Presidential decision No. 1338/2015, and in section 116 of the collective labour agreement; (iii) the trade unions' offices and noticeboards are not for the exclusive use of the signatories since section 113 of the collective labour agreement does not specify their physical location, merely stating that they will be provided if the employer is able to do so, and the complainant has not requested them; and (iv) concerning the ten hours of paid leave, the time granted is proportionate to the representativeness of each group.*

96. *With regard to the complaint regarding the advantages granted to two trade unions, the AEJBA and SITRAJU–CABA, the Committee observes that these advantages arose from implementation of the collective agreement and from the fact that the signatory organizations are the most representative. The Committee refers to its previous conclusions regarding the need to ensure that in future, the verification of "most representative trade union" status with a view to negotiation of the collective agreement in the judiciary is carried out by a body independent of the parties involved.*

97. *The Committee takes note of the complainants' final allegation: that the formation of the trade union, SINTRAJU, and its subsidiary, SITRAJU–CABA, in 2015 was accompanied by favouritism by the then Minister of Labour and the then judiciary and by interference and persecution directed against the UEJN, including, among other things: (i) registration of SITRAJU by the Ministry of Labour in just four days; (ii) seizure of the data on the UEJN's hard drives; and (iii) unlawful diversion of 2,000 members of the UEJN by SITRAJU. While noting that the Government has sent no observations concerning these allegations, the Committee notes that they were presented quite briefly by the complainants, which did not provide details or evidence that would facilitate both the Government's response and the Committee's examination. Under the circumstances, unless it receives additional details from the complainants, the Committee will not pursue its examination of these allegations.*

The Committee's recommendations

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

(a) The Committee requests the Government to take measures adapted to national conditions, including legislative measures if necessary, to promote collective bargaining between judiciary authorities and the trade union organizations concerned and, in particular, to facilitate the adoption, in consultation with the various trade unions concerned, of the rules applicable to collective bargaining in this sector. The Committee requests the Government to keep it informed in that regard.

(b) The Committee requests the Government to take the necessary measures to ensure that in future, identification of the representative trade unions with a view to negotiation of the collective agreement in the judiciary of the Autonomous City of Buenos Aires is based on objective and pre-established criteria. The Committee requests the Government to keep it informed in that regard.

CASE NO. 3229

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

Complaint against the Government of Argentina presented by
– the Unified Trade Union of Fuegian Education Workers (SUTEF) and
– the Independent Confederation of Workers of Argentina (Independent CTA)

Allegations: Refusal to hold discussions, replacement of workers, salary deductions, declaring a strike illegal and anti-union measures in the context of industrial action in the public education sector of Tierra del Fuego province

99. The complaint is set out in communications dated 22 June and 1 December 2016 from the Unified Trade Union of Fuegian Education Workers (SUTEF) and the Independent Confederation of Workers of Argentina (Independent CTA).

100. The Government provided its observations in a communication in May 2017.

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

A. The complainants' allegations

102. In their communications of 22 June and 1 December 2016, SUTEF and Independent CTA allege a refusal to hold discussions, replacement of workers, salary deductions, declaring a strike illegal, and anti-union measures in the context of industrial action in the public education sector of Tierra del Fuego province.

103. The complainants state that, on 8 and 9 January 2016, the Legislature of Tierra del Fuego province approved legislation comprising a series of bills tabled by the executive on 17 December 2015. The legislation included the declaration of a social security emergency and other measures relating to social security and its institutions in the province, such as modifications to the system of workers' benefits. According to the complainants, the measures implied a decrease of up to approximately 9.14 per cent in the nominal net salaries of teachers, with the introduction of extraordinary contributions (from about 1 to about 4.5 per cent) during the emergency period (two years extendable for a further two years), a 3-point increase in regular contributions (from 13 to 16 per cent) and changes in the objective criteria for obtaining retirement benefits at the expense of workers.

104. Following the entry into force of the legislation, all public workers' organizations in the province demonstrated on 1 March 2016 to obtain a hearing with the executive and legislative authorities. The Governor refused to receive the trade union representatives; a pro-government legislator convened the workers the following day, but the meeting was unfruitful. It was at that point that all the trade unions called for direct action, which lasted for about 100 days without obtaining any form of response from the executive or legislative authorities. The executive refused to hold a round-table dialogue with a view to drawing up draft legislation derogating from or replacing the laws in question. The legislative authorities did not even agree to discuss the partial reform or modification of the legislation in committee. The dispute was prolonged because there were absolutely no channels of communication.

105. The complainants allege that the Government decided to end the dispute by taking measures infringing freedom of association. They state that, on 20 April 2016, the Ministry of Education issued Resolution No. 823/16, which established, on the basis of an emergency administrative decree (No. 462/16 of 22 March 2016) and in contravention of national and international law, that striking workers could be replaced by hiring temporary workers (for a period of time subject to the eventual return to work of the striking workers). The complainants point out that teaching is not an essential service for which measures of this kind might be justified and allege that the mechanisms set out in domestic legislation for declaring a public service an essential service in a particular situation were not respected. They recall that a strike may be called for reasons that have nothing to do with the collective bargaining process, such as to claim rights infringed by legislative measures. Likewise, the complainants report that their salaries were docked for the days of work stoppage even though the strike was not declared illegitimate, with deductions in some cases amounting to 80 per cent of salaries. They state that these matters were raised in a judicial appeal (Case No. 8999), a ruling on which is pending.

106. The complainants likewise report that Resolution No. 16/16 of the Under-Secretariat of Labour, which declared that the strike was unlawful on the grounds that its purpose fell outside the reach of collective labour law, was intended to limit the scope of a strike to issues in respect of which the employer is competent to meet demands. They consider that absurd as it would render unlawful many of the legitimate strikes called by trade unions. They recall that the purpose of the action called by SUTEF was to oppose modifications affecting workers' living, working and social security conditions.

107. According to the complainants, the competent authorities have a generally negative attitude towards social dialogue, not only on the legislative matters referred to above but also on labour issues. In that regard, they allege that throughout 2016 the authorities refused to agree to joint meetings to discuss salaries, working conditions and other matters (the organizations allude to Resolution No. 109/2016 of the Under-Secretariat for Labour, decreeing the closure and archiving of action relating to joint meetings, and to Resolution No. 3379/16 of the Ministry of Education, decreeing the suspension of union leave for teachers taking part in joint activities).

108. The complainants also report that the authorities refuse to hold discussions about the situation of workers in cultural workshops. They report that, after the change in administration, the authorities closed all the cultural workshops as of January 2016 and the workshop facilitators lost their jobs. The complainants likewise refer to the precarious employment situation facing those workers. They state that, as the trade union representing the interests of cultural workers (on the basis of the recognition of the sector as non-formal education in article 97 of Provincial Education Law No. 1018), SUTEF called for the establishment of a negotiating committee in order to engage in collective bargaining on the regulations governing the specific work of workshop facilitators with a view to eliminating that precarious employment situation. In that regard, the complainants report that the authorities negotiated in bad faith: even though Resolution No. 1/16 of the Under-Secretariat of Labour (the authority engaging in collective bargaining involving the province's teachers) ordered the start of negotiations between SUTEF and the Culture Secretariat, the Secretariat refused to take part; and even though the Ministry of Labour convened another meeting, that meeting was again postponed at the request of the Culture Secretariat. The complainants further indicate that, during the resulting dispute – involving not just those workers but a large majority of state workers – the Culture Secretariat started to reinstate the workshop facilitators in a process plagued by discriminatory irregularities, the workers to be reinstated being selected on the basis of no objective criteria.

109. In addition, the complainants allege that they were subject to anti-union harassment by the provincial authorities, who took three types of measures. First, the complainants report that administrative steps were taken to lift the trade union immunity of 17 teacher workers' delegates (with a view to their dismissal) for having participated in trade union activities. According to the complainants, in ten of the 17 cases the administration has already requested that trade union immunity be lifted (however, in two of those ten cases the first notification and the subsequent proceedings have been declared null and void, with the process having to start again). In the remaining seven cases, the proceedings are at the appeal stage (without trade union immunity having been lifted since the appeals were deemed to have a suspensive effect).

110. Second, the complainants report that criminal proceedings have been instigated against teacher workers' delegates in the following cases: (i) Case No. 1642 (Appeal No. 213/2016), in which nine teacher delegates were convicted in connection with the events that took place on 23 May 2013 in the context of industrial action and were given suspended sentences of between eight months and two years in prison; an extraordinary appeal is currently pending before the province's Supreme Court of Justice; and (ii) Case No. 33186/2016, in which three SUTEF delegates were tried in connection with the violent dispersal by the police of a peaceful 90-day demonstration in front of the government building. The complainants allege that the examining magistrate harassed the trade union delegates and that, in his decision of 26 August 2016, he found them guilty of the crimes of resisting authority and causing bodily and material harm, among others. The decision (which the complainants consider invalid because two of the three members of the bench did not explain their vote) has been appealed and the appeal remains pending.

111. Third, the complainants allege anti-union practices consisting of the following: (a) modification of their leaders' working conditions in the form of salary reductions (a complaint for unfair practices filed in that regard by SUTEF on 11 November 2016 is currently pending); (b) interference in and restriction of their trade union activities through the refusal to grant the corresponding time credits; and (c) the elimination of union leave and the prohibition of meetings and assemblies in the workplace.

112. Lastly, the complainants request the establishment of a forum for dialogue so as to channel the present dispute.

B. The Government's reply

113. In its communication of May 2017, the Government provides the observations of the provincial authorities concerned on the allegations of the complainants.

114. The provincial authorities take the preliminary view that some of the issues raised by the complainants are inadmissible as they have nothing to do with freedom of association or collective bargaining.

115. First, the provincial authorities consider the complaint about the supposed violation of the right to engage in collective bargaining inadmissible. According to the provincial authorities, SUTEF started the dispute in order to collectively negotiate the total or partial derogation from, or replacement of, the legislation concerned. They therefore consider that the dispute lay outside the reach of collective bargaining with the employer, the subject being beyond the authority of the executive and collective bargaining possibilities. They further state that the legislation that gave rise to the dispute was not subject to collective bargaining as it does not involve matters relating to employment conditions but is instead strictly circumscribed within social security legislation.

116. Second, the provincial authorities assert that the allegations relating to the supposed violation of the employment rights (alleged precarious employment situation) of the so-called "facilitators" of cultural workshops should also be deemed inadmissible. They state that, although the allegations may be of concern to the trade unions, they do not come under the Committee's remit. Without prejudice thereto, the provincial authorities provide additional information on the situation. First, they point out that the trade union status of SUTEF encompasses "teaching staff providing services in state-run schools" and that the workshop facilitators are not covered by that definition since they do not provide services within the scope of State schools or the Ministry of Education (but rather the Culture Secretariat); SUTEF therefore cannot claim to represent those workers. Second, the provincial authorities indicate that the decisions taken by the authorities were intended to improve the management of the cultural workshops, which involved the adoption of a new regulatory framework following an exhaustive analysis (irregularities having been identified in its past application), and to strengthen the administrative and technical structure and ensure greater transparency, efficiency and effectiveness and better access for the general population. The provincial authorities provide detailed information on the procedure followed and consider the assertion that workers were reinstated on a discriminatory or criteria-free basis to be completely false (they also point out that many of the facilitators who complained were reinstated).

117. In a further preliminary statement, the provincial authorities indicate that the complainants omitted to provide information on the acts of violence that took place in the context of the industrial action. Those acts resulted in various judicial – in some cases, criminal – proceedings that are currently pending. The provincial Ministry of Labour, Employment and Social Security indicates that the dispute, which lasted for almost 100 days, prevented and obstructed not only educational but also government activities, owing to the fact that the protest surrounded the provincial seat of government, preventing public officials from entering the building. The Ministry indicates that the industrial action involved disproportionate violence, undemocratic slogans and criminal acts. It gives the following examples: (i) national road No. 3, the only overland route to the town of Ushuaia, was cut off despite repeated court injunctions to the contrary (leading to several criminal charges); (ii) in order to cut off the supply of fuel to the province, on 12 April 2016, a fuel depot was blockaded and the premises surrounded by wood-burning pickets in a serious hazard to public safety; (iii) these acts were accompanied by highly threatening and intimidating demonstrations, as described in various criminal cases, different kinds of sabotage and damage to public property, and acts of aggression such as those publically inflicted on the

Vice-Governor; and (iv) in the schools, workers trying to perform their duties were not only threated but also hurt. The provincial authorities consider that such displays of violence are incompatible with the principles of freedom of association.

118. Referring to the alleged refusal to hold discussions and reinstate workers, the provincial authorities state that, despite the violence deployed in the industrial action, the Provincial Government reacted to the dispute by convening the trade unions in joint commissions in order to discuss the dispute among the items subject to the collective negotiation of working conditions. This proved impossible, however, because SUTEF refused, demanding to discuss only questions that were not subject to collective bargaining and refusing to stop the direct action it had started. The Provincial Government was therefore obliged to take appropriate measures to protect the rights of children attending public schools, and after 50 days it decided to implement an exceptional and temporary class make-up programme. The provincial authorities specify that the programme was in no way an attempt to replace the striking workers; instead, in the face of the social harm caused by the prolongation of the dispute it sought to minimize the harmful consequences for children by establishing minimum services. The provincial authorities assert that, owing to the prolongation of the dispute, the province's judicial authorities required the executive to consider the adoption of minimum services that would limit the damage being done. The Provincial Government, in adopting the class make-up programme called into question by the complainants, considered that the criteria established by the Committee were applicable to the strike in the education sector, noting that even though education could not, strictly speaking, be termed an essential service, in cases in which a dispute was extended the possibility of establishing minimum services was not an infringement of freedom of association, in particular taking into account the principle of the higher interest of the child. The provincial authorities further indicate that the exceptional conditions that gave rise to the programme were the result not only of the strike but also of the critical situation of the province's education system. They deny that the programme was an attempt to replace the strikers since the make-up teachers had a different purpose (to make up for lost classes as additional human resources guaranteeing the right to learn); indeed, when a striking worker was reinstated, the two teaching functions were maintained alongside each other in the classroom. In addition, the make-up teachers were retained even after the dispute had ended and the decision was made to prolong the programme in question in the expectation that the exceptional situation would last longer since a great many classroom days had been lost.

119. Regarding the deductions made for days of strike, the provincial authorities recall that according to the Committee such deductions give rise to no objection from the point of view of freedom of association principles, that the Committee of Experts on the Application of Conventions and Recommendations has not criticized the legislation of member States stipulating salary deductions for days of strike, and that the domestic regulations and case law take account of those principles and establish that, in the event that a service is not provided because of direct action, the employer has the right to make the relevant deductions. The provincial authorities indicate that the court of first instance dismissed the suit for *amparo* (protection of constitutional rights) filed by SUTEF in that regard.

120. Regarding the declaration that the strike was illegal, the Provincial Government states that, while it is not unaware of the Committee's position that declarations of this type should not be made by an administrative body, it considers that the declaration did not imply any anti-union practices. In that regard, the provincial authorities assert the following: (i) the strike, in addition to stopping education for more than three months, paralysed the Government's administrative and labour-related activities almost entirely, obliging the executive to issue Decree No. 462/16 of 22 March 2016 declaring a state of administrative emergency; (ii) in Resolution No. 16/6, the provincial Ministry of Labour, Employment and Social Security declared the industrial action carried out by SUTEF on 18 May 2016 to be unlawful on the grounds that the grievance had nothing to do with the employment

relationship and exceeded the purpose of a labour dispute – in other words, on the grounds that the matter in dispute had nothing to do with the industrial relationship, there being no grievances involving labour or working conditions that could have been resolved by the provincial executive in its role as the employer; (iii) according to the case law and legal doctrine, industrial action must be decreed in the context of exclusively contractual disputes arising from the employment relationship, and the application for *amparo* filed by SUTEF was therefore dismissed at first instance, the judge considering that the strike was based on criticism of the law but that there was no evidence of a dispute with the state employer; (iv) of the more than 100 days of strike called in an attempt at widespread violence on the part of demonstrators and trade unionists, only one day was the subject of the declaration of unlawfulness; and (v) no measures or reprisals were adopted as a consequence of the declaration (it stipulated no effective legal consequences).

C. The Committee's conclusions

121. *The Committee observes that this case concerns allegations of anti-union harassment and discrimination on the grounds of participation in industrial action, refusal to hold discussions, replacement of workers, salary deductions and declaring a strike illegal, in the context of an industrial dispute in the public education sector of Tierra del Fuego Province.*

122. *The Committee notes, on the one hand, the complainants' allegation that, as a result of industrial action taken in a dispute relating to the adoption of legislation on the social security system, the authorities engaged in anti-union harassment in the form of judicial action, including various criminal trials and proceedings to waive the judicial protection of trade union leaders with a view to their dismissal. On the other hand, the Committee notes that the provincial authorities provide detailed information on the conduct of many violent, undemocratic and even criminal activities in the context of the trade unions' industrial action and indicate that those activities resulted in various judicial proceedings, including criminal trials, which remain ongoing. The Committee recalls that the mere fact of taking part in picketing and firmly but peacefully inciting other workers to keep away from their workplace cannot be considered unlawful. The case is different, however, when picketing is accompanied by violence or coercion of non-strikers in an attempt to interfere with their freedom to work; such acts constitute criminal offences in many countries [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 651]. Stressing that the right to strike is not an absolute right and that the acts alleged by the Government such as the use of violence, sabotage, damage to public property and the creation of serious hazards to public safety would, if proven, go beyond the limits of its protection, the Committee requests the Government to keep it informed about the outcomes of the judicial proceedings currently pending against the trade unionists.*

123. *The Committee observes that a key aspect of the complaint is the allegation that, throughout the dispute on social security legislation, the authorities refused to engage in discussions with the trade union organizations concerned, in particular SUTEF, and subsequently blocked the holding of joint meetings in 2016 to negotiate matters pertaining to working conditions. The Committee notes that the provincial authorities deny that they objected to discussions, stating that, on the contrary, once the dispute had emerged and despite the many acts of violence carried out, they invited the organizations concerned to joint meetings to discuss labour issues. The provincial authorities nonetheless state that their efforts to channel the dispute through collective bargaining were unfruitful owing to the lack of cooperation by SUTEF, which insisted on discussing solely the matter of social security legislation. In that regard, the Committee observes, on the one hand, that the provincial authorities consider that the subjects of the dispute raised by the complainants on social security legislation fall outside the Committee's competence and exceed the scope of collective bargaining with the employer. The provincial authorities state that the trade union's demand (to derogate from or amend the legislation) has nothing to do with the*

executive and cannot be collectively negotiated. On the other hand, the Committee observes that the complainants do not request the executive to examine the legislation in question or to determine whether there existed a right to collective bargaining in respect of the legislation, but rather request the establishment of a forum for dialogue in order to resolve the dispute, recalling in that respect that the legislation concerned was presented and approved by the executive itself. While recalling that questions concerning social security legislation fall outside its competence and recognizing the right of states to legislate in that area, the Committee recalls that while the refusal to permit or encourage the participation of trade union organizations in the preparation of new legislation or regulations affecting their interests does not necessarily constitute an infringement of trade union rights, the principle of consultation and cooperation between public authorities and employers' and workers' organizations at the industrial and national levels is one to which importance should be attached. In this connection, the Committee has drawn attention to the provisions of the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113). The Committee has further emphasized the value of consultations with organizations of employers and workers during the preparation and application of legislation which affects their interests [see ***Digest****, op. cit., paras 1077 and 1072]. The Committee regrets that, according to the information provided, the authorities preparing and applying the draft legislation did not conduct prior consultations with their social partners on a matter – social security reform and special measures (including an increase in contributions and modifications of the conditions for obtaining retirement benefits) – that directly affects the workers' interests. Having taken due note that the provincial authorities stress their prioritization of social dialogue, the Committee invites the Government to request the said authorities to establish a commission or other forum of social dialogue with the workers' organizations concerned, with a view to establishing mechanisms for consultations with the social partners on the preparation and application of legislation affecting their interests, and to deal with any issue that may remain pending, in particular with regard to promoting collective bargaining on working conditions and employment. The Committee requests the Government to keep it informed in that regard.*

124. *Regarding the complainants' allegations about the workshop facilitators (reports about their precarious employment situation, dismissals, reinstatements and failed collective bargaining attempts), the Committee observes that the provincial authorities consider that the allegations are inadmissible on the grounds that they relate to labour issues that are outside the Committee's competence. In that respect, the Committee recalls that, while it is not competent in relation to the facilitators' working conditions, it is competent to examine their enjoyment and exercise of the rights to freedom of association and to engage in collective bargaining. In that regard, the Committee observes that the complainants allege that the authorities raised obstacles to prevent the facilitators from engaging in collective bargaining through SUTEF by failing to show up at joint committee meetings convened for that purpose. In that regard, the Committee notes the following: (i) on the one hand, the provincial authorities state that SUTEF has recognized trade union status to represent and negotiate on behalf of "teaching staff providing services in State-run schools" and the workshop facilitators do not fall within that group; and (ii) on the other hand, the complainants assert the following: (a) SUTEF is the trade union representing the interests of those workers given that the law recognizes that cultural workers are part of the non-formal education system; (b) based on that legislation, SUTEF requested the authority with competence for collective bargaining to establish a joint committee; and (c) a resolution of the Labour Under-Secretariat ruled in favour of the opening of negotiations between SUTEF and the Culture Secretariat but the Secretariat refused to participate. While it does not have the information it needs to adopt a position on this divergence between the parties, the Committee nonetheless observes that the right of this group of workers to engage in collective bargaining is in no way called into question and asks the Government to request the competent authorities to engage in collective bargaining in relation to the cultural workshop facilitators.*

125. *Regarding the allegation that workers were replaced in response to the strike, the Committee notes that, according to the indications of the provincial authorities: (i) additional teachers were hired not to replace workers but rather as a minimum service mechanism (the provincial authorities state that they based the decision on the Committee's principles relating to the possibility of establishing minimum services in the education sector owing to the long duration of the strike – 50 days at the time of the decision, extending to about 100 days); and (ii) owing to the exceptional circumstances facing the education system, the additional teachers hired continued to perform their duties after the striking workers had been reinstated and even for an additional period following the end of the dispute. The Committee recalls that in cases of a strike of long duration in the education sector minimum services may be established in full consultation with the social partners [see* ***Digest****, op. cit., para. 625].*

126. *Regarding the allegations of salary deductions, the Committee recalls that salary deductions for days of strike give rise to no objection from the point of view of freedom of association principles [see* ***Digest****, op. cit., para. 654].*

127. *Regarding the allegations that the strike was declared unlawful in an administrative resolution, the Committee notes that the provincial authorities state the following: (i) the resolution was adopted in respect of a single day (of the almost 100 days that the strike lasted and in a context of direct action in which almost all the Government's work had been paralysed) and the declaration stipulated no measure, reprisal or other legal consequence; and (ii) the direct action of 18 May 2016 was declared unlawful on the grounds that the subject of the dispute had nothing to do with the employment relationship, there being no employment-related or working condition-related demands that it would have been within the authority of the provincial executive to resolve in its role as employer. In that regard, the Committee wishes to recall that the responsibility for declaring a strike illegal should not lie with the government but with an independent body which has the confidence of the parties involved, and that the right to strike should not be limited to industrial disputes that are likely to be resolved through the signing of a collective agreement, but that workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests [see* ***Digest****, op. cit., para. 531].*

The Committee's recommendations

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

(a) The Committee invites the Government to request the competent provincial authorities to establish a committee or other social dialogue body with the workers' organizations concerned, in order, in conformity with the principles of freedom of association, to address matters relating to the promotion of collective bargaining on working conditions and employment and on the right to strike in the education sector. The Committee requests the Government to keep it informed in that regard.

(b) Stressing that the right to strike is not an absolute right and that the acts alleged by the Government such as the use of violence, sabotage, damage to public property and the creation of serious hazards to public safety would, if proven, go beyond the limits of its protection, the Committee requests the Government to keep it informed about the outcomes of the judicial proceedings (criminal charges and waiver of union immunity) against trade

unionists in the context of the events that occurred during the direct action referred to in the complaint.

CASE NO. 3203

INTERIM REPORT

Complaint against the Government of Bangladesh presented by the International Trade Union Confederation (ITUC)

Allegations: The complainant organization denounces the systematic violation of freedom of association rights by the Government, including through repeated acts of anti-union violence and other forms of retaliation, arbitrary denial of registration of the most active and independent trade unions and union-busting by factory management. The complainant organization also denounces the lack of law enforcement and the Government's public hostility towards trade unions and alleges that the new draft of the Bangladesh Export Processing Zones Labour Act, 2016 is not in conformity with freedom of association and collective bargaining principles

129. The Committee last examined this case at its May–June 2017 meeting, when it presented an interim report to the Governing Body [see 382nd Report, paras 149–176, approved by the Governing Body at its 330th Session].

130. The Government provided its observations in a communication dated 10 October 2017.

131. Bangladesh 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

132. At its May–June 2017 meeting, the Committee made the following recommendations [see 382nd Report, para. 176]:

(a) The Committee expects that the important technical cooperation programme currently ongoing in the country will assist the Government to achieve the recommendations below and that it will have full information in this regard for its next examination.

(b) The Committee requests the Government to take the necessary measures to ensure that all anti-union acts alleged in this case, including those allegedly perpetrated by the police and the 2012 murder of a trade unionist – allegations which raise serious concern – are fully investigated and that their perpetrators are held accountable, so as to avoid occurrence of such serious acts in the future, and to inform it of any developments in this regard. The

Committee requests the Government to keep it informed of the outcome of ongoing judicial proceedings relating to the alleged anti-union retaliation in the cases of the Sramik Karmochari Union and the union at enterprise (d), as well as the measures taken to ensure their implementation by the employers. The Committee also expects the Government to take all necessary measures to ensure that the police and other state authorities are not used as an instrument of intimidation and harassment of workers and that all future allegations of anti-union violence reported to the police are properly and expeditiously investigated in order to avoid impunity. The Committee encourages the Government, in collaboration with the social partners and the ILO, to institute training on human rights, civil liberties and trade union rights so as to assist the police and other state authorities in better understanding the limits of their role in respect of freedom of association rights and to ensure the full and legitimate exercise by workers of these rights and liberties in a climate free from fear. The Committee further invites the Government to provide full particulars in relation to the steps taken to fully address complaints of anti-union discrimination, including by means of a publicly accessible database, to the CEACR.

(c) The Committee requests the Government to take all necessary measures to facilitate the registration process so as to ensure that it is a simple formality, which should not restrict the right of workers to establish organizations without previous authorization. The Committee requests the Government to report progress on this issue to the CEACR, to which it refers this aspect of the case and which has, for a number of years, closely followed developments in this regard.

(d) The Committee requests the Government to take the necessary measures to ensure that the procedure available to challenge trade union registration is not misused so as ultimately to become a tool for impeding, or significantly delaying, workers' exercise of their freedom of association rights and that any future allegations of union-busting are fully and expeditiously investigated, and to keep it informed of any developments in this regard. The Committee also requests the Government to keep it informed of the outcome of any pending proceedings relating to cancellation of trade union registrations in the abovementioned factories.

(e) The Committee firmly trusts that all government entities and representatives will refrain from publicly expressing hostility or antagonism towards trade unionists so as to contribute to an environment conducive to the full development of trade union rights.

(f) The Committee expects the Government to take the necessary measures, including legislative, to ensure that workers in EPZs can fully benefit from freedom of association rights and requests the Government to report progress on this matter to the CEACR, to which it refers this aspect of the case.

(g) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of this case.

B. The Government's reply

133. In its communication dated 10 October 2017, the Government indicates that the police is a law enforcement agency committed to maintaining law and order and providing a sense of security to people, and is not concerned with any internal issues or prevailing practices regarding trade unions in garment factories. When handling situations of agitation, violence and crisis in the industrial sector, which often result in blocked roads and vandalism of factories and thus substantially impair economic activities of the country, the police has to act according to the law in order to protect public and private property and restore normality. If the law enforcement agencies interrogate people involved in or responsible for the violent acts, this is done in an extremely cautious manner to ensure that no one is harassed in the name of exercising law and the objective is in no way to harass trade union leaders or disrupt trade union activities in the country. The Government also states that there is no record of harassment of trade unionists for participation in trade union activities and that measures are being taken to enhance the capacity of the police.

134. The Government also indicates that the Bangladesh Labour Act (BLA) contains specific provisions to protect trade union activities and that anti-union discrimination and unfair labour practices in any form constitute a violation of the law and are subject to legal actions. Different authorities exist under the Ministry of Labour and Employment (MOLE) to ensure compliance with the labour law and to introduce effective grievance redress mechanisms and every aggrieved worker has the right to file complaints to the Directorate of Labour for remedial action against management for anti-union activities or unfair labour practices. The Government further states that with the support of technical cooperation programmes ongoing in the country, several remarkable achievements were made in recent years: development of standard operating procedures (SOPs) and a public database for anti-union discrimination and unfair labour practices to facilitate the handling and investigation of such allegations and to make the process more transparent and publicly available (in August 2017, 76 cases of anti-union discrimination or unfair labour practices were available in the database, out of which 51 were settled and 25 ongoing); the launch of a helpline for workers from the ready-made garment (RMG) sector in Ashulia to facilitate lodging of labour-related complaints (as of September 2017, 2,068 complaints were received through the helpline, out of which 501 were settled); intensive training programmes for labour officials, employers, workers and judges on anti-union discrimination, unfair labour practices, arbitration and conciliation, as well as grievance handling; and development of a system to prioritize, record and forward labour disputes to the relevant authority, as well as to update statistics to improve transparency and governance in dealing with complaints.

135. With regard to the 2012 murder of a trade unionist, the Government informs that in October 2012, the investigation was transferred to the Criminal Investigation Department (CID) of the police which determined two persons as principal suspects and established the identity of one of them. As the suspects had absconded, the Government declared a reward of 100,000 Bangladeshi taka (BDT) (US$1,400) for the apprehension of the person whose identity had been established. The police confiscated his property and served notice on him in leading national daily papers on two occasions. The Government also brought the case under the ambit of "sensitive cases" which will ensure its regular monitoring and an expeditious trial: the charge sheet against the identified suspect has been submitted, the case is under trial in absentia and nine out of 25 witnesses have been examined. The Government hopes that the case will be disposed of very soon.

136. The Government further provides statistics and general information on trade union registration, as well as detailed information regarding the measures taken to facilitate the process and improve its transparency: creation of an online registration system to submit applications for registration; adoption of SOPs setting time limits for each step of the registration process; establishment of a public database on trade union registration containing relevant information on the submission and resolution of registration applications, including reasons for refusal and cancellation; upgrade of the Department of Labour; and conducting of awareness-raising and capacity-building activities for workers and employers on social dialogue. The Government also informs about the withdrawal of the Bangladesh Export Processing Zones Labour Act, 2016 (ELA) from Parliament in order to further align it with core ILO Conventions, the tripartite consultations that took place to prepare a new draft and its submission to the 2017 session of the Committee of Experts on the Application of Conventions and Recommendations.

137. Finally, the Government states that it is committed to improving industrial relations in a transparent manner through social dialogue and in line with national legislation and international labour standards. In order to create a conducive environment at the workplace and to address labour dispute issues, the Government has established a secretarial support unit within the MOLE both for the National Tripartite Consultative Council and the RMG Tripartite Consultative Council. According to the Government, this demonstrates its willingness to ensure labour rights.

138. The Government informs that its report has been provided both to this Committee and the Committee of Experts.

C. The Committee's conclusions

139. *The Committee notes that this case concerns allegations of systematic violation of freedom of association rights, including through repeated acts of anti-union retaliation, arbitrary denial of union registration and union-busting activities, as well as lack of law enforcement and the Government's public hostility towards trade unions. The complainant also denounces non-compliance of the new draft Bangladesh Export Processing Zones Labour Act with freedom of association and collective bargaining principles.*

140. *With regard to the allegations of severe and at times violent anti-union retaliation by factory management and the police (recommendation (b)), the Committee notes the Government's indication that even when the police conduct an interrogation for violent acts committed in the industrial sector, such an interrogation does not aim at harassing trade union leaders or disrupting trade union activities, and that measures are being taken to enhance the capacity of the police. While further noting the detailed information provided by the Government on the steps taken to improve the handling and investigation of anti-union discrimination complaints in the future, the Committee regrets that the Government does not provide any concrete information on the judicial proceedings relating to allegations of anti-union retaliation that are ongoing in the present case. The Committee also observes that despite a detailed account of numerous allegations of anti-union retaliation provided in the original complaint, the Government affirms that there is no record of harassment of trade unionists for participation in trade union activities. Recalling in this regard that a genuinely free and independent trade union movement can only develop where fundamental human rights are respected and that the Government has the duty to defend a social climate where respect for the law reigns as the only way of guaranteeing respect for and protection of individuals [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 33–34], the Committee requests the Government once again to take the necessary measures to ensure that, where this has not yet been done, all anti-union acts alleged in this case, including those allegedly perpetrated by the police, are fully investigated and that any future allegations of this nature, even when later resolved through bilateral agreements, are systematically and properly investigated and prosecuted so as to avoid their repetition. The Committee also requests the Government once again to provide updated information on the judicial proceedings relating to the alleged anti-union retaliation in the cases of the Sramik Karmochari Union and the union at enterprise (d) [see 382nd Report, para. 153] and trusts that these cases will be concluded without delay. The Committee further expects the Government to continue to conduct comprehensive training activities in order to assist the police in better understanding the limits of their role in respect of freedom of association rights and to ensure the full and legitimate exercise by workers of these rights and liberties in a climate free from fear.*

141. *The Committee further notes the developments described by the Government regarding the ongoing trial for the 2012 murder of a trade unionist, in particular that one suspect is being tried in absentia and that the case has been brought under the ambit of sensitive cases so as to ensure its regular monitoring and expeditious trial. Taking due note of this information and recalling that the incident which gave rise to the case occurred approximately six years ago, the Committee expects the trial to be conducted without further delay and requests the Government to keep it informed of its outcome.*

142. *With regard to the allegation that the procedure available to challenge trade union registration is regularly misused by factory management to halt trade union activities (recommendation (d)), the Committee observes that while the Government provides detailed general information on the registration process and on the measures it considers will bring*

more transparency to the process, it does not address the issue of concrete attempts by factory management to cancel union registrations alleged in this case. Regretting that no specific information has been provided in this regard and recalling the severe implications the alleged requests for cancellation of registration can have on the functioning of trade unions, the Committee requests the Government once again to provide detailed information on the outcome of the proceedings for cancellation of trade union registration in enterprises (a), (l) and (n) [see 382nd Report, paras 153, 157 and 158]. The Committee also expects the Government to take any necessary measures to ensure that the procedure available to challenge trade union registrations which had been properly granted will not be misused to halt trade union activities in the future.

143. *Concerning the allegations of public hostility or antagonism towards trade unionists (recommendation (e)), the Committee notes the Government's commitment to improving industrial relations though social dialogue and in a transparent manner, as well as its indication that a secretarial support unit was established within the Ministry of Labour and Employment to address issues relating to labour disputes. Taking due note of this information, the Committee trusts that the measures envisaged and taken will contribute to an environment conducive to the full development of trade union rights and will prevent any future occurrence of public hostility and antagonism towards trade unionists.*

144. *Finally, the Committee recalls that it had previously referred the legislative issues concerning registration of trade unions and freedom of association rights in export processing zones (recommendations (c) and (f)) to the Committee of Experts. While taking note of the Government's detailed reply in this regard, the Committee observes that the same information has also been provided to the Committee of Experts, which examined the relevant issues in detail in its latest report. In view of these circumstances, the Committee will not pursue the examination of these legislative aspects of the case.*

The Committee's recommendations

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

(a) The Committee requests the Government once again to take the necessary measures to ensure that, where this has not yet been done, all anti-union acts alleged in this case, including those allegedly perpetrated by the police, are fully investigated and that any future allegations of this nature, even when later resolved through bilateral agreements, are systematically and properly investigated and prosecuted so as to avoid their repetition. The Committee also requests the Government once again to provide updated information on the judicial proceedings relating to the alleged anti-union retaliation in the cases of the Sramik Karmochari Union and the union at enterprise (d) and trusts that these cases will be concluded without delay. The Committee further expects the Government to continue to conduct comprehensive training activities in order to assist the police in better understanding the limits of their role in respect of freedom of association rights and to ensure the full and legitimate exercise by workers of these rights and liberties in a climate free from fear.

(b) Concerning the ongoing trial for the 2012 murder of a trade unionist, the Committee expects the trial to be conducted without further delay and requests the Government to keep it informed of its outcome.

(c) The Committee requests the Government once again to provide detailed information on the outcome of the proceedings for cancellation of trade union registration in enterprises (a), (l) and (n). The Committee also expects the Government to take any necessary measures to ensure that the procedure available to challenge trade union registrations which had been properly granted will not be misused to halt trade union activities in the future.

(d) The Committee trusts that the measures envisaged and taken by the Government will contribute to an environment conducive to the full development of trade union rights and will prevent any future occurrence of public hostility and antagonism towards trade unionists.

(e) The Committee will not pursue the examination of the legislative aspects of this case concerning registration of trade unions and freedom of association rights in export processing zones.

(f) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of this case.

CASE NO. 3263

INTERIM REPORT

Complaint against the Government of Bangladesh presented by
– the International Trade Union Confederation (ITUC)
– the IndustriALL Global Union (IndustriALL) and
– UNI Global Union (UNI)

Allegations: The complainant organizations denounce serious violations of freedom of association rights by the Government, including arbitrary arrest and detention of trade union leaders and activists, death threats and physical abuse while in detention, false criminal charges, surveillance, intimidation and interference in union activities, as well as mass dismissals of workers by garment factories following a peaceful protest

146. The complaint is contained in a communication from the International Trade Union Confederation (ITUC), the IndustriALL Global Union (IndustriALL) and UNI Global Union (UNI) dated 26 February 2017.

147. The Government provides its observations in a communication dated 1 November 2017.

148. Bangladesh 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

149. In their communication dated 26 February 2017, the complainants denounce serious violations of freedom of association rights by the Government, including arbitrary arrest and detention of trade union leaders and activists, death threats and physical abuse while in detention, false criminal charges, surveillance, intimidation and interference in union activities, as well as mass dismissals of workers by garment factories following a peaceful protest.

150. The complainants allege arbitrary arrest and detention of over two dozen trade union leaders and activists following a work stoppage in Windy Apparels Ltd, a ready-made garment factory in Ashulia, a suburban area of the capital Dhaka, on 11 December 2016. The complainants explain that the work stoppage aimed at increasing the minimum wage for garment workers and was supported by workers from around 20 factories, most of which were non-unionized. However, on 20 December 2016, pursuant to a decision of the Bangladesh Garment Manufacturers and Exporters Association (BGMEA), around 60 factories, many of which were not affected by the protest, locked-out their workers, refused to pay for the days the factories were closed and thus effectively ended the work stoppage. According to the complainants, the arrests and detention that followed the strike were arbitrary, as the concerned trade unionists neither carried out violent acts nor damaged property and most of them were not even present in the region during the strike or had no role in it. The complainants allege that the Government is engaged in an all-out assault on trade unionism and used the protest as a pretext to clamp down on unions which have been active in organizing the garment sector and to detain union leaders and charge them with a variety of unrelated crimes. In particular, the complainants denounce the following incidents of arrest and detention coupled with death threats, physical abuse or false criminal charges:

– On 21 December 2016, the police invited a number of trade union leaders and activists to a meeting to discuss the recent work stoppage in Ashulia but arrested those who attended: Ibrahim (an employee of the Bangladesh Centre for Worker Solidarity (BCWS)), Shoumitro Kumar Das (President of Garment Sramik Front Savar-Ashulia-Dhamrai Regional Committee), Rafiqul Islam (President of the Garment and Industry Sramik Federation), Al Kamran (President of Shwadhin Bangla Garment Sramik Federation Savar-Ashulia-Dhamrai Regional Committee), Shakil Khan (General Secretary of Shwadhin Bangla Garment Sramik Federation Savar-Ashulia-Dhamrai Regional Committee), Shamim Khan (President of Bangladesh Trinomul Garment Sramik-Kormochari Federation) and Md Mizan (unionist from the Textile Workers' Federation). All of the arrested unionists were denied the opportunity to speak to lawyers, colleagues or family members for over 24 hours, even though the Constitution of Bangladesh provides for the right to consult with a legal practitioner at the earliest opportunity. The following day, they were taken to court and charged under sections 16 and 25 of the Special Powers Act, 1974, for having committed prejudicial acts and for conspiracy and aiding and abetting the commission of an offence under the Act (Case No. 30/526 of Ashulia police station). The complainants indicate, however, that the offence of "prejudicial acts" under section 16 had been repealed and not subsequently replaced and that in January 2017, the Bangladesh High Court confirmed that the use of the offence was unlawful. The arrested leaders and activists were also charged in another eight cases filed by different factory owners from Ashulia for unlawful assembly, criminal trespass, theft, criminal intimidation and other related charges. One of the detained unionists informed that he had been interrogated in an isolated building in the woods, threatened to be killed and told that it would be covered up as a crossfire incident, while another two were badly beaten while in custody. Another unionist, the President of the union at the Designer Jeans Ltd, was separately taken from his home by a group of men, some in police uniforms and some in plain

clothes, brought to court, charged in the same case and remanded to the Dhaka central jail for three days.

– On 22 December 2016, Asaduzzama and Golam Arif, organizers from the Bangladesh Independent Garment Workers Union Federation (BIGUF), were taken from their residences in Gazipur by the detective branch of the police and reported being physically beaten while in custody. Two days later, the Magistrates Court added them as suspects under sections 15(3) and 25(D) of the Special Powers Act in the pending Case No. 32 of 2015 of Joydebpur police station in Gazipur district, although they had not been named as suspects at the time the case was filed in January 2015 (charges were primarily levelled against leaders and activists of the Bangladesh Nationalist Party (the main opposition party) and Jamaat Islami (an opposition Islamic Party)).

– On 23 December 2016, Nazmul Huda, a journalist who covered the Ashulia work stoppage, was invited by the police to a news conference but, upon arrival, he was forced into a police vehicle, beaten, and driven around Dhaka until around 4 a.m., while being threatened with a "cross-fire" killing. He was produced in court the following day. Ahmed Jjbon, a union leader, vanished on 23 December following a phone call from the detective branch of the police asking him to meet the police on 27 December. He was untraceable until he was produced in court the following morning.

– On 25 December 2017, three activists from the United Federation of Garment Workers were charged under section 15(3) of the Special Powers Act for sabotage, in particular for conspiring to cause damage to the country's economy and spreading fear throughout the civilian population.

– On 27 December 2016, Md Ranju, a BIGUF organizer, was detained at his office by the detective branch of the police and charged under the Explosives Act for possession of explosive substances with the intent to endanger life or cause injury to person or property. On 14 February 2017, he was released on bail and despite the charges against him, there is no evidence that he possessed or planted any explosives.

– On 10 February 2017, four armed police officers in plain clothes entered the BIGUF office in Chittagong, where an industrial dispute resolution training with 25 factory-level union leaders was taking place. The police asked questions about the training while taking photos of the banner and the participants, before requesting Chandon Kumar Dey, the BIGUF Finance Secretary, to go on the street where six police motorcycles and ten policemen in plain clothes were waiting. Kumar Dey and Jewel Borua, the BIGUF Joint Secretary, were asked to accompany the police for questioning. Kumar Dey insisted he be the only one taken and was thus driven to the double mooring police station in Chittagong where he was questioned about BIGUF's activities and affiliates. When several BIGUF organizers and union leaders arrived at the police station to show their support, eight of them were detained: Jewel Borua (the BIGUF Joint Secretary), Rintu Barua, Nipa Akter, Ayub Nobi, Md Rafik, Sam Dulal Bormon, Jahangir and Zahir Uddin (union leaders from garment factory trade unions). All nine trade unionists were then moved to the Kotuwali police station, where they were formally arrested and charged under sections 143, 148, 149, 186, 332, 333 and 353 of the Penal Code (Case No. 70/8/2016 of Kotowali police station dating back to August 2016). They were released on bail on 13 February 2017.

151. The complainants denounce the apparent lack of evidence of any criminal activity in the abovementioned cases and state that while allegations against workers include property damage, such as destruction of factory doors, windows and machinery, no corroborating information has been produced by factory owners or the police. In addition, according to an investigation conducted by Human Rights Watch in Ashulia, there was no evidence of

destruction at the factories, no machinery needed replacement or repairs and residents did not witness any looting or violence.

152. The complainants further allege persistent surveillance and intimidation of trade unionists, as well as police-ordered closure of organizations, as a result of which at least ten garment workers' federations and two non-governmental organizations protecting workers' rights can no longer operate. Many organizers, staff and activists fled the area or are in hiding out of concerns for personal safety and some union leaders were forced by the police to fill out biographical data sheets, which contained 36 questions concerning detailed personal and family information not relevant to their work. According to the complainants, requests to fill out such detailed personal information constitutes a severe intrusion into the privacy of the individuals and the only reason to collect this type of information is to harass or intimidate trade unionists, their families and associates.

153. The complainants further denounce the following concrete incidents of intimidation and interference in trade union activities:

– On 22 December 2016, Moshrefa Mishu, President of the Garment Workers Unity Forum, was stopped and detained by the police on her way to a press conference. While the police claimed that she had simply been invited for a cup of tea, she was only returned home at 5.30 p.m. that evening.

– On 29 December 2016, four police officers came to the BCWS office in Zirabo, Ashulia, confiscated a set of office keys, gave them to the landlord and demanded he contact them directly should any attempt be made to re-open the Centre. Two days later, the police, led by an inspector from the industrial police, once again visited the Zirabo office to verify that the Centre had not been re-opened and gave the landlord the same instructions as previously.

– On 20 January 2017, the police disrupted a health and safety training led by the BIGUF and the Bangladesh Institute for Labour Studies (BILS) and supported by the ILO. The police gathered the participants and photographed one of them because he resembled Monowar Hossain, a BIGUF organizer. The sub-inspector demanded that the training be cancelled, arguing that it required prior police permit (which is false, according to the complainants), threatened that any workers who continued to associate with the BIGUF would be in trouble and that if he caught the union's Vice-President, he would kill him by drowning. The sub-inspector also told Sanjida, the General Secretary of BIGUF, to leave the federation at once or face the consequences and continued to disparage and threaten the union, its leaders and organizers before the assembled participants. Finally, the police gathered the personal information of the participants and their family members, forced the organizers to cancel the training, confiscated the programme banner, notepads, flipcharts and bags, and padlocked and closed the office. On 2 February 2017, two industrial police officers in plain clothes visited the BIGUF office in Chittagong, asked one member to fill in the biographical data sheet for herself, as well as for all relevant persons from the BIGUF, the Clean Clothes Campaign (CCC) and IndustriALL, showed her a letter from a superior officer instructing the police to collect that information but refused to provide a copy of the letter to the BIGUF. The following day, four local police officers once again entered the BIGUF office while a labour law training for garment sector workers was in course, collected personal information from all the participants, spent several hours at the office and told the BIGUF staff to inform the police about its future activities so that they could attend them.

– On 30 January 2017, Nurul Amin Mamun, an organizer from the Bangladesh Revolutionary Garment Workers Federation (BRGWF), was arrested by the police in the union's office in Savar after having met earlier that day with a group of workers

seeking his assistance and was held under Ashulia Case No. 28 filed by the garment factory, in which the December 2016 work stoppage occurred, even though he had not been originally named as a suspect in that case. On 7 February 2017, two industrial police officers in plain clothes entered the BRGWF office in Gazipur and, in an effort to collect information on two organizers, they called one of the main leaders and asked him detailed questions that seemed to mirror the set of personal questions the police had previously circulated to various federations active in Gazipur, including information about political activities, relationships and financial situation. The police spent four hours in the federation's office and asked the same questions to a female organizer working there.

– On 5 February 2017, leaders of the Garment Workers Solidarity Federation (GWSF) and the Akota Garment Workers' Federation (AGWF) reported that officers from the industrial police visited the federations' branch offices in Gazipur and presented organizers in both offices with a two-page biographical data sheet so as to collect personal information for all the federations' leaders.

– On 6 February 2017, three police officers from the special branch entered the Solidarity Centre's office in Gulshan to inquire about a meeting to be held later that day with garment federations that are members of the IndustriALL Bangladesh Council (IBC). The police asked to see the organization's registration documents and requested more information on the meeting, including its participants. Soon after, an additional 15 police officers gathered outside the office's front gate, set up a large camera aimed at the door of the compound and took photographs of those entering. The arriving participants reported that many more police officers circled the block, estimating their number to be between 30 and 50. Participants at the meeting also reported that all federations represented at the training had been visited by the police and asked to provide personal data on their leaders and staff. Following the arrival of a USAID official, the police began to disperse. On 8 February 2017, a constable from the industrial police intelligence branch visited the Solidarity Centre, requested to speak to one specific staff member and inquired about the types of programmes and activities conducted by the organization. He also briefly spoke to the Country Programme Director, asked for the contact information for each staff member and requested to be notified about the dates of their training activities.

154. The complainants further allege arbitrary use of section 13(1) of the Bangladesh Labour Act (BLA), which allows employers to close down a factory in the event of an illegal strike, and denounce that in the present case the determination of the illegality of the strike was made unilaterally by the BGMEA (the BGMEA claims that it closed down the concerned factories to protect the livelihoods of the vast majority of innocent workers). Furthermore, the BLA does not provide for a procedure allowing the Department of Labour (DoL) to assess whether section 13 of the BLA was properly invoked and since judicial procedures are extremely lengthy and involve a high level of corruption, workers rarely use the labour courts to challenge the application of this provision. The complainants also consider that a work stoppage in furtherance of workers' interests, even where it is taken by mostly unrepresented workers, should be protected and should not give rise to employers' retaliation. However, following the December 2016 Ashulia strike, over 1,600 workers were either suspended, dismissed or forced to resign and while the exact number remains unclear, it appears that none of the suspensions and dismissals were carried out in accordance with the procedures set forth in the BLA, as they appear to be indiscriminate and without evidence as to whether those workers who were terminated even participated in the work stoppage. In addition, where unions were operating within the concerned factories, their members and leaders were targeted and dismissed as part of the mass dismissals.

155. Furthermore, according to the complainants, the Government and the employers ignored elected and representative trade union officials in the negotiations following the mass dismissals and instead engaged in negotiations with two trade union federations, which have no unions at the concerned garment factories and possibly no members among the dismissed workers (the Bangladesh Textile and Garment Workers Sramik League and the Bangladesh Apparel and Garments Sramik League). These federations were ordered to compel workers to return to work, disregarding the federations' explanations that they had no power over workers in the striking factories, as a vast majority of them were non-unionized. The complainants also allege that further memoranda of understanding between the BGMEA and several other factories, through which 1,395 workers allegedly opted to resign with compensation, were also concluded with trade unions picked by the Government or the employers which were neither representative of the workers concerned nor mandated by non-unionized workers to negotiate on their behalf. According to the complainants, any waiver of the right of workers to contest their suspension or dismissal should thus be considered null and void. With regard to the aftermath of the Ashulia strike, the complainants add that besides the specific criminal cases filed against trade unionists mentioned above, the police intimidate union leaders and workers by registering criminal complaints against unknown persons, which allows them to misuse the threat of arrest against anyone, and as a result of which there are now open-ended complaints against over 1,600 unknown persons for having committed crimes during the Ashulia strike. The complainants also denounce excessive restrictions on the right to strike contained in the BLA, as previously highlighted by the Committee of Experts on the Applications of Conventions and Recommendations.

156. Finally, the complainants request the Committee to urge the Government to: release all imprisoned workers and drop all charges filed by the authorities, and encourage private entities to drop charges against both named and unnamed defendants; investigate and prosecute all claims of threats of death and physical abuse while in custody; immediately permit trade unions and non-governmental organizations defending workers' rights to access and use their facilities without threat or intimidation; ensure that no rights are waived by agreements between employers and trade unions which are not representative of the workers on behalf of whom they claim to negotiate; ensure the immediate reinstatement of all workers who were removed from employment; ensure that, should a future strike be deemed illegal it is dealt with in accordance with the provisions of the BLA, not the Penal Code or other laws; amend the law so that all cases, including the criminal cases related to disputes between workers and employers are dealt with by the Labour Court; ensure that, in the case of any future unrest in the garment sector, no criminal case is filed prior to a thorough and transparent investigation by the Department for Inspection of Factories and Establishments (DIFE) and the DoL, with the full participation of worker representatives, in which credible evidence would support such a charge; enact amendments, through social dialogue, to prevent the arbitrary use of section 13 of the BLA by the employers; and bring the BLA into full conformity with Convention No. 87.

B. The Government's reply

157. In its communication dated 1 November 2017, the Government indicates with regard to the allegations of arrest and detention of trade union leaders, physical abuse and false criminal charges, that under the law, the police are obliged to produce an arrested or detained person before the magistrate within 24 hours from the time of arrest and that all persons who were arrested and detained after the Ashulia incident were later released on bail. There were 11 cases, out of which eight have been disposed of after investigation with a final report and the remaining three are being investigated and will be resolved at the shortest possible time. The process of investigation is independent and the Government refrains from interfering in it, except for taking steps with the independent investigating authority to expedite the matter. The Government further explains that no complaint of threats or physical abuse of trade union leaders while in detention has been lodged to the police but should any such claim be

made, the police will proceed to an investigation. Physical abuse in custody is rare but if it takes place, the persons at fault are taken to task in accordance with the law. Concerning the allegations of surveillance and intimidation leading to the closure of trade unions' and workers' organizations' offices, the Government states that although the offices of two organizations in Ashulia were closed due to the law and order situation so to ensure their security, they were immediately reopened once there was no risk to their operation.

158. With regard to the allegations of mass dismissals following the December 2016 Ashulia unrest, the Government indicates that no worker was removed for having taken part in any activities relating to the strike but that a number of workers voluntarily resigned upon receipt of their legal dues in accordance with the BLA and two factories are no longer in operation. The Government also states that as a result of illegal strikes and incurring continuous financial losses, employers are compelled to close down factories by invoking section 13 of the BLA. However, this provision is exercised cautiously, its arbitrary use is never encouraged and workers' rights are never infringed.

159. Concerning the allegations that the memoranda of understanding made in the aftermath of the Ashulia strike were concluded with trade union federations that were not representative of the concerned workers, the Government states that several meetings were held with the workers in the presence of the central leaders, which is customary in Bangladesh, and the workers were always represented by a federation or a union. The Government also indicates that no settlement between workers and employers takes effect without the workers being represented by a union or a federation leader and workers' rights are not liable to waiver in such agreements.

160. As regards the complainants' request that all labour issues, including criminal activity resulting from labour unrest, be dealt with by the labour courts, the Government states that workers responsible for taking part in an illegal strike, as well as any offence committed during a labour unrest which falls within the purview of the BLA, are dealt with in accordance with the BLA and not the Penal Code. However, if during an illegal strike a worker commits an offence, including rioting, destroying property of the employer, causing grievous injury or death, public nuisance or disrupting public peace and tranquillity in any way, or creating a disorderly or lawless situation, the offender will be liable under the Penal Code, as there is no scope to initiate criminal cases for such offences under the BLA and the Directorate of Labour and the DIFE are not authorized by the BLA to deal with offences which are criminal in nature. The Government also indicates that although the BLA is currently undergoing a revision process, there are no amendments foreseen to enable criminal cases relating to disputes between workers and employers to be dealt with by the Labour Court.

C. The Committee's conclusions

161. *The Committee notes that this case concerns allegations of serious violations of freedom of association rights by the Government, including arbitrary arrest and detention of trade union leaders and activists, death threats and physical abuse while in detention, false criminal charges, surveillance, intimidation and interference in union activities, as well as mass dismissals of workers by garment factories following a peaceful protest.*

162. *The Committee notes the complainants' allegations that the Government is engaged in an all-out assault on trade unionism and used the December 2016 Ashulia strike as a pretext to repress trade unions active in the garment sector. The Committee observes from the detailed information provided by the complainants that these allegations refer to arbitrary arrest and detention of over two dozen trade union leaders and activists, most of whom had not participated in the work stoppage, and were allegedly accompanied by interrogations, physical abuse, beatings and death threats by the police, as well as denial of access to*

lawyers and the filing of false criminal charges for repealed offences or for unrelated crimes for which criminal cases had been initiated months before. The Committee notes the Government's indication in this regard that all persons who were arrested and detained were later released on bail, that out of 11 cases, eight have been resolved and three are still being investigated, and that no complaint of threats or physical abuse in detention has been lodged with the police but should any such claim be made, the police will proceed to an investigation. While taking due note of this information, the Committee observes that the Government does not address the allegations that a repealed criminal offence was used in the charges against a number of arrested trade unionists and that the criminal charges were filed without any corroborating evidence and regrets that despite the extremely serious and detailed allegations raised by the complainants (death threats, physical abuse and beatings by the police), the Government does not elaborate on this issue and simply indicates that no investigations have so far been conducted as no complaints were received. Observing the Government's suggestion that the complainants should have filed complaints with the institution they were complaining against (i.e. the police), the Committee considers that measures should have been taken to conduct an independent inquiry with a view to bringing any responsible persons to account, especially in light of the gravity of the allegations. The Committee recalls in this regard the 2017 recommendations of the Conference Committee on the Application of Standards which called upon the Government to continue to investigate, without delay, all alleged acts of anti-union discrimination, including in the Ashulia area, and impose fines or criminal sanctions, particularly in cases of violence against trade unionists, according to the law. It similarly notes that, in its latest report, the Committee of Experts on the Application of Conventions and Recommendations expressed deep concern at the continued violence and intimidation of workers and expected the Government to take any necessary measures to prevent such incidents in the future and to ensure that any such incidents are properly investigated. It also observed that, according to the ITUC, baseless criminal charges remained pending against workers for their involvement in the Ashulia incident and requested the Government to take the necessary measures to ensure that any pending proceedings in relation to the work stoppage be concluded without delay.

163. *The Committee considers that the described situation raises serious concerns as to the environment for free exercise of trade union rights and wishes to emphasize 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. While persons engaged in trade union activities or holding trade union office cannot claim immunity in respect of the ordinary criminal law, trade union activities should not in themselves be used by the public authorities as a pretext for the arbitrary arrest or detention of trade unionists. 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 for the exercise of trade union rights. As regards allegations of physical ill-treatment and torture of trade unionists, the Committee has recalled that governments should give precise instructions and apply effective sanctions where cases of ill-treatment are found, so as to ensure that no detainee is subjected to such treatment [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 43, 72, 63 and 55]. Furthermore, the Committee has pointed out the danger for the free exercise of trade union rights of sentences imposed on representatives of workers for activities related to the defence of the interests of those they represent [see* ***Digest****, op. cit., para. 92]. In view of the above and fully endorsing the conclusions of the Conference Committee and the Committee of Experts in this regard, the Committee requests the Government to take the necessary measures to institute an independent inquiry into the serious allegations of death threats, physical abuse and beatings while in custody and ensure that their perpetrators are held accountable and the persons concerned adequately compensated for any damage suffered, so as to avoid occurrence of such grievous acts in the future. The Committee invites the complainants to*

provide any further additional information to the relevant national authorities so that they can proceed to an investigation in full knowledge of the facts. The Committee further requests the Government to take the necessary measures to ensure that all pending cases against trade unionists for their alleged involvement in the Ashulia strike, whether filed by the police, garment factories or other private entities, are concluded without delay and to provide detailed information as to the number of cases, the exact charges retained and their outcome. The Committee requests the Government to keep it informed of any developments in the above matters and trusts that all trade unionists imprisoned or detained after the Ashulia strike have been released.

164. *The Committee notes that the complainants further allege persistent surveillance and intimidation of trade unionists by the police, including through repeated visits of trade union offices, death threats and other menaces not to pursue union activity, taking of photographs of trade union members and participants in labour trainings, repeated inquiries about trade union leaders and staff and collection of personal information, including through the use of a biographical data sheet. The Committee observes that the biographical data sheet provided by the complainants contains very detailed personal questions, such as a person's religion, marital status, annual income and bank account details, political involvement, insurance policy, personal or family car registration number, family history and weaknesses of character, and notes with concern that collection of such sensitive personal information could significantly contribute to the perception of harassment and intimidation of trade unionists and their families, especially in view of the general climate of fear and repression of trade unionism alleged by the complainants, and regrets that the Government fails to provide any information in this regard. Further observing with concern that, according to the complainants, many unionists and activists are in hiding out of fear for their personal safety, 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. The apprehension and systematic or arbitrary interrogation by the police of trade union leaders and unionists involves a danger of abuse and could constitute a serious attack on trade union rights. 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****, op. cit., paras 60, 68 and 58]. In these circumstances, the Committee urges the Government to give the necessary instructions and provide mandatory comprehensive training and awareness-raising activities to ensure that any form of intimidation and harassment of trade unionists and activists by the police ceases immediately, that all persons affected can safely and without fear of repression return to their homes and places of work and that incidents of intimidation and harassment by the police are effectively prevented in the future. The Committee further requests the Government to take the necessary measures to initiate an independent inquiry into all alleged instances of intimidation and harassment presented in the complaint in order to ensure that the perpetrators are held accountable and the concerned workers receive adequate compensation for any damages suffered, and to inform it of any developments in this regard.*

165. *The Committee further observes that parallel to the allegations of intimidation and surveillance of trade unionists, the complainants also denounce repeated interference by the police in trade union activities, including spontaneous visits to union offices, disruption of training sessions and confiscation of training material (banners, notepads, flipcharts and bags), forced cancellation of a health and safety training activity supported by the ILO, inquiries about previous and future meetings, confiscation of union office keys and police-ordered closure of organizations. The Committee notes with concern these serious*

allegations and observes that the Government simply indicates that although the offices of two organizations in Ashulia were closed to ensure their security, they were immediately reopened once there was no risk to their operation. In these circumstances, the Committee must recall that attacks against trade unionists and trade union premises and property constitute serious interference with trade union rights. Criminal activities of this nature create a climate of fear which is extremely prejudicial to the exercise of trade union activities [see ***Digest****, op. cit., para. 59]. The Committee also wishes to emphasize that the inviolability of trade union premises is a civil liberty which is essential to the exercise of trade union rights. The entry by police or military forces into trade union premises without a judicial warrant constitutes a serious and unjustifiable interference in trade union activities. 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. The occupation or sealing of trade union premises should be subject to independent judicial review before being undertaken by the authorities in view of the significant risk that such measures may paralyse trade union activities [see* ***Digest****, op. cit., paras 178, 181, 190 and 188]. Highlighting the gravity of the consequences such alleged interference can have on the functioning of trade unions, the Committee requests the Government to take the necessary measures to ensure that all trade unions and workers' organizations offices mentioned in the complaint are able to operate freely and without fear of intimidation and that any confiscated material belonging to these entities is fully returned. In view of the severity and repeated nature of the alleged interference in trade union activities by the police, including forced cancellation of a training activity supported by the ILO, the Committee encourages the Government to conduct an internal investigation and review so as to determine those responsible and to ensure that appropriate sanctions are taken to avoid repetition of such serious acts in the future.*

166. *The Committee further notes that the complainants and the Government disagree on a number of issues with regard to the Ashulia strike, including the lawfulness of the industrial action and the ensuing closure of the factories by the employers, the nature of the termination of around 1,600 workers, as well as the filing of 1,600 open-ended criminal complaints against unknown persons. Furthermore, while the complainants denounce that the negotiations that followed the incident were conducted with trade union federations picked by the Government or the employers which did not represent the concerned workers, the Government indicates that no worker was removed for having taken part in any activities relating to the strike but a number of them resigned voluntarily upon receiving their legal dues and that workers were represented in the negotiations by central leaders, as is general practice, and an agreement does not become effective without the workers being represented. In this regard, the Committee also notes the information provided by the Government to the 2017 Conference Committee, indicating that a tripartite agreement was reached with IndustriALL in February 2017, whereby all persons imprisoned and under police custody after the Ashulia incident had been released on bail and the salary of workers who had left jobs had been paid as per the labour legislation, as well as the conclusions of the Conference Committee which called on the Government to continue to investigate, without delay, all alleged acts of anti-union discrimination and ensure the reinstatement of those illegally dismissed in the Ashulia area.*

167. *In view of the opposing views of the complainants and the Government on the above matters and while acknowledging that it does not have sufficient information at its disposal to pronounce itself on the lawfulness of the Ashulia strike and the subsequent lockout, the Committee wishes to recall that the right to strike is a prerogative of workers' organizations (trade unions, federations and confederations) and that the responsibility for declaring a strike illegal should lie with an independent and impartial body. While further emphasizing that the principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike [see* ***Digest****, op. cit., para. 667], the Committee must express concern at the more than 1,000 workers who lost their employment, and recalls in*

*this regard that arrests and dismissals of strikers on a large scale involve a serious risk of abuse and place freedom of association in grave jeopardy. The competent authorities should be given appropriate instructions so as to obviate the dangers to freedom of association that such arrests and dismissals involve [see **Digest**, op. cit., para. 674]. With regard to the alleged 1,600 open-ended criminal complaints against unknown persons, the Committee recalls that penal sanctions should only be imposed as regards strikes where there are violations of strike prohibitions which are themselves in conformity with the principles of freedom of association. All penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence or fault committed and the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike [see **Digest**, op. cit., para. 668]. Furthermore, the Committee wishes to point out that while it understands the usefulness of addressing compensation issues with representative trade union spokespersons, especially in cases concerning thousands of workers from different factories, it also considers it critical that any such representatives be clearly mandated for this purpose by the concerned workers. In view of the circumstances of this case and fully endorsing the conclusions of the Conference Committee in this regard, the Committee requests the Government to take the necessary measures to ensure that all workers terminated or suspended for anti-union reasons in the aftermath of the Ashulia strike who have not yet been reinstated through the various agreements concluded and who have indicated their willingness to return to work are reinstated without further delay and to inform it of any developments in this regard. The Committee also requests the Government to provide detailed information on the status of the alleged 1,600 criminal complaints filed following the Ashulia strike, including information on the number of complaints which gave rise to criminal cases, the charges retained and their outcome.*

168. *Finally, the Committee notes the complainants' allegation that the BLA imposes excessive restrictions on the right to strike and their request for any future strike deemed illegal, as well as criminal cases related to labour disputes, to be dealt with by the labour courts under the BLA. The Government, for its part, indicates that although workers responsible for taking part in an illegal strike are dealt with in accordance with the BLA, offences committed during an illegal strike, such as serious injury or death, are addressed under the Penal Code, as the BLA does not authorize to hold trials for such offences. The Committee therefore trusts that, while criminal offences committed during a strike, such as deliberate violence against persons or property, are legitimately dealt with pursuant to the penal law prohibiting such acts, the Government will ensure that recourse to penal sanctions and the filing of criminal charges are not misused to suppress peaceful trade union activities or to threaten and intimidate trade union members and leaders.*

The Committee's recommendations

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

(a) The Committee requests the Government to take the necessary measures to institute an independent inquiry into the serious allegations of death threats, physical abuse and beatings while in custody and ensure that their perpetrators are held accountable and the persons concerned adequately compensated for any damage suffered, so as to avoid occurrence of such grievous acts in the future. The Committee invites the complainants to provide any further additional information to the relevant national authorities so that they can proceed to an investigation in full knowledge of the facts. The Committee further requests the Government to take the necessary measures to ensure that all pending cases against trade unionists for their alleged involvement in the Ashulia strike, whether filed by the police, garment

factories or other private entities, are concluded without delay and to provide detailed information as to the number of cases, the exact charges retained and their outcome. The Committee requests the Government to keep it informed of any developments in the above matters and trusts that all trade unionists imprisoned or detained after the Ashulia strike have been released.

(b) The Committee urges the Government to give the necessary instructions and provide mandatory comprehensive training and awareness-raising activities to ensure that any form of intimidation and harassment of trade unionists and activists by the police ceases immediately, that all persons affected can safely and without fear of repression return to their homes and places of work and that incidents of intimidation and harassment by the police are effectively prevented in the future. The Committee further requests the Government to take the necessary measures to initiate an independent inquiry into all alleged instances of intimidation and harassment presented in the complaint in order to ensure that the perpetrators are held accountable and the concerned workers receive adequate compensation for any damages suffered, and to inform it of any developments in this regard.

(c) The Committee requests the Government to take the necessary measures to ensure that all trade unions and workers' organizations' offices mentioned in the complaint are able to operate freely and without fear of intimidation and that any confiscated material belonging to these entities is fully returned. In view of the severity and repeated nature of the alleged interference in trade union activities by the police, including forced cancellation of a training activity supported by the ILO, the Committee encourages the Government to conduct an internal investigation and review so as to determine those responsible and to ensure that appropriate sanctions are taken to avoid repetition of such serious acts in the future.

(d) The Committee requests the Government to take the necessary measures to ensure that all workers terminated or suspended for anti-union reasons in the aftermath of the Ashulia strike who have not yet been reinstated through the various agreements concluded and who have indicated their willingness to return to work, are reinstated without further delay and to inform it of any developments in this regard. The Committee also requests the Government to provide detailed information on the status of the alleged 1,600 criminal complaints filed following the Ashulia strike, including information on the number of complaints which gave rise to criminal cases, the charges retained and their outcome.

(e) The Committee trusts that, while criminal offences committed during a strike, such as deliberate violence against persons or property, are legitimately dealt with pursuant to the penal law prohibiting such acts, the Government will ensure that recourse to penal sanctions and the filing of criminal charges are not misused to suppress peaceful trade union activities or to threaten and intimidate trade union members and leaders.

CASE NO. 3276

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

Complaint against the Government of Cabo Verde presented by the National Union of Workers of Cape Verde – Trade Union Confederation (UNTC–CS)

Allegations: The complainant organization alleges that the requisition by the Government of workers of an electricity company who had given notice of strike action stood in contravention of new legislation on the determination of minimum services and violated the principles of freedom of association

170. This complaint is contained in a communication dated 6 March 2017 from the National Union of Workers of Cape Verde – Trade Union Confederation (UNTC–CS).

171. The Government sent its observations in a communication dated 3 August 2017.

172. Cabo Verde 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. The complainant's allegations

173. In its communication dated 6 March 2017, the UNTC–CS alleges that the Government used civil requisitioning during a strike called by one of its affiliates, the Industry, Trade and Tourism Union (SICOTUR), on 30 and 31 December 2016, and 1 and 2 January 2017, in an electricity company, ELECTRA–NORT (hereafter the company), on the island of Sal.

174. According to the complainant organization, the Government, alleging that the parties had failed to agree on the minimum services to be performed during the strike, ordered that the strikers be requisitioned. It indicates that the Government systematically requisitions strikers to prevent them from exercising the right to strike, a matter that has been examined by the Committee on two previous occasions (Cases Nos 2044 and 2534).

175. The complainant organization specifies that the right to strike is enshrined both in the Constitution of the Republic (article 67) and the Labour Code (sections 112 ff.), that civil requisitioning is also covered by law (Legislative Decree No. 77/90 of 10 September 1990) and that, following complaints presented by the UNTC–CS to the Committee and the recommendations of the latter, an agreement was signed with the social partners to revise the Labour Code, including the section on the determination of minimum services. Thus, with the publication of Legislative Decree No. 1/2016 of 3 February 2016, section 123 of the Labour Code was amended as follows: the determination of minimum services is ensured by an independent tripartite commission made up of a workers', an employers' and a Government representative and of two other members designated by them by mutual agreement, without prejudice to the provisions of article 127.

176. The complainant organization alleges that, in the case of the civil requisition in question, the Government, and not the independent tripartite commission, determined the minimum services, in violation of amended section 123 of the Labour Code. Nor was the law on civil requisitioning (Legislative Decree No. 77/90) respected, in that no ministerial decision ordering the requisition was published in the *Official Journal*.

B. The Government's reply

177. In its communication of 3 August 2017, the Government states that it does not systematically use civil requisitioning and that it acted strictly within the legal framework established in this regard.

178. The Government indicates that, following the notice of a strike given by SICOTUR, a first tripartite conciliation and mediation meeting was held on 27 December 2016, in the presence of a delegate from the General Directorate of Labour (DGT) of the island of Sal, the chairman of the company's board, the president of SICOTUR and a few company employees. As the trade union's demands remained unmet, the parties were informed that the minimum services would have to be determined, and a meeting was scheduled for 28 December for this purpose. The parties again failing to agree on the matter, the Government indicated that another meeting was held on 29 December in order to form a tripartite commission, made up, in accordance with section 123, paragraph 2, of the Labour Code, of a workers', an employers' and a Government representative, and of two other members designated by mutual agreement, to determine the minimum services.

179. According to the Government, this commission could not be set up, as the president of SICOTUR contested the legitimacy of the delegation from the DGT of the island of Sal, and of the DGT itself, to represent the Government, and opposed the establishment of the tripartite commission (the records of the meetings are attached to the Government's communication). The Government adds that SICOTUR is against having the workers it represents provide minimum services and is seeking, like other trade unions, to exert pressure to have its demands met. According to the Government, this attitude is at odds with section 122, paragraph 2, of the Labour Code, which stipulates that, in enterprises or establishments set up to meet imperative social needs, during strikes workers are required to provide the minimum services necessary to meet those needs. According to the legislation in force, companies operating in the energy sector aim to meet basic needs; therefore, when those basic needs are compromised and the minimum services provided for in law are not performed, there is no choice but to use civil requisition, in accordance with section 127 of the Labour Code (which sets out that, in cases where minimum services are not maintained, the Government can order a civil requisition under the terms laid down in law).

180. The Government points out that, according to section 2 of Legislative Decree No. 77/90, requisitioning is an exceptional measure that can only be adopted in urgent or extremely serious situations or when absolutely necessary to ensure the normal functioning of essential public services. Given this particular situation, the Government explains that it had to take a decision on a civil requisition and that it brought that decision to the attention of the parties concerned through the media, without it being necessary to publish an order, as the original reason no longer existed (the notice of a strike had been withdrawn).

C. The Committee's conclusions

181. *The Committee observes that the allegations in the present case refer: (1) to the civil requisition, by the Government, of workers who had called a strike in an electricity company; and (2) the systematic use by the Government of civil requisition during strike proceedings.*

182. *The Committee notes the Government's reply, which states that the strikers were requisitioned, in the specific case of a strike in the electricity sector in December 2016, because the tripartite commission provided for under the Labour Code (amended section 123) could not be established and therefore could not determine the minimum services within an essential service.*

183. *The Committee observes that it examined allegations on the requisition of workers during strikes in two previous cases concerning Cabo Verde (Cases Nos 2044 and 2534), one in the maritime sector and the other in the meteorological sector. In this regard, the Committee recalled that: "The establishment of minimum services in the case of strike action should only be possible in: (1) services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense of the term); (2) services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population; and (3) in public services of fundamental importance." [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 606]; it also recognized that a minimum service could be established. The Committee further recalls that what is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country. Moreover, 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 [see* ***Digest****, op. cit., para. 582].*

184. *The Committee recalls that the provision of electricity can be considered an essential service and that minimum services can also be established when workers decide to strike.*

185. *Nevertheless, in the cases previously examined by the Committee, it had requested the Government to take the necessary measures to amend the relevant legislation so as to ensure that minimum services are determined with the participation of the Government and of the workers and employers concerned, and that any difference of opinion in this respect is settled by an independent body. The Committee notes that, under section 123 of the Labour Code amended in 2016, in the case of a strike, the determination of minimum services is ensured by an independent tripartite commission made up of a workers', an employers' and a Government representative and of two other members designated by them by mutual agreement. The Committee notes that this amendment is without prejudice to the provisions of article 127, which provide that, in cases where the provisions on minimum services are not upheld, the Government can order a civil requisition.*

186. *Highlighting the positive changes in the labour law, the Committee notes that, in this case, the parties did not reach an agreement, including on the establishment of an independent tripartite commission responsible for determining minimum services, and that, according to the Government, SICOTUR opposed the very establishment of the commission and the provision by its members of minimum services. The Committee notes that the system in place does not appear to provide for dispute resolution by an independent body when differences of opinion arise between the parties relating to the minimum services to be maintained during a strike. Noting that Cabo Verde received technical assistance from the Office in June 2017, the Committee requests the Government to provide further information on the tripartite commission established by the Labour Code, indicating whether implementing regulations are envisaged, and invites it to identify an independent body responsible for determining the minimum services to be maintained in essential public services in the event that the parties do not reach an agreement. The Committee recalls, as it has previously, that any difference of opinion in this respect should be settled by an independent body and not by the administrative authority [see Case No. 2534, 349th Report (2008), para. 559].*

187. *The Committee trusts that, within the framework of the social dialogue mechanisms in force, the tripartite commission, newly established by the 2016 legislative revision, will fulfil its functions and enable, in the interest of the parties, a careful exchange of viewpoints on what, in a given situation, can be considered to be the minimum services that are strictly necessary and determine the number of workers needed to guarantee those services.*

The Committee's recommendation

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

> ***The Committee requests the Government to provide additional information related to the tripartite commission established by the Labour Code, indicating whether implementing regulations are envisaged, and invites it to identify an independent body responsible for determining the minimum services to be maintained in essential public services in the event that the parties do not reach an agreement.***

CASE NO. 3214

DEFINITIVE REPORT

Complaint against the Government of Chile presented by the National Association of Public Servants (ANEF)

Allegations: Non-compliance by the authorities with a memorandum of understanding, acts of repression in punishment for collective work stoppages and protests, and failure to use social dialogue mechanisms to handle the dispute

189. The complaint is contained in a communication from the National Association of Public Servants (ANEF) dated 4 May 2016.

190. The Government sent its observations in a communication dated 20 April 2017.

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

A. The complainant's allegations

192. In its communication dated 4 May 2016, ANEF indicates that it signed a memorandum of understanding (copy attached) on 5 September 2014 with the authorities of the regional government of Atacama through the region's Public Sector Board (hereinafter "MSP-Atacama"). The complainant organization states that the key provisions of the memorandum of understanding included: (i) the payment of a regular special cost-of-living allowance to the region's public servants, the final amount of which would be determined following a study by the National Institute of Statistics (INE) in 2015 to establish the real cost of living in the region; (ii) the inclusion of MSP-Atacama representatives in the team

tasked with defining the terms of reference of the study and in its monitoring and evaluation; (iii) the payment of a temporary special allowance to the region's public servants in 2015 pending completion of the study, with the possibility of renewal in the event of a delay in the study; and (iv) the establishment of a number of round tables from 8 to 12 September 2015 to address matters, including the situation of public workers paid on a fee basis in the region, and to discuss various measures with the aim of improving the living conditions of the region's inhabitants.

193. The complainant alleges that the Government has failed to comply with the abovementioned memorandum of understanding. In that regard, the complainant points out that, as a result of the signing of the memorandum of understanding on 13 February 2015, Act No. 20815 was published with a view to granting a temporary special allowance to the public servants of the Atacama region pending completion of the study on the cost of living in the region. The complainant states that the study was carried out between January and February 2016, outside the agreed time frame, and reports that, contrary to the provisions of the memorandum of understanding, MSP-Atacama representatives were not included in the group responsible for defining the study's terms of reference. Furthermore, the complainant reports that in December 2015, on account of the delay in carrying out the study, the governor of the Atacama region informed MSP-Atacama that the temporary special allowance would continue to be paid under the same conditions as in 2015. The complainant further reports that the various bipartite round tables envisaged in the memorandum of understanding were never established. Lastly, the complainant alleges that, on 7 April 2016, a bill seeking to ensure that the regular special allowance would only be received by workers earning a maximum wage of 700,000 Chilean pesos was submitted to Parliament without first informing the workers. The complainant indicates that the workers opposed the bill, which was rejected on 19 April 2016 by the Finance Committee of the Chamber of Deputies.

194. The complainant alleges that, in response to the Government's non-compliance with the memorandum of understanding, on 1 March 2016 the trade union and professional association members of MSP-Atacama called an indefinite strike that lasted for more than 60 days. The complainant reports acts of repression against workers who took part in the indefinite strike. In particular, the complainant reports: (i) the repression by the special forces unit of the Chilean police of a protest staged by workers in the centre of the regional capital city on 9 March 2016; (ii) the brief detention of 22 workers, mostly trade union officials, who took part in a demonstration on 22 March 2016; (iii) the brief detention of the national vice-president of the Single Confederation of Workers (CUT) during a protest in the region; and (iv) the initiation of criminal proceedings against public servants who had taken part in the indefinite strike for allegedly violating the State Security Act (No. 12927). Specifically, section 11 of the Act provides that "collective work stoppages, walkouts or strikes in public services … that are carried out in a manner inconsistent with the law and disturb the peace or disrupt public utilities or services the compulsory operation of which is established by law … shall constitute an offence and be liable to a minimum or medium term of ordinary imprisonment or confinement to a specific place in the territory". The complainant adds that the dispute created a high level of tension, leading several public authorities to call for the Government and the unions to engage in dialogue.

195. The complainant alleges "blacklisting" and deducting pay from public servants as punishment for their participation in the indefinite strike. The complainant states specifically that, on 11 April 2016, the Office of the Under-Secretary for the Interior instructed the public services of the region to make lists of those public servants who had not worked as a result of the indefinite strike. In this connection, the Office of the Under-Secretary for Transport and Telecommunications communicated through Decision No. 81 of 12 April 2016 that deductions would be applied to the representative of the public servants' association. The complainant reports that, in the same vein, the Office of the Comptroller-General issued Opinion No. 18297 (copy attached) in which it declared illegal the public servants' indefinite

strike under article 19(16) of the Constitution and section 84(i) of the Administrative Statute. Furthermore, the Office of the Comptroller-General established in its opinion that, as a consequence of the public servants' participation in the work stoppage, the deduction made from their wages was lawful under section 72 of the Administrative Statute.

196. Lastly, the complainant alleges that the Government did not use social dialogue mechanisms to deal with the abovementioned dispute. In particular, the complainant considers that it did not observe Articles 7 and 8 of Convention No. 151, ratified by Chile, which require the adoption of machinery for negotiation or other methods to allow representatives of public employees to participate in the determination of terms and conditions of employment, as well as mechanisms to settle disputes pertaining to the determination of such terms and conditions that ensure the confidence of the parties involved.

B. The Government's reply

197. In its communication dated 20 April 2017, the Government reports the signing on 5 September 2014 of a memorandum of understanding between the Atacama region public authorities and MSP-Atacama, of which the ANEF was a member. The Government recalls the content of the memorandum of understanding in its communication and appends a copy thereto. The Government states that, after this complaint was filed, it signed an agreement (copy enclosed) with the public servant members of MSP-Atacama on 11 May 2016. The Government notes that the signing of the abovementioned agreement put an end to the demonstrations and strike staged by the public servants of the Atacama region and settled the dispute clearly and comprehensively.

198. The Government reports that, in accordance with the provisions of the 2014 memorandum of understanding, 13 February 2015 saw the publication of Act No. 20815 granting a temporary special allowance to the public servants of the Atacama region, with the possibility of renewal for 2016 in the event of a delay in completing the study required in order to decide on the granting of the regular special allowance. The Government states that the study was completed by the INE in due time and form and published in December 2015 as the Consolidated National Expenditure Basket ("Canasta Nacional Única de Gasto") study. The Government adds that round tables were held on 7, 12, 15, 18, 23 and 30 March 2016 to inform the public servants of Atacama of the findings of the study that would serve to validate their right to receive a regular special allowance. The Government notes that the social partners involved were informed in those meetings that there were no technical grounds or divergences in the macroeconomic situation of the Atacama region to justify the continued payment of a special allowance. The Government indicates that, with a view to resolving the dispute that arose as a consequence, the 2016 agreement envisaged: (i) the convening before 21 May 2016 of a round table composed of members of the Government and representatives of MSP-Atacama, to analyse the priorities and time frames for addressing the various items included in the 2014 memorandum of understanding and other documents; (ii) the carrying out of a new study on the cost of living in the Atacama region by the end of the first half of 2017 to once again consider granting a regular allowance to the public servants of the region; (iii) the convening of a joint round table between the Government and the representatives of the region from 15 May 2016 to agree the terms of reference of the study; and (iv) the allocation of a one-off allowance in 2016 and 2017 to the region's lowest paid public servants.

199. The Government states that the abovementioned events gave rise to protests and an indefinite strike by the public servants of Atacama in the first half of 2016, as well as to the submission of this complaint. The Government indicates that it did not engage in acts of repression or "blacklist" those who took part in the protests and the indefinite strike. The Government adds that the police force only intervened in incidents that violated the rights of citizens or compromised their safety, such as takeovers of public buildings, physical assaults on

individuals, and blocking of roads and paths to hinder the free movement of the inhabitants of the Atacama region. Furthermore, the Government reports that the competent authorities authorized requests to carry out marches and protests in the region in line with current legislative requirements, especially with regard to the feasibility of the marches and protests and the safety of the workers themselves. Lastly, the Government indicates that it gave a commitment, under item 2 of the agreement of 11 May 2016, to establish a regional labour forum with worker representatives with a view to analysing and possibly withdrawing the criminal complaints already being investigated in relation to acts linked to the public servants' demonstrations.

200. Regarding the deductions in the wages of public servants for days or hours not worked, the Government states that this measure does not constitute a sanction against the workers; rather, it ensured the implementation of current regulations. In this connection, the Government refers to section 72 of Ministry of Finance Legislative Decree No. 29 (2004), approving the amended and harmonized text of the Administrative Statute (Act No. 18834). In accordance with this provision, wages will not be paid for hours not actually worked except in specific cases that do not include work stoppages, and time not worked must be deducted from employees' wages. The Government also refers to various opinions of the Office of the Comptroller-General, including Opinion No. 62446 of 10 November 2009 which provides that "when public employees do not perform their duties owing to their voluntary participation in strikes, walkouts or work stoppages, the value of the periods of time not worked for such reason will be deducted from their wages".

201. Regarding the dispute settlement mechanisms, the Government states that the authorities were always available to meet with workers and open to dialogue. The Government adds that regulation of the collective bargaining of public servants could help facilitate dispute settlement; however, the adoption of such regulations has not been possible owing to the absence of consensus among the organizations. Overall, the Government states that it complies with the standards established in Convention No. 151 and that the right to strike is exercised by public servants without restriction.

202. With respect to the allegations and in line with the abovementioned observations, the Government considers that there has been no violation of Convention No. 151 by the Government of Chile, notwithstanding the differences in the interpretation of the facts by the parties, since these differences were resolved through dialogue, as shown by the conclusion of the memorandum of understanding of 5 September 2014 and the agreement of 11 May 2016.

C. The Committee's conclusions

203. *The Committee observes that, in the present case, the complainant alleges non-compliance by the authorities with the memorandum of understanding, acts of repression in punishment for collective work stoppages and protests, and failure to use social dialogue mechanisms to handle the dispute.*

204. *The Committee notes, in particular, that the complainant alleges the violation of the provisions of the memorandum of understanding that had been concluded on 5 September 2014 between the authorities of the Atacama region and the public servant members of MSP-Atacama. According to the complainant, the study required in order to decide on the granting of a regular special allowance to the public servants of the Atacama region was concluded between January and February 2016, outside the allotted time frame. The complainant also alleges that, contrary to the provisions of the memorandum of understanding, the representatives of MSP-Atacama were not included in the team tasked with defining the terms of reference of the study and in its monitoring and evaluation. The complainant further alleges that bipartite round tables to discuss the issues listed in the*

memorandum of understanding were not established. Moreover, the Government submitted a bill regarding the conditions for the allocation of the regular special allowance to Parliament on 7 April 2016 without first informing the workers. The Committee notes that the Government, for its part, declares that the abovementioned study was completed in due time and form in December 2015, and that round tables were convened on 7, 12, 15, 18, 23 and 30 March 2016 to inform the public servants of the Atacama region that, on the basis of the study's findings, there were no technical grounds or divergences in the macroeconomic situation of the Atacama region to justify the continued payment of a special allowance.

205. *While observing that the parties differ on the subject of the failure to comply with the 2014 memorandum of understanding, which gave rise to the dispute at the heart of this complaint, the Committee takes note of the Government's indication that it signed an agreement with the public servant members of MSP-Atacama on 11 May 2016 to put an end to that dispute. The Government provides a copy of the agreement.*

206. *With regard to the complainant's allegations of acts of repression by the police force against workers who took part in protests, the Committee notes the Government's indication, in its communication, that the police force only intervened in situations where the rights of citizens were violated and their safety compromised. Regarding the alleged initiation of criminal proceedings against the workers who took part in the indefinite strike, the Committee notes the Government's statement that, under the 2016 agreement, it committed itself to the establishment of a regional labour forum with worker representatives with a view to analysing and possibly withdrawing the criminal complaints already being investigated in relation to acts linked to the public servants' demonstrations. The Committee observes that, according to the ANEF's indications and as it transpires from the Office of the Comptroller-General's opinion, these criminal proceedings had been based on the alleged abandonment of duties by the public servants. In this connection, the Committee recalls that "No one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike" [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 672] and firmly expects that the abovementioned process of reviewing the criminal complaints will ensure full respect for this principle.*

207. *In relation to the complainant's allegations of "blacklisting" and deducting pay from workers who took part in the indefinite strike, the Committee notes that the Government, in its response, declares that it never drew up "blacklists" and that the deduction in salaries was made on the basis of current regulations regarding time not worked by public servants. In this connection, the Committee recalls that "Salary deductions for days of strike give rise to no objection from the point of view of freedom of association principles" [see* ***Digest****, op. cit., para. 654].*

208. *Lastly, regarding the complainant's allegation about the Government's failure to use social dialogue mechanisms to deal with the dispute that gave rise to this complaint, the Committee observes that the Government also emphasizes that, as a result of social dialogue, it signed the abovementioned agreement on 11 May 2016 with the public servant members of MSP-Atacama.*

209. *Therefore, in the light of the information provided by the Government in relation to the content of the agreement of 11 May 2016, the Committee understands that the dispute that is the subject of this complaint was ultimately resolved through dialogue between the parties.*

The Committee's recommendation

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

CASE NO. 3144

DEFINITIVE REPORT

Complaint against the Government of Colombia presented by
– the National Confederation of Workers of Colombia (CNT) and
– the Trade Union Association of Professional Staff in Ecopetrol (ASPEC)

Allegations: The complainant organizations allege that an oil company refuses to bargain collectively with the Trade Union Association of Professional Staff in Ecopetrol and fails to recognize the union's right to equal access to paid union leave

211. The complaint is contained in a communication dated 6 April 2015 presented by the National Confederation of Workers of Colombia (CNT) and the Trade Union Association of Professional Staff in Ecopetrol (ASPEC), and a further communication dated 9 October 2015 from ASPEC.

212. The Government sent its observations in communications dated 7 March 2016 and February 2017.

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

A. The complainants' allegations

214. In communications dated 6 April and 9 October 2015, the CNT and ASPEC allege, firstly, that Ecopetrol S.A. (hereinafter "the oil company") refuses to bargain collectively with ASPEC. In this regard, the complainants state specifically that: (i) ASPEC was formed on 12 February 2014; (ii) in May and June 2014, the trade union organizations operating at branch level in the oil company (the Petroleum Industry Workers' Trade Union (USO)), the Association of Managers, Technical Staff and Workers in Enterprises in the Colombian Petroleum Industry (ADECO) and the National Trade Union of Workers of Operating, Contracting and Subcontracting Companies Providing Services and Activities in Petroleum, Petrochemical and Similar Industries (SINDISPETROL) submitted their respective lists of claims to the company, with a view to adopting a new collective agreement for the period 2014–18; (iii) ASPEC submitted its own list of claims on 29 May 2014; (iv) the direct negotiation phase (direct settlement) between the oil company and ASPEC took place from 14 July to 22 August 2014, without an agreement being reached; and (v) the next working day, ASPEC filed the final record of the negotiations with the Bogotá Regional Labour

Directorate with the intention of applying to the Ministry of Labour for a compulsory arbitration tribunal to be appointed to settle the unresolved collective labour dispute.

215. With regard to the process of collective bargaining mentioned above, the complainants state that negotiations with the four trade union organizations operating in the company took place at four separate bargaining tables, which infringes the principle of bargaining unity enshrined in Decree No. 089 of 2014. This regulation provides that, in situations involving multiple trade unions in a company and where the unions do not amalgamate their lists of claims, the different claims are negotiated under a single-table bargaining arrangement, which include a proportional number of representatives based on each organization's representativeness. The complainants allege that this resulted in the substantive negotiations being the focus of discussion at the USO and ADECO bargaining tables, while the list of claims submitted by ASPEC did not lead to any real discussions, forcing the workers affiliated to ASPEC to accept what was negotiated by the largest union in the company, USO, which is nevertheless a minority organization. Thus, the legitimate and specific claims of the company's technical and managerial staff and staff in positions of trust represented by ASPEC were overlooked. The complainants conclude that the refusal of the oil company to bargain with ASPEC is evident from the legal proceedings brought before the 34th district labour court of Bogotá, in which the company seeks the annulment of the trade union organization's registration.

216. The complainants add that: (i) in the absence of genuine negotiations, on 17 June 2014, ASPEC filed an administrative labour complaint concerning the refusal to enter into bargaining on its list of claims; (ii) once the direct settlement phase failed, ASPEC applied to the Ministry of Labour for an arbitration tribunal to be set up; (iii) in Decision No. 0963 of 17 March 2015, the Ministry of Labour unjustly rejected the application, without taking the salient facts into account; and (iv) similarly, the *tutela* action (judicial proceedings to enforce rights) filed by ASPEC against the ministerial decision was dismissed at first and second instance.

217. The complainants allege, secondly, that the oil company denied ASPEC equal access to paid union leave, demonstrating preferential treatment towards the other trade union organizations operating in the company. They state that this discrimination first emerged when the lists of claims relating to the collective agreement of 2014–18 were being negotiated and, subsequently, under the terms of that agreement, which provides agreed and protected trade union guarantees for USO, SINDISPETROL and ADECO, whereas ASPEC's access to union leave depends on the discretion of the company. The complainants report that, on 25 June 2014, they filed a request for an inspection visit and a labour administration inquiry in this connection.

218. The complainants further allege that Decision No. 01 of 1977, or the "statutes governing executives", adopted by the board of directors of the oil company and which covers technical and managerial staff and staff in positions of trust, who are in the majority in the company, constitutes an instrument of anti-union discrimination, since it can only be applied to non-unionized staff. They add that this statute establishes a number of non-statutory wage and employment benefits and allowances for non-unionized managerial workers that are different and superior to those agreed by the company through collective agreements. The complainants report that they filed a request for an inspection visit and a labour administration inquiry in this connection.

B. The Government's reply

219. In its communications of March 2016 and February 2017, the Government first refers to the oil company's reply, which describes the collective bargaining process entered into in 2014 with ASPEC and the other trade union organizations operating in the company as follows:

(i) on 29 May 2014, ASPEC submitted its list of claims, requesting that, in accordance with Decree No. 089 of 2014, it be negotiated in parallel with the lists of claims of the industrial unions USO, ADECO and SINDISPETROL, which also operate in the company; (ii) these three organizations submitted their own lists of claims between 25 and 27 June 2014; (iii) on 3 July 2014, all the coexisting trade unions made a joint decision that the direct settlement phase would begin on 14 July 2014; (iv) in exercising their trade union autonomy, the unions chose not to submit a single list; (v) in accordance with the above decree, it was expressly specified that the bargaining would be a unified and integrated process, although for logistical reasons four parallel sets of discussions were held; (vi) bargaining with the different trade union organizations was conducted under the same conditions; (vii) the collective dispute ended with the signing of the collective agreement 2014–18 by the majority of unions represented, although with ASPEC deciding not to sign the agreement; and (viii) the collective agreement, having been signed by the majority of trade union organizations, is applicable to all workers in the organizations that simultaneously submitted their lists, meaning that it is also applicable to all workers affiliated to ASPEC. The company adds that ASPEC signed the agreement on 3 July 2014 initiating the direct settlement phase and that the trade union organization took no steps whatsoever to request, within the legally established limits and deadlines, an arbitration tribunal to be appointed.

220. With regard to the granting of union leave and guarantees, the company refutes the complainant's allegations, since: (i) even though these conditions are not stipulated in any agreement, the company grants 22 monthly paid periods of leave to members of ASPEC's national executive board and branch executive boards; and (ii) the number of periods of leave granted is not identical for each union because it is proportional to the representativeness of each organization.

221. Lastly, the company states in its reply that Decision No. 01 of 1977 does not disregard the trade union organization right recognized in the Colombian Constitution, and that it is in line with the principle of freedom to join or not join a trade union organization. Specifically, the company states that: (i) workers holding managerial and technical posts and positions of trust are completely free to join or not join one of the coexisting trade union organizations operating within the oil company or to avail themselves of the wage and benefits system contained in the collective agreement or in Decision No. 01; (ii) given that there are two wage and benefit systems that are completely independent and incompatible with one another, and that, under the principle of the inseparability of regulations enshrined in the Labour Code, a worker cannot simultaneously enjoy the benefits contained in the collective agreement and those provided in Decision No. 01; (iii) at the time, both the Council of State and the Constitutional Court had an opportunity to confirm the legality and constitutionality of Decision No. 01; and (iv) the collective agreement concluded with the oil company refers to Decision No. 01, which shows there was an understanding between the company and its unions with respect to the decision.

222. After informing the Committee of the oil company's position on the complaint, the Government provides its own observations on the matter. With regard to the company's alleged refusal to bargain with ASPEC, the Government considers that negotiations did take place and states in this regard that: (i) according to the provisions of Decree No. 089 of 2014, joint negotiations were held with all the trade union organizations operating in the company, which culminated in all of them, including ASPEC, signing a letter of agreement on collective bargaining on 3 July 2014; (ii) on 14 July 2014, although on that date ASPEC did not sign the agreement initiating the direct settlement phase, the oil company's negotiating committees and ASPEC met, thus entering into the bargaining process with the trade union organization in question, a phase that lasted until 22 August 2014; and (iii) following the administrative labour complaint filed by ASPEC, the Bogotá district directorate of the Ministry of Labour conducted an investigation that concluded, in a decision dated 12 March

2015, that the company had not refused to bargain collectively with the trade union organization.

223. Concerning the refusal of the Ministry of Labour to appoint an arbitration tribunal to resolve the collective dispute between ASPEC and the oil company, the Government states that: (i) ASPEC's application is not admissible because the bargaining process between this organization and the company was conducted jointly with the other trade union organizations operating in the company, in accordance with Decree No. 089 of 2014, and that the bargaining process culminated in the majority of the trade union organizations signing a collective agreement; (ii) both the Cundinamarca Administrative Court, in a ruling on 7 April 2015, and the State Council, in a ruling on 9 June 2015, declared inadmissible the *tutela* action filed by ASPEC against Decision No. 0963, stating that the appropriate way to appeal against this decision was not to file a *tutela* action but to lodge an administrative appeal; and (iii) to date ASPEC has not challenged, in the administrative courts, Ministry of Labour Decision No. 0963, which rejects the request for an arbitration tribunal to be set up.

224. With regard to the alleged refusal to grant union leave to ASPEC, the Government notes that the company provides information showing that 22 monthly paid periods of union leave are granted to the trade union organization, and that the latter has failed to provide any evidence that it reported the company's alleged refusal to grant the aforementioned union leave to the relevant authorities.

C. The Committee's conclusions

225. *The Committee observes that the present case refers to the alleged refusal of an oil company to bargain collectively with the trade union organization in the company ASPEC, and to the alleged failure to recognize the union's right to equal access to paid union leave. The Committee observes that, in its allegations, the complainants also make brief reference to the alleged anti-union nature of Decision No. 01 of 1977 adopted by the oil company's board of directors. The Committee notes that this issue will be examined under Case No. 3149, which contains allegations directly related to Decision No. 01 as well as the Government's and company's replies in this regard.*

226. *With regard to the alleged violation of ASPEC's right to bargain collectively, the Committee notes, firstly, that the complainants state that: (i) ASPEC, the recently formed trade union organization, submitted its list of claims to the oil company on 29 May 2014; (ii) on 3 July 2014, in accordance with Decree No. 089 of 2014, ASPEC agreed to negotiate as a group with the other three trade union organizations operating in the oil company, each having submitted its own list of claims; (iii) however, negotiations on the four lists of claims took place at separate bargaining tables; (iv) while the oil company held substantive discussions with the union with the most members (although still a minority organization), the former did not engage in any real negotiations with ASPEC; (v) as a result of the above, on 24 August 2014, the company signed a collective agreement with the other trade union organizations, whereas no agreement was reached with ASPEC; and (vi) the action brought before the Ministry of Labour and the courts against the oil company's refusal to bargain with ASPEC and to request an arbitration tribunal to be set up were unsuccessful, due to the lack of objectivity on the part of the public authorities.*

227. *Furthermore, the Committee notes that both the oil company and the Government take the same position, namely that: (i) in the negotiations on the collective agreement 2014–18, the four trade union organizations operating in the company decided, in keeping with their trade union autonomy, to each maintain their own list of claims; (ii) in accordance with the bargaining agreement signed on 3 July 2014, the four lists of claims were negotiated in a coordinated manner, albeit at separate bargaining tables, which is not contrary to Decree No. 089 of 2014 regulating collective bargaining processes in situations involving*

multiple trade unions; (iii) the ASPEC bargaining table met between 14 July and 22 August 2014; (iv) while an agreement was reached with the other trade union organizations, ASPEC decided not to sign the company's collective agreement 2014–18, which nevertheless applies to all unionized workers in the company; and (v) following the administrative labour complaint filed by ASPEC, an investigation was conducted by the labour inspectorate, which found no evidence of the oil company refusing to bargain with the trade union organization.

228. *The Committee observes that this first allegation refers, in a context of multiple trade unions, to the alleged preference shown by the oil company for negotiating the collective agreement with the most representative trade unions, to the detriment of ASPEC, a recently formed trade union organization with which the company allegedly did not engage in any genuine negotiations. In this respect, the Committee recalls in general that the recognition by an employer of the main unions represented in the undertaking, or the most representative of these unions, is the very basis for any procedure for collective bargaining on conditions of employment in the undertaking [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 953]. In the present case, based on the information made available by the complainants, the company and the Government, the Committee notes that: (i) the oil company has entered into negotiations with all the trade union organizations operating in the company, including with ASPEC, irrespective of the degree of representativeness of each union; (ii) the company signed a collective agreement with the most representative organizations, which was not signed by ASPEC; (iii) the collective agreement applies to all unionized workers in the company, including ASPEC members; and (iv) following investigations conducted by the labour inspectorate, the Ministry of Labour rejected the complaint filed by ASPEC on the violation of the right to bargain collectively. Under the circumstances, the Committee will not pursue the examination of this allegation.*

229. *Regarding the refusal of the Ministry of Labour to set up an arbitration tribunal to resolve the dispute following the absence of any agreement between ASPEC and the company, the Committee notes that the Government states that ASPEC's application was not admissible because the bargaining process between the organization in question and the company was conducted jointly with the other trade union organizations operating in the company, and that the bargaining process culminated in the majority of the trade union organizations signing a collective agreement. Under the circumstances, the Committee will not pursue the examination of this allegation.*

230. *Concerning the alleged refusal to allow ASPEC union leave, the Committee notes, firstly, that the complainants state that: (i) ASPEC was not granted the same number of periods of union leave as the other three trade union organizations operating in the oil company during the collective agreement bargaining period; (ii) through the collective agreement 2014–18 signed on 22 August 2014, the other three trade union organizations were able to agree on and guarantee the number of periods of paid leave due to them, whereas the union leave available to ASPEC depends solely on the goodwill of the company; and (iii) in June 2014, ASPEC requested an investigation by the Ministry of Labour in this connection. The Committee notes, secondly, that the oil company in turn states that: (i) the four trade union organizations were on an equal footing when it came to negotiations on the collective agreement; (ii) ASPEC receives 22 monthly paid periods of union leave from the company; and (iii) ASPEC does not have the same number of periods of union leave as the other trade union organizations because they are calculated based on the representativeness of each organization. The Committee notes, thirdly, the Government's indication that the company provides information, on the basis of which paid leave is granted to the trade union organization, whereas the latter has failed to provide any evidence that it reported the company's alleged refusal to grant the aforementioned union leave to the relevant authorities.*

231. *With regard to the fact that ASPEC receives fewer periods of paid union leave than the other unions operating in the company, the Committee notes that the organization does not deny that it also has fewer members than the other unions. In these circumstances, the Committee observes that it is fully justified for the union leave granted to be proportional to the representativeness of each trade union organization. With respect to the fact that, unlike the other trade union organizations operating in the company, ASPEC does not have an agreed number of periods of union leave due to it, the Committee observes that this situation is the result of the failure to reach an agreement between the company and ASPEC in the negotiations on the company's collective agreement 2014–18 and of the trade union organization's decision not to sign the agreement signed by the other unions operating in the company.*

The Committee's recommendation

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

CASE NO. 3067

INTERIM REPORT

Complaint against the Government of the Democratic Republic of the Congo presented by
- **the Congolese Labour Confederation (CCT)**
- **the Espoir Union (ESPOIR)**
- **the National Union of Teachers in Catholic Schools (SYNECAT)**
- **the Union of State Officials and Civil Servants (SYAPE)**
- **the National Trade Union of Mobilization of Officials and Civil Servants of the Congolese State (SYNAMAFEC)**
- **the Union of Workers – State Officials and Civil Servants (UTAFE)**
- **the National Union of Officials and Civil Servants in the Agri-rural Sector (SYNAFAR)**
- **the General Trade Union of the State and Para-State Finance Administration, and Banks (SYGEMIFIN)**
- **the Trade Union of Workers of the Congo (SYNTRACO)**
- **the State Civil Servants and Public Officials Trade Union (SYFAP) and**
- **the National Board of State Officials and Civil Servants (DINAFET)**

Allegations: The complainants denounce Government interference in trade union elections in the public administration, intimidation, and the suspension and detention of union officials at the instigation of the Ministry of Public Service

233. The Committee last examined this case, brought by several public service unions, during its meeting in October 2016 and on that occasion presented an interim report to the Governing

Body [see 380th Report, approved by the Governing Body at its 328th Session (November 2016), paras 332–348].

234. The Congolese Labour Confederation (CCT), the Union of State Officials and Civil Servants (SYAPE) and the Independent Trade Unions of the Public Administration (SIAP) provided additional information in communications dated 3 May 2017, 29 May 2017 and 3 October 2017, respectively.

235. In the absence of a reply from the Government, the Committee was obliged to postpone its examination of the case on two occasions. At its meeting in October 2017 [see 383rd Report, para. 6], the Committee expressed regret at the Government's persistent non-cooperation and launched an urgent appeal to the Government indicating that a report would be presented on the substance of the matter at its next meeting, even if the information or observations requested had not been received on time. To date, the Government has not sent any information.

236. The Democratic Republic of the Congo 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

237. During its previous examination of the case in November 2016, the Committee made the following recommendations [see 380th Report, para. 348]:

(a) The Committee regrets that, despite the time that has elapsed since the presentation of the complaint, the recommendations made in November 2015 and a meeting with a Government delegation in June 2016, the Government has to date not provided any reply to or observations on the complainant organizations' allegations or the Committee's recommendations, even though it has been requested to do so several times, including through an urgent appeal. In view of its continuing failure to respond to complaints, the Committee invites the Government, by virtue of its authority as set out in paragraph 69 of the Procedures for the examination of complaints alleging violations of freedom of association, to come before the Committee at its next session in March 2017 so that it may obtain detailed information on the steps taken by the Government in relation to the pending cases.

(b) The Committee urges the Government to take without delay the necessary steps related to the contested 2013 decrees adopted by the Ministry of Public Service in order to review them in consultation with the relevant workers' organizations. The Committee requests the Government to keep it informed in this regard.

(c) The Committee must urge the Government once again to undertake, without delay, consultations with all the relevant representative workers' organizations concerned, including the National Inter-union Body for the Public Sector (INSP) and the Independent Trade Unions of the Public Administration (SIAP), on ways of representing workers' interests in terms of collective bargaining in the public administration. The Committee requests the Government to keep it informed in this regard.

(d) The Committee requests the Government to provide the founding document of the [National Public Administration Inter-union Association] (INAP) and the handover document between the former inter-union association INSP and the INAP and to report its observations on the matter.

(e) The Committee expects the Government to issue immediate instructions so that trade union members who are exercising their rightful trade union duties in public administration cannot be subjected to prejudice in the workplace and so that those responsible for these acts are punished. Furthermore, the Committee urges the Government to conduct investigations on the aforementioned disciplinary action cases

against trade union leaders in order to determine if they were punished for lawfully exercising their trade union activities and, if appropriate, to award compensation that sufficiently discourages further disciplinary action.

(f) Noting that Mr Muhimanyi and Mr Endole Yalele filed a complaint before the appeals court for the violation of the legal time limit for concluding a disciplinary case, the Committee urges the Government to keep it informed of the result of this complaint.

(g) The Committee urges the Government to conduct without delay an investigation into the circumstances behind the arrest and detention of trade union leaders in July 2013 and November 2014 and to keep it informed of the findings and follow-up action.

(h) The Committee urges the Government to keep it informed of the status of the complaint filed by Mr Modeste Kayombo-Rashidi with the Kinshasa/Gombe prosecution authorities against Mr Constant Lueteta, INAP Secretary, for having made death threats.

(i) The Committee urges the Government to inform it of the follow-up given to the administrative and judicial appeals brought by the complainants.

(j) Firmly recalling that trade union leaders should not be subject to retaliatory measures, in particular arrest and detention, for having exercised their rights which derive from the ratification of ILO instruments on freedom of association, in this case for having lodged a complaint with the Committee on Freedom of Association, the Committee urges the Government to provide detailed information without delay on the reasons for and the status of the dismissals and disciplinary action against the following trade union leaders and members: Mr Nkungi Masewu, President of SYAPE; Mr Embusa Endole, President of the Espoir Union; Mr Gongwaka, trade union leader; Mr Kaleba, President of the CCT/Finance union committee; and Mr Kalambay, coordinator of COSSA.

(k) The Committee urges the Government to provide without delay detailed information in response to the allegations that trade union leaders in the public service have been subjected to disciplinary measures, including dismissal, for having signed two open letters addressed to the Prime Minister in January and February 2014, and particularly on the reasons given to justify the termination in May 2016 of the President of the SYAPE, Mr Nkungi Masewu.

B. Additional information from the complainants

238. In a communication dated 3 May 2017, the General Secretary of the CCT, Mr Modeste Kayombo-Rashidi, spokesperson for the Independent Trade Unions of the Public Administration (SIAP), reported that the INSP and the SIAP had issued a joint statement on 9 April 2017 to the effect that the term of office of the INAP, of which both the composition and the action are contested, had in any case come to an end in October 2016, and that, consequently, the Government should hold genuine trade union elections with a view to establishing the legitimacy and lawfulness of trade union activities and avoiding any dispute.

239. In a communication dated 29 May 2017, the SYAPE indicated that its President, Mr Nkungi Masewu, had been dismissed, not only in a context of anti-trade union discrimination, but also in violation of the legislation in force, and that, according to the correspondence sent on 26 April 2016 to the Ministry of Public Service by the Special Adviser to the Head of State on good governance and combating corruption, money laundering and terrorist financing, Mr Masewu should have been reinstated as in his post.

240. In additional information brought to the Committee's attention on 3 October 2017, the SIAP denounced the intimidation and threats made against two trade union leaders who were members of the SIAP, Mr Mulangu Ntumba (General Secretary of the SAFE union) and Mr Tshimanga Musungay (General Secretary of the Trade Union Renewal of the Congo (REYSCO)), because of the General Assembly of State officials and civil servants of several ministries held on 21 July 2017 on their initiative.

C. The Committee's conclusions

241. *The Committee deplores the total lack of cooperation on the part of the Government in the proceedings, in particular the fact that it has communicated none of the information requested on several occasions, including through urgent appeals. Despite the time that has elapsed since the presentation of the complaint, the recommendations made by the Committee in November 2015 and November 2016, a meeting between members of the Committee and a Government delegation in June 2016, and an invitation to come before the Committee, pursuant to paragraph 69 of the procedures for the examination of complaints alleging violations of freedom of association, so that the Committee may obtain complete information, the Government has to date not provided any reply to the complainant organizations' allegations or the Committee's recommendations.*

242. *Under these circumstances, and in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee finds itself obliged to present a new 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.*

243. *The Committee reminds the Government, once again, that the purpose of the whole procedure instituted 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 is confident that, while the procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning the allegations brought against them [see First Report of the Committee, para. 31]. The Committee urges the Government to be more cooperative in the future, especially since it recently benefited (in November 2017) from technical assistance from the Office and the International Training Centre in Turin on international labour standards, with a focus on the fundamental Conventions and the supervisory mechanisms.*

244. *The Committee notes that this case, presented by several public administration trade unions, concerns the interference, with impunity, of the Government as the employer in trade union activities, particularly intimidation of, and disciplinary measures against, trade union officials, and the adoption of contentious regulations concerning the organization of trade union elections in the public administration aimed at the establishment of an inter-union association (INAP) under the control of the Government as its sole representative.*

245. *The Committee notes in particular that the complainant organizations referred to reprisals against trade union leaders and members following the adoption of the Committee's recommendations in November 2015. These allegations include the dismissal of Mr Nkungi Masewu, President of SYAPE, and Mr Embusa Endole, President of ESPOIR, as well as disciplinary action against Mr Gongwaka, Mr Kaleba and Mr Kalambay, all trade union members. The Committee deeply regrets that fresh measures of reprisal have been reported since it last examined the case, in October 2016. Indeed, the Committee notes with concern the recent allegations of harassment of the trade union group SIAP, according to which union leaders who are members of the group, namely Mr Mulangu Ntumba (General Secretary of SAFE) and Mr Tshimanga Musungay (General Secretary of RESYCO) have been subject to intimidation and threats of dismissal in connection with their legitimate trade union activities. The Committee once again firmly recalls that trade union leaders should not be subject to retaliatory measures, and in particular arrest and detention, for having exercised their rights which derive from the ratification of ILO instruments on freedom of association, including for having lodged a complaint with the Committee on Freedom of Association. Underlining the importance of ensuring that trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of pressure,*

fear and threats of any kind, the Committee urges the Government to provide detailed information without delay on the reasons for and the status of the dismissals and disciplinary action against the aforementioned trade union leaders and members.

246. *As concerns the situation of the SYAPE President, Mr Nkungi Masewu, the Committee recalls that he was reportedly dismissed for having made defamatory remarks about the Minister of the Public Service. The Committee takes note of the information provided by the SYAPE in a communication dated 29 May 2017, in particular the correspondence addressed to the Ministry of Public Service by the Special Adviser to the Head of State on good governance and combating corruption, money laundering and terrorist financing, according to which Mr Masewu should have been reinstated as in his post, and urges the Government to provide, without delay, detailed information on the reasons for his dismissal.*

247. *The Committee notes the communication dated 3 May 2017 referring to a joint INSP–SIAP statement of 9 April 2017, according to which the term of office of the INAP had ended in October 2016, and calling on the Government to hold genuine trade union elections with a view to establishing the legitimacy and lawfulness of trade union activities and avoiding any dispute. In this respect, the Committee cannot but recall that the development of harmonious industrial relations in the public sector requires respect for the principles of non-interference, the recognition of the most representative organizations and autonomy of the parties. Referring to its previous conclusions concerning a review of the contested 2013 decrees limiting union activities, the Committee again draws the Government's attention to the need to review the regulatory provisions concerned and to undertake consultations with all the relevant representative workers' organizations without delay, in particular the INSP and the SIAP, on ways of representing workers' interests.*

248. *Deploring the Government's lack of response, the Committee finds itself obliged to refer the Government to all the conclusions from its last examination of the case [see 380th Report, paras 332–348] and to its previous recommendations.*

The Committee's recommendations

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

(a) The Committee deplores the total lack of cooperation on the part of the Government in the proceedings, in particular the fact that it has communicated none of the information requested on several occasions, including through urgent appeals. Despite the time that has elapsed since the presentation of the complaint, the recommendations made by the Committee in November 2015 and November 2016, a meeting between members of the Committee and a Government delegation in June 2016, and an invitation to come before the Committee pursuant to paragraph 69 of the procedures for the examination of complaints alleging violations of freedom of association, the Government has to date not provided any reply to the complainant organizations' allegations or the Committee's recommendations. The Committee urges the Government to be more cooperative in the future, especially since it recently benefited from technical assistance from the Office and the International Training Centre in Turin.

(b) The Committee urges the Government to take without delay the necessary steps to review the contested 2013 decrees of the Ministry of Public Service in consultation with the relevant workers' organizations. The Committee requests the Government to keep it informed in this regard.

(c) The Committee must urge the Government once again to undertake, without delay, consultations with all the representative workers' organizations concerned, including the INSP and the SIAP, on ways of representing workers' interests in collective bargaining in the public administration. The Committee requests the Government to keep it informed in this regard.

(d) The Committee requests the Government to provide the founding document of the INAP and the handover document between the former inter-union association (INSP) and the INAP and to report its observations on the matter.

(e) The Committee expects the Government to issue immediate instructions so that trade union members who are exercising their rightful trade union duties in public administration cannot be subjected to prejudice in the workplace and so that those responsible for these acts are punished. Furthermore, the Committee urges the Government to conduct investigations on the aforementioned disciplinary action cases against trade union leaders in order to determine if they were punished for lawfully exercising their trade union activities and, if appropriate, to award compensation that sufficiently discourages further disciplinary action.

(f) Noting that Mr Muhimanyi and Mr Endole Yalele filed a complaint before the appeals court for the violation of the legal time limit for concluding a disciplinary case, the Committee urges the Government to keep it informed of the result of this complaint.

(g) The Committee urges the Government to conduct without delay an investigation into the circumstances behind the arrest and detention of trade union leaders in July 2013 and November 2014 and to keep it informed of the findings and follow-up action.

(h) The Committee urges the Government to keep it informed of the status of the complaint filed by Mr Modeste Kayombo-Rashidi with the Kinshasa/Gombe prosecution authorities against Mr Constant Lueteta, INAP Secretary, for having made death threats.

(i) The Committee urges the Government to inform it of the follow-up given to the administrative and judicial appeals brought by the complainants.

(j) Firmly recalling that trade union leaders should not be subject to retaliatory measures, and in particular arrest and detention, for having exercised their rights which derive from the ratification of ILO instruments on freedom of association, including for having lodged a complaint with the Committee on Freedom of Association, and underlining the importance of ensuring that trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of pressure, fear and threats of any kind, the Committee urges the Government to provide detailed information without delay on the reasons for and the status of the dismissals and disciplinary

action against the following trade union leaders and members: Mr Nkungi Masewu, President of SYAPE; Mr Embusa Endole, President of ESPOIR; Mr Gongwaka, trade union leader; Mr Kaleba, President of the CCT/Finance union committee; and Mr Kalambay, coordinator of COSSA. Noting with concern that fresh allegations have been made of harassment of trade union leaders since it last examined the case, the Committee requests the Government to provide information on the situation of Mr Mulanga Ntumba, General Secretary of SAFE, and Mr Tshimanga Musungay, General Secretary of RESYCO.

(k) The Committee urges the Government to provide without delay detailed information in response to the allegations that trade union leaders in the public service have been subjected to disciplinary measures, including dismissal, and particularly on the reasons given to justify the termination in May 2016 of the President of the SYAPE, Mr Nkungi Masewu.

(l) The Committee invites the Government to a meeting with representative members during the next session of the International Labour Conference (May–June 2018) in order to obtain detailed information on the measures taken in relation to this case.

CASE NO. 3227

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

Complaint against the Government of the Republic of Korea presented by
– the International Trade Union Confederation (ITUC)
– the Korean Confederation of Trade Unions (KCTU) and
– the Korean Metal Workers' Union (KMWU)

Allegations: Acts of anti-union discrimination, harassment and employer interference with internal trade union affairs culminating in compelling workers to unilaterally disaffiliate from the industrial union KMWU and change the union structure by establishing a breakaway management-dominated company union, which was validated by the Supreme Court albeit in violation of national law and the internal KMWU statutes

250. The complaint is contained in a communication from the International Trade Union Confederation (ITUC), the Korean Confederation of Trade Unions (KCTU) and the Korean Metal Workers' Union (KMWU) dated 2 September 2016.

251. The Government sent its observations in a communication dated 30 May 2017.

252. The Republic of Korea has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

253. In a communication dated 30 May 2017, the complainant organizations ITUC, KCTU and KMWU allege several serious acts of anti-union discrimination, harassment and employer interference with internal trade union affairs of the KMWU, culminating in compelling workers, on fear of dismissal, to unilaterally disaffiliate from the industrial union KMWU and change the union structure by establishing a breakaway management-dominated company union at Valeo Electrical Systems Korea (hereinafter: the company). In addition to being unlawful under Korean and international law, the establishment of a company union also violated the KMWU's internal statutes, which do not permit the creation of such structures. Nonetheless, the Korean Supreme Court issued a decision in late 2015 that approved of the establishment of the company union, despite the brazen employer interference and the violation of the KMWU's internal statutes. Thus, the Government violated the right to freedom of association by failing to sanction acts of anti-union discrimination and interference committed by management against the workers and the KMWU; and through the Supreme Court's far-reaching opinion, which validated the establishment of a company union despite the obvious employer interference and the violation of the KMWU statutes.

254. The complainants indicate that the company, established in 1999 by the homonymous French mother company, is a subsidiary that assembles and supplies automotive electrical systems to the Republic of Korea's auto sector. In February 2001, in order to increase its collective bargaining power and to better protect the independence of the labour union, the employees changed the structure of the enterprise-level union in the company, which became a unit of the KMWU.

255. According to the complainant organizations, in March 2009, the relationship between the local unit and the company deteriorated drastically. After having hired an outside consulting firm to advise it on union-busting, the company submitted in June 2009 demands to the union that would have had the effect of nullifying several key provisions of the then existing collective bargaining agreement (CBA). On 4 February 2010, the company unilaterally decided to outsource its security personnel and reassign the pre-existing security guards to undesirable tasks such as cleaning restrooms. The workers were also subjected to public humiliation by, for example, forcing them to sit silently by themselves in the middle of the hallway without work. The union objected to this as a breach of the CBA and demanded the reinstatement of the security guards to their original posts.

256. The complainants state that, on 16 February 2010, the company responded with a lockout of union members and took measures to establish an enterprise union in the company. First, management prohibited union members from entering the union office and hired 400 "thugs" to physically intimidate the union members and to block off all entrances to the plant. The union members were then placed under financial pressure by discontinuing the wages of all (illegally) locked-out workers. Furthermore, the company publicly announced that it would shut down production unless the workers disaffiliated from the KMWU, and the workers started fearing that they would lose their jobs.

257. The complainant organizations further allege that, during the lockout, which lasted 99 days (from 17 February to 25 May 2010), the company permitted workers to return to work if they were willing to agree to the company's demands. The returning workers were nevertheless subjected to harsh anti-union measures, including being detained inside the plant for several days and forced to sleep next to the machinery at night. During their forced

detention, the company submitted the workers to high-pressure tactics, including physical harassment and mandatory meetings during which they were coerced to disaffiliate from the KMWU and to form a new, unaffiliated enterprise-level union. Moreover, the returning workers were put through a disciplinary committee, which punished 66 workers with wage cuts, 24 workers with an official reprimand, and 173 workers with warnings. All these disciplinary measures violated the CBA.

258. In addition, the complainants denounce that, although the District Court deemed the lockout illegal and issued an injunction, the company continued to prevent union leaders from accessing the union office and from contacting other workers. Following the lockout, those workers who had not capitulated were subjected to more severe punishment. For example, the disciplinary committee decided to fire 37 workers and suspended 16. The company even filed a lawsuit against the union members seeking compensation for costs incurred, such as for hiring the anti-union "thugs". The lawsuit was eventually dropped, but only after 25 union members agreed to accept unpaid leave for two-and-a-half years.

259. In the complainants' view, the above union-busting tactics enabled the company to gain enough influence over the workers to manipulate the internal union affairs of the local unit. On 19 May and 7 June 2010, the company called for the establishment of a members' assembly to vote for disaffiliation from the KMWU and to form an independent enterprise union. During the assembly, the company influenced the results by prohibiting union members from attending the meetings. In addition, the company forced the workers to vote by department and threatened that it would outsource or liquidate the department which recorded the lowest approval rate for the new union. Facing certain dismissal, it is no surprise that workers voted for the change of union structure: 517 out of 543 members (95.2 per cent) at the first voting and 536 out of 550 members (97.5 per cent) at the second voting, agreed to form an independent enterprise union, the Valeo Electrical Systems Union (VESU).

260. The complainant organizations highlight that the Government at that time worsened the situation of organized labour by, for example, adopting a multiple union system permitting workers to establish more than one labour group within the same company. Although this policy initially raised hopes that it would expand union organization, it became apparent that the Government intended to weaken the bargaining power of the country's leading industrial unions. Furthermore, the President appeared in a number of press conferences and held the union responsible for causing significant delays in production and creating social chaos.

261. The complainants add that the KMWU has internal regulations which are essential to protecting the industrial trade union-based system, and which prohibit the formation of autonomous unions at the plant level. The local unit's unilateral decision to disaffiliate from the KMWU and establish the VESU inevitably had a negative impact on the KMWU's solidarity and unity. In order to protect the integrity of the KMWU and maintain its collective strength as an industrial union, the KMWU leaders brought a lawsuit seeking nullification of the VESU's decision (albeit compelled) to disaffiliate from the KMWU.

262. With reference to the relevant decisions, the complainants indicate that: (i) the Seoul District Court (2010) and the Seoul High Court (2012) ruled in favour of the KMWU, holding that the local unit cannot unilaterally disaffiliate from the KMWU; (ii) the High Court affirmed the District Court's decision that the local unit violated the Trade Union and Labour Relations Adjustment Act (hereinafter: TULRAA) when it unilaterally changed the union structure without the KMWU's consent; (iii) the High Court further held that the local unit does not have the authority to form an independent union because the branch lacks the independence to mount collective action and has relied on the KMWU for wage negotiations; and (iv) the High Court also noted that the formation of the VESU violates the local unit's own internal regulations, as the regulations limit the local unit's autonomy to change the

union structure and require compliance with the KMWU's by-laws, which explicitly state that its branch or local unit does not have any authority to decide on the structural change.

263. The Korean Supreme Court reversed the rulings of the lower courts. With reference to the relevant decision, the complainants indicate that, according to the Supreme Court: (i) the High Court's decision is based on an incorrect assumption that the branch or local unit of industrial unions could change their form of organization only when they could independently engage in a CBA with a company; (ii) the ability of the branch or local unit of an industrial union to independently engage in collective bargaining with a company is not dispositive of the substructure's independence; and (iii) the branch or local unit may still be considered independent and, thus, be able to exercise its right to change the form of organization, if the unincorporated organization has the characteristics of a workers' organization by having independent regulations and an executive body and conducting its own activity.

264. The complainant organizations indicate that the strong dissent in the Supreme Court decision raised the following valid points: (i) the TULRAA protects labour unions pursuant to the constitutional guarantees of workers' collective rights, and since labour unions serve as an agent to collectively bargain and petition for unfair labour practices on behalf of individual workers, the Court must consider labour unions' collective nature when determining the legitimacy of the workers' decision to change the organizational form; (ii) the TULRAA was originally intended to allow enterprise unions to change their form of organization as branch or local unit in affiliation with industrial unions, and thus the Court must examine this case in ways that honour such legislative intent; (iii) as to the assessment of the local unit's independence, the local unit's independent regulations and executive organization alone do not suffice to conclude the union's independence; the most important characteristic of an independent union is its ability to collectively bargain, and, if the branch or local unit of an industrial union were able to collectively bargain only through the industrial union, the branch or local unit would lack the most notable characteristic of an independent labour union; (iv) without the ability to collectively bargain, a branch or local unit does not have the capacity to be an independent labour organization, and without that kind of independence, the branch or local unit cannot change its form of organization; and (v) a Supreme Court decision recognizing the local unit's disaffiliation from the KMWU will subject workers across the country to companies' anti-union measures in the future and will promote the companies' manipulation of union activities to eventually create yellow unions.

265. In the complainants' view, the Supreme Court's decision is an open invitation to employers to encourage units of industrial unions to disaffiliate and form enterprise-level unions with little to no power vis-à-vis the employer. Efforts to undermine the position of the trade union, for example through legislation, which requires unions to set up small units instead of consolidating into larger structures, are a violation of freedom of association. The Supreme Court's decision is an invitation to further fragmentation of the trade union movement, against the policy and statutes of a union which has structured itself for maximum unity. The Supreme Court incorrectly recognized the local unit of the KMWU as an independent organization without regard for the union's statutes and the local unit's substantial characteristics amounting to an independent union. The structural change of the union results in fragmentation and, thus, amounts to the change of the union per se. Thus, the Court's decision will not only undermine the position of the KMWU but also serve as a detrimental precedent for future applications against unions. Despite the precedents emphasizing the workers' constitutionally guaranteed collective rights, the Supreme Court incorrectly favoured workers' individual rights to the detriment of workers' collective rights. This radical departure from precedent and constitutional authority will have serious consequences as it implies that individuals' constitutional rights can always trump unions' constitutional rights; moreover, it is likely to encourage the government and employer interference with internal union affairs. This will not only allow the Government to implement anti-union

policies but also invite employers to disguise their interference with union organizations, and will weaken the trade union and ultimately the trade union movement as a whole. The Government should be urged to pass legislation reversing the Supreme Court decision to ensure protection of trade unions against interference by employers in internal union affairs.

266. The complainants conclude that, in the present case, the Government clearly and repeatedly interfered with the internal affairs of the KMWU and its local unit at the company, both directly and by failing to sanction the company's conduct, and thereby violated its obligations under Conventions Nos 87 and 98. These violations include the repeated breach of the CBA (including outsourcing of the security work, the illegal lockout, the cessation of pay and the disciplinary/discharge actions against the union's members), the repeated high-pressure tactics against the workers to form a union independent of the KMWU (including threat of job loss), and infringing the union's independence and internal governance. In order to prevent the dilution of collective rights, the Constitution and labour laws strengthen the workers' collective rights to organize and to bargain effectively. The legislature also passed laws to encourage enterprise unions to join industrial unions and to facilitate such process, thereby enhancing the trade unions' bargaining power. The Supreme Court decision, however, narrowly interpreted the law and, thus, completely disregarded the constitutional guarantee of workers' collective rights, and thereby may result in legislative changes that favour individual rights to the detriment of collective rights.

B. The Government's reply

267. In a communication received on 30 May 2017, the Government states that it has endeavoured to enhance the fundamental labour rights of workers, respect trade unions and regard them as partners for the advancement of labour relations. According to the Government, part of the substance of this complaint is in contradiction with the facts and, thus, may cause some misunderstandings. The case at issue is whether a local unit of an industrial trade union, if such a local unit corresponds to an independent trade union or workers' organization, may convert its organizational structure to a company-level trade union through a resolution on structural change, as set forth in section 16(1)8 and (2) of the TULRAA. The validity of the complainants' arguments must be considered in relation to the Constitution and the TULRAA, and the relevant ILO standards. All citizens shall enjoy freedom of association (article 21 of the Constitution), and workers shall have the right to independent association, collective bargaining, and collective action to enhance working conditions (article 33 of the Constitution). Therefore, organizations or associated organizations of workers formed in a voluntary and collective manner upon the workers' initiative for the purpose of maintaining and improving working conditions, or improving the economic and social status of the workers, are recognized as trade unions, and workers shall freely organize trade unions (sections 2(4) and 5 of the TULRAA). The intent of the provision above is to respect the workers' right to organize and to freely choose a form of trade union organization, the autonomy of the trade union, and its democratic operation.

268. The Government maintains that, when a local unit of an industrial trade union conducts its own activities as an independent organization having independent regulations and an executive body, and when such an unincorporated association possesses a status equivalent to that of a workers' organization, then its affiliated union members are capable of deciding on the organizational structure of their trade union in a voluntary manner through a democratic decision-making process. This view may also be observed in the Supreme Court *en banc* Decision (20i2Da96i20) on this case. The intent of the decision recognizing the capability of the local unit having the status of an independent workers' organization to autonomously change the organizational structure, is to respect the workers' right to organize and freely choose to establish trade unions, as much as it values the protection of industrial trade unions. A legislation restricting the conversion of the organizational structure of a local unit of an industrial trade union to a company-level trade union, as contended by

the complainant, would force trade unions to maintain specific organizational structures and infringe on the workers' right to associate freely and decide the organizational structure of their trade union as per the Constitution, the TULRAA, and ILO standards.

269. As regards the capability of a local unit of an industrial trade union to convert into a company-level trade union through a resolution on structural change, the Government observes that the complainant claims that local units of industrial trade unions are merely internal branches of industrial trade unions, and therefore do not have the right to bargain collectively and conclude CBAs, which means their independence is not recognized, and they cannot change their organizational structure to a company-level trade union through a resolution on structural change. In this regard, the Supreme Court held that section 16(1)8 and (2) of the TULRAA prescribing the rules on converting organizational structures is applicable to trade unions established pursuant to the TULRAA, that is, inapplicable to a mere internal organization or entity within a trade union. However, in cases where the branch of an industrial trade union is recognized as an independent workers' organization similar to a company-level trade union on the grounds of its substance as an unincorporated association having independent regulations and an executive body, and is capable of independently conducting collective bargaining or reaching collective agreements, thereby possessing the substance tantamount to a trade union constituted on a company level, such a local unit is de facto similar to a company-level trade union, and the entity may make a structural change to convert into a company-level trade union through a decision-making process of its union members consistent with the requirements for resolution, as set forth under section 16(1)8 and (2) of the TULRAA. In other words, the Supreme Court decided that in cases where a local unit has the substance of an unincorporated association rather than a corporate personality, whereby its independence as a workers' organization is recognized, the union branch is capable of independent decision-making on its prerogatives apart from the industrial union, and inasmuch as it has decision-making power, the local unit may choose to change its purpose and organizational structure by means of an independent and democratic process through a general assembly consisting of its affiliated workers.

270. The Government deems the Supreme Court decision to be in line with the spirit of the Constitution, the TULRAA, and the ILO ensuring the workers' freedom of association and decisions on a trade union's structure and its establishment. Additionally, the decision recognizing the capability of converting its organizational structure is not an attempt to intentionally weaken industrial trade unions' bargaining power but to respect the workers' right to organize and their freedom to choose union structures as much as it values protection of industrial trade unions. The Government believes that it will be difficult for union branches, being internal organs of industrial trade unions, to become the agent of structural conversion; however, in this case, the union chapter was originally a company-level trade union, which was later incorporated into the KMWU and continued to engage in activities through its internal organs such as its general assembly and union branch head. In light of the developments surrounding its establishment, the content of its charter and by-laws, its actual management and operation, and the nature of its specific activities, this union branch was deemed to be independent, having the substance of an unincorporated association as a workers' organization similar to a company-level trade union, which enables it to transform itself into a company-level trade union apart from an industrial trade union, and decide to terminate its status as a local unit voluntarily and convert its organizational structure into a company-level trade union through a democratic process of resolution according to section 16(2) of the TULRAA, which allows structural change with the attendance of a majority of all union members and a concurrent vote of two-thirds majority of the members present (the participation rate of members for resolution on structural change was 91.5 per cent, and the approval rate was 97.5 per cent).

271. In the Government's view, prohibiting workers from changing the organizational structure by themselves contradicts the spirit of the Constitution, the TULRAA, and the ILO.

Conclusively, it would be unreasonable to argue that union branches of an industrial trade union are merely internal organs of an industrial trade union, and therefore cannot convert into a company-level trade union through a resolution on structural change and that the decision recognizing structural conversion is an attempt to divide industrial trade unions and weaken bargaining power. The Government fully respects the organizational and operational principles of industrial trade unions and maintains that, in principle, a resolution on structural change is not permissible if a local unit of an industrial trade union is merely an internal organ of an industrial trade union. However, as for this case, when the entity has the substance of an unincorporated association and its independence is recognized, a structural change is permissible through a democratic decision-making process. In conclusion, the Government does not intend to generally permit the resolution on structural change by treating organizations extensively as unincorporated associations without clearly examining the substance of a union branch of industrial trade unions, but to prudently determine whether the entity has the substance of an independent trade union or a workers' organization similar to a trade union.

272. As regards the allegation that the Government has clearly and repeatedly interfered with the internal union affairs of the KMWU and its union chapter at the company by not imposing any sanctions against the activities of management to form an independent union, the Government contests this allegation arguing that it has been engaging in active measures to protect trade unions from management's unfair intervention of internal union affairs and has been actively addressing discriminatory practices by taking the following measures: (i) as to investigation into unfair labour practices, on 23 October 2012, the KMWU argued that management had coaxed the local unit into withdrawing from the industrial union, thus trying to weaken the union. To investigate the alleged unfair labour practice, the Government conducted searches and seizures at the company on 9 November 2012 and 29 April 2013, and referred the case to the prosecutors' office for an "indictment on part of the allegation" on 26 July 2013, which is pending in court (Gyeongju Branch of Daegu District Court) since May 2017; (ii) as to the consulting firm, which provided labour consulting services for the company, the Government took administrative action against the firm for violating the Certified Public Labour Attorney Act, by cancelling its labour law firm certification and public labour attorney registration for the unfair labour practice case pending in court (Seoul Southern District Court) since May 2017; (iii) as to guidance provided to address labour relations issues, the Government called on management to comply with the decisions of the Labour Relations Commission regarding the issues of differential rates of performance-based pay, cut-off of power and water supplies, and blocking access to the union office for union members, and on the workforce to refrain from entering the workplace without due notice, excessive broadcast advertising and slandering of the CEO (on-site guidance: 23 times (1 January 2014–31 December 2015)); (iv) as to arrangements for labour–management bargaining, on 27 March 2014, the head of the Pohang Employment and Labour Office, a district branch of the Ministry of Employment and Labour, met face-to-face with the representatives of labour and management, calling for their talks, made efforts to arrange a meeting between the Gyeongju branch of the KMWU and the CEO of the company from April to June 2014, and called for labour–management bargaining through the Gyeongju Committee of Labour, Management, Civic Groups and Government from May to June 2014.

273. In conclusion, the Government feels that the complainants' call for adoption of a law reversing the Supreme Court ruling to guarantee the protection of trade unions from employer interference with a union's internal affairs, amounts to a call for the introduction of a law that restricts industry-level unions' branches from changing their organization structures into company-level unions. Such a law cannot be accepted as it would force workers into a particular structure of organization and thus infringe on the workers' right to organize themselves autonomously and choose the organization structures of unions under the Constitution, the TULRAA, and ILO standards. Recalling that these standards and enshrined rights were designed to respect workers' rights to organize themselves

autonomously and choose the structures of union organizations, the Government believes that a law that limits the freedom of choosing the organization structure of a union is unacceptable.

274. Furthermore, the Government forwards the information submitted by the Korea Employers' Federation (KEF). According to the KEF, the complainants' demand to pass legislation reversing the Supreme Court's ruling denies the judicial system of the Republic of Korea, is far from the truth, and violates the workers' right to organize as stipulated and protected by the Constitution of the Republic of Korea and the ILO. The Supreme Court decision of 19 February 2016 is a final ruling by the highest court in the Republic of Korea. The proceedings of this case were broadcast live all over the country, which means that it was open to the public, and the Supreme Court delivered its judgment after going through a prudent process with much deliberation and hearings. The KMWU can criticize it, but it is not appropriate to conclude that the Supreme Court decision is wrong and demand the Government to pass legislation reversing it.

275. As to the allegation that the company called for the establishment of a members' assembly to vote for disaffiliation from the KMWU and to form an independent enterprise union on 19 May and 7 June 2010, and that the company forced the workers to vote by department, the KEF indicates that the judiciary has not acknowledged this argument throughout the trials including the Supreme Court. In the KEF's view, this is an ungrounded opinion of the KMWU given that the Supreme Court endorsed the structural change to reconvert the local unit into the VESU through a series of general assembly meetings to pass resolutions.

276. With regard to the allegation that the lockout was deemed illegal and an injunction issued, while the company continued to prevent union leaders from accessing the union, the KEF contests this allegation indicating that the Daegu District Court (Gyeongju Branch) ruled the lockout legal, but to be suspended after three months (2010Kahap58, 19 May 2010), which means that a lockout for a certain period of time (less than three months) is lawful. Also, the Daegu High Court ruled that a lockout of a duration of three months is lawful for the first two months, with the third month being unlawful (Daegu High Court, 2016Nal 190).

277. As to the argument that the Supreme Court incorrectly favoured workers' individual rights to the detriment of workers' collective rights, the KEF highlights that individual rights do not always have to yield to collective rights, and that changes in workers' collective rights as a result of securing workers' individual rights do not mean that the former are damaged. The Supreme Court ruled that "even a subdivision, etc. of an industrial trade union may change its affiliation and convert into an independent company-level trade union through an independent, democratic process by means of a resolution on a structural change by its general assembly, as set forth under section 16(1)8 and (2) of the TULRAA, in cases where it constitutes an independent trade union notwithstanding its appearance, or an unincorporated association functioning as an independent labour organization similar to a trade union"; and that "the statutory construction of section 16(1)8 and (2) of the TULRAA reflecting the entity's substance as a trade union or an unincorporated association is consistent with the spirit of the Constitution and the Act guaranteeing workers freedom of association and freedom to establish trade unions".

C. The Committee's conclusions

278. *The Committee notes that, in the present case, the complainant organizations allege several serious acts of anti-union discrimination, harassment and employer interference with internal trade union affairs of the KMWU, culminating in compelling workers, on fear of dismissal, to unilaterally disaffiliate from the industrial union KMWU and change the union structure by establishing a breakaway management-dominated company union, which was*

validated by the Supreme Court albeit in violation of national law and the internal KMWU statutes.

279. *The Committee observes the divergence of views regarding the general question as to whether the local unit of an industrial trade union at the company level, may unilaterally disaffiliate from the industrial union and convert its organizational structure to an autonomous enterprise-level trade union. On the one hand, the complainants endorse the position of the lower courts and believe that such action should not be possible under national law and that, moreover, in the present case, the action violated the KMWU's internal statutes, and the entity lacked the independence to mount collective action and engage autonomously in collective bargaining, which might have been an argument in favour of enabling it to independently change its structure. On the other hand, the Government and the KEF endorse the position of the Supreme Court and affirm that the local plant-level entity of an industrial union should be able to exercise its right to change the form of organization, if it has the characteristics of a workers' organization by having independent regulations and an executive body and conducting its own activity.*

280. *In this regard, the Committee generally observes that the free exercise of the right to establish and join unions implies the free determination of the structure and composition of unions, and that workers should be free to decide whether they prefer to establish, at the primary level, a works union or another form of basic organization, such as an industrial or craft union. The Committee further recalls that systems of collective bargaining with exclusive rights for the most representative trade union and those where it is possible for a number of collective agreements to be concluded by a number of trade unions within a company are both compatible with the principles of freedom of association [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 333, 334 and 950]. The Committee also notes the complainants' argument that the local unit as such did not have an independent status so as to enable it as an entity to make autonomous decisions of withdrawal and change of organizational status. The Committee observes that the right to join an organization of one's own choosing could indeed still be assured in such a scenario through the resignation of individual workers who might ultimately choose to set up an enterprise union. In the present case, the Committee has insufficient information at its disposal in relation to the KMWU by-laws governing the creation of local units, their status in national law, the manner in which the local KMWU unit at the company converted into an enterprise union and whether it was in conformity with the organization's by-laws, and the impact that this had on the free exercise of freedom of association by the workers, especially in light of the other allegations in this case.*

281. *In this respect, the Committee cannot ignore the numerous allegations of anti-union discrimination, harassment and employer interference in internal trade union affairs and expresses deep concern at their seriousness. In particular, the Committee observes the following alleged acts on the side of the company: (i) in the framework of the lockout from 17 February to 25 May 2010 undertaken in response to the union's objection to a claimed CBA breach by the company, prohibition of union members from entering the union office and hiring of 400 "thugs" to physically intimidate the union members and to block off all entrances to the plant; public announcement that production would be shut down unless the workers disaffiliated from the KMWU (threat of job loss); permission of workers to return to work on condition of agreement to the company's demands; anti-union measures against returning workers, such as forced detention inside the plant for several days during which time they were submitted to high-pressure tactics, including physical harassment and mandatory meetings, aimed at coercing them to disaffiliate from the KMWU and form an enterprise-level union; and disciplinary measures (66 wage cuts, 24 official reprimands and 173 warnings); although the lockout was deemed illegal, continued denial of union leaders to access the union office or to contact workers and financial pressure on union members; severe sanctions after the lockout, such as disciplinary measures against those workers who*

had not capitulated (37 dismissals and 16 suspensions) and a lawsuit against the union members seeking compensation for costs incurred, such as for hiring the "thugs"; and (ii) in the context of the members' assembly, the company call on 19 May (still during the lockout) and 7 June 2010 for the establishment of a members' assembly to vote for disaffiliation from the KMWU and to form an "independent" enterprise union; prohibition of union members from attending the meetings; and forcing workers to vote by department while threatening that the department which recorded the lowest approval rate for the new union would be outsourced or liquidated.

282. *In this regard, the Committee wishes to 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 [see **Digest**, op. cit., para. 786]. Moreover, the Committee emphasizes that acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, shall be deemed to constitute acts of interference. The Committee has had occasions to examine examples of such interference and recalls that respect for the principles of freedom of association requires that the public authorities exercise great restraint in relation to intervention in the internal affairs of trade unions. It is even more important that employers exercise restraint in this regard. They should not, for example, do anything which might seem to favour one group within a union at the expense of another [see **Digest**, op. cit., para. 859]. Also, as regards allegations of anti-union tactics in the form of bribes offered to union members to encourage their withdrawal from the union and the presentation of statements of resignation to the workers, as well as the alleged efforts made to create puppet unions, the Committee considers such acts to be contrary to the principles of freedom of association and the right of workers' and employers' organizations to enjoy adequate protection against any acts of interference by each other or each other's agents in their establishment, functioning or administration.*

283. *In the present case, the Committee considers that it is inherent to the freedom of choice of trade union structure that the determination by the workers of the trade union structure deemed most appropriate for safeguarding their occupational interests, is made freely, voluntarily and via an independent, democratic process. The Committee is of the view that the acts allegedly undertaken by the company in the run-up to and during the vote would, if found to be true, amount to pressure, intimidation and coercion, which are irreconcilable with the free exercise of the right of workers to establish a trade union of their own choosing. The Committee further observes that: (i) despite differing information, the complainants and the KEF concur that, as far as the third month and beyond is concerned, the lockout was deemed illegal by the courts; (ii) the results of the Government investigation into the unfair labour practice alleged by the KMWU (management coaxed the local unit into withdrawing from the industrial unit so as to weaken the trade union), sufficed for the case to be referred to the prosecutors' office in July 2013, and the case is pending in the Daegu District Court (Gyeongju Branch) since May 2017; and (iii) the Government took administrative action against the consulting firm, which allegedly provided union-busting advice to the company, by cancelling its labour law firm certification and public labour attorney registration; and the related unfair labour practice case is pending in the Seoul Southern District Court since May 2017. While noting the KEF's view that the judiciary did not acknowledge the allegation of employer interference through calling for the establishment of the members' assembly and forcing workers to vote by department, the Committee observes that no information has been provided on the extent to which the Supreme Court, when deciding on the appeal lodged against the disaffiliation from the KMWU and the creation of the VESU, has given due consideration and inquired into each of the multiple allegations referred to above, taking into account the results of the related Government investigation conducted at the company in November 2012 and April 2013 as well as the administrative sanctions imposed against the consulting firm. Considering that the above allegations of anti-union*

discrimination, harassment and employer interference are intrinsically linked to the validity of the decision to disaffiliate from the KMWU and create the VESU, an independent company trade union, the Committee requests the Government to report in detail on the scope and the results of the investigation carried out in 2012 and 2013 and any imposed sanctions, to provide information on the outcome of the pending judicial proceedings concerning the unfair labour practices allegedly committed by the company and the consulting firm, and to ensure that these allegations, to the extent that they have not otherwise been investigated and given final resolution, will be the subject of a thorough inquiry and, if proven, provided with adequate redress. The Committee requests to be kept informed of any further developments of relevance to the case.

284. *Lastly, the Committee regrets that the Government does not reply to the allegation that it directly interfered with the internal affairs of the KMWU and its local unit at the company by making official statements in public against the KMWU. In this regard, the Committee recalls that, on more than one occasion, it has examined cases in which allegations were made that the public authorities had, by their attitude, favoured or discriminated against one or more trade union organizations, for instance through pressure exerted on workers by means of public statements made by the authorities. Discrimination by such methods, or by others, may be an informal way of influencing the trade union membership of workers. The Committee recalls that "the right of organizations to carry out their activities freely and to formulate their programmes requires the public authorities to refrain from commenting on or intervening in the workings of these organizations, which is in the interests of the normal development of the trade union movement and harmonious professional relations" (see also 370th Report, Case No. 2994 (Tunisia), para. 736) and requests to ensure respect for this principle.*

The Committee's recommendations

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

(a) Considering that the allegations of anti-union discrimination, harassment and employer interference are intrinsically linked to the validity of the decision to disaffiliate from the KMWU and create the VESU, an independent company trade union, the Committee requests the Government to report in detail on the scope and results of the Government investigation and any sanctions imposed, to provide information on the outcome of the abovementioned judicial proceedings concerning the unfair labour practices allegedly committed by the company and the consulting firm, and to ensure that these allegations, to the extent that they have not otherwise been investigated and given final resolution, will be the subject of a thorough inquiry and, if proven, provided with adequate redress. The Committee requests to be kept informed of any further developments of relevance to the case.

(b) The Committee requests the Government to ensure respect for the principle that organizations shall have the right to carry out their activities freely and to formulate their programmes. In this regard, it further requests the Government to ensure that public authorities refrain from commenting on or intervening in the workings of these organizations.

CASE NO. 3262

DEFINITIVE REPORT

Complaint against the Government of the Republic of Korea presented by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF)

Allegations: The complainant alleges the lack of protection of minority unions and their members under the Trade Union and Labour Relations Adjustment Act (TULRAA), as amended, as well as unfair labour practices against the Sejong Hotel Labor Union (SHLU) and its members

286. The complaint is contained in a communication dated 16 January 2017 from the International Union of Food Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF).

287. The Government sent its observations in a communication dated 28 September 2017.

288. The Republic of Korea has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

289. In its communication dated 16 January 2017, the IUF alleges that the amendments to the Trade Union and Labour Relations Adjustment Act (TULRAA), which came into effect in July 2011, while lifting the enterprise-level ban on multiple trade unions, they granted employers discretionary powers which, in conjunction with the absence of enforcement provisions to guarantee effective representation and bargaining rights and protection against acts of discrimination for minority unions and their members, prevent workers from enjoying their freedom of association and collective bargaining rights.

290. According to the complainant, the developments at the Sejong Hotel (hereinafter: the hotel) make evident these obstacles to freedom of association and collective bargaining and the effective protection of trade union rights. The complainant explains that the Sejong Hotel Labor Union (SHLU) was established in 1975. It is affiliated to the IUF through its membership in the Korean Federation of Service Workers' Unions. The IUF indicates that until 2011, the SHLU regularly negotiated and renewed a two-year collective agreement with the management of the hotel. The IUF alleges that following the amendment of the TULRAA, the management of the hotel began to actively undermine the SHLU by discriminating against its leaders and members and supporting a rival organization.

291. The complainant alleges that, soon after the wage negotiation formally began on 21 June 2011, union members were informed by their managers that a new union was being established and were urged to join the new organization. According to the complainant, on 1 July 2011, the Sejong United Union (SUU) held a founding congress in the hotel, an event which could only have taken place at the venue with the explicit approval of the management. The complainant alleges that, on 5 July 2011, the hotel management unilaterally ended the bargaining process with the SHLU. On 11 July 2011, 120 out of the

207 SHLU members resigned from the union. The union believes that the withdrawals were in response to pressure from the management.

292. The complainant indicates that the management's unilateral termination of ongoing negotiations was successfully contested in the Seoul Central District Court, which on 12 November 2011 confirmed the SHLU's role as a bargaining representative on the basis that negotiations had begun before 1 July 2011. Following the court decision, the bargaining resumed but had quickly deadlocked, prompting the SHLU to hold a legally authorized 38-day strike beginning on 2 January 2012. The strike ended following an agreement with the management. The IUF indicates that, in the run-up to the strike, 12 SHLU members had resigned from the union citing pressure from the management. The complainant alleges that SHLU members and officers have received no legal protection under the new legislation.

293. The complainant further denounces punitive transfers and demotion of SHLU members. It alleges, in particular, that six SHLU members, including Vice-President Jubo Cho, were transferred or demoted in September 2011 after the union had contested discrimination against precarious room attendants and unilateral changes to allowances paid to sales employees. The complainant indicates that, on 29 November 2011, the Seoul Regional Labour Relations Commission rejected the union's claim that the transfers of Jubo Cho and other workers were unfair and constituted unfair labour practices. The complainant alleges that this decision opened the door for more pressure on the union.

294. The complainant further alleges that, despite the no-reprisals agreement with the management which ended the strike, Jubo Cho and the union organizing officer Gwanghyeon Baek were suspended from work in February 2012 for six and one months, respectively. The complainant adds that SHLU members Junsu Park and Dujin Oh were unfairly transferred in April and May 2012, respectively, and that the following month, the management unilaterally terminated the employment contract with Yunhui Yu after refusing to convert her status to permanent. The complainant alleges that the pressure on the SHLU continued in 2013 when the management unfairly transferred Yonggi Kim and Hyeongrae Kim, active SHLU members who took part in the strike. The complainant adds that the management also transferred Dongsin Lee, Jubo Cho's wife from finance department to room cleaning. The SHLU believes this transfer to be retaliatory. The complainant also alleges that in 2014 two SHLU members, Hyeongrae Kim and Seunghyeop Lee, were transferred and that Mr Kim returned to his original job only after leaving the union at the end of 2014.

295. According to the complainant, the management profited from the union's declining membership and the prevailing atmosphere of intimidation to come to an agreement with the SUU in June 2014 which nullified the job security agreement negotiated with the SHLU. The IUF alleges that a revised collective bargaining agreement negotiated in August 2014 with the SUU imposed limitations on union membership by excluding section chiefs, including SHLU members, and thus further restricting eligibility in the bargaining unit.

296. The complainant further denounces a series of unfair practices and transfers of SHLU members:

- 12 January 2015: transfer of SHLU President, Jinsu Ko, Jubo Cho and former SHLU President, Sangjin Kim.
- 16 January 2015: Daeyeol Chang was compelled to resign after his salary was dramatically reduced.
- 1 June 2015: transfer of Gwanghyeon Baek and Jubo Cho, who also received, in July 2015, a four-month pay cut for supporting an ongoing union protest.

- 20 August 2015: transfer of Gisu Kim.

297. The complainant alleges that the management escalated the pressure on the SHLU on 19 September 2015 by taking a legal action against its members Yunhui Yu and Dongsin Lee, who had filed civil lawsuits to invalidate their dismissals. The complainant explains that when the court failed to uphold their complaints of unjust dismissal, the hotel claimed the cost of procedure and seized Yunhui Yu's bank account and prepared to seize the account of the other plaintiff. The union decided to bear the cost of the procedure.

298. The IUF further alleges that, in April 2016, former SHLU President, Sangjin Kim, was dismissed. Kim had been the President of the union from February 2006 through December 2014 and returned to his original job when he relinquished the office. On 12 January 2015 he was transferred to the position of a waiter, a job he had never performed. After 15 months of resisting the transfer and continuing to defend the rights of SHLU members he was terminated on disciplinary grounds. The union filed a complaint with the Seoul Regional Labour Relations Commission on 19 July 2016 alleging unfair dismissal and unfair labour practices. The Commission rejected the complaint on 19 September 2016 and the National Labour Relations Commission rejected the union's request for a retrial on 11 January 2017.

299. The complainant alleges that the management has consistently rejected collective bargaining with the SHLU, which the law in principle allows, arguing that the union minority status gives the management a discretionary authority under the TULRAA to negotiate solely with the SUU which was established on the same day the new legislation took effect. The IUF further adds that, on 26 August 2015, the SHLU called on the management to resolve the long series of disputes through collective bargaining and submitted its proposals. The management had rejected the request, arguing that negotiations would breach the single bargaining channel established by the TULRAA. The management had also failed to reply to a second request for collective bargaining on 15 September 2015.

300. The IUF alleges that the chronicle of events described in its complaint demonstrates that the amended TULRAA, which in principle should have removed long-standing obstacles to freedom of association and brought about a more robust collective bargaining environment, has instead produced the opposite result at the hotel, owing to deficiencies in the law itself and a permissive legal system which has not effectively protected the rights of the union and its members. The complainant adds that the hotel management has availed itself of these weaknesses to unilaterally exclude a representative union from the collective bargaining process and to harass, transfer, intimidate and dismiss union members and officers. The IUF further alleges that with the support of a compliant organization, which the management sponsors and supports, the latter has substantially reduced remuneration for many categories of workers (in some cases by as much as by 10–30 per cent) while increasing employment insecurity through the expansion of "irregular" employment contracts. The complainant alleges that the number of directly employed workers at the hotel has decreased from 250 in 2011 to 140 in 2016 which raised new obstacles to union organization and bargaining. In the complainant's opinion, while the 2011 law allows for the unions to agree on a joint bargaining representation, the amendments leave the management unacceptable latitude to unilaterally determine its bargaining partners. It alleges that where the management can establish a compliant union to generate instantaneous "multiple unions", agreement on joint bargaining remains purely theoretical.

301. The IUF calls on the Committee to urge the Government to review the TULRAA amendments to fully guarantee representation rights to all unions and their members, and to ensure adequate protection against acts of anti-union discrimination. The IUF considers that the Government should be requested to take all necessary measures to ensure that the management of the hotel enters into good faith negotiations with the SHLU to resolve all

outstanding issues, including through compensation of trade union members who have suffered from the loss of employment or degradation of working conditions.

B. The Government's reply

302. By a communication dated 28 September 2017 the Government transmits its observations on the allegations in this case and emphasizes its continuous efforts to promote workers' fundamental labour rights and indicates that it respects all workers' organizations, including the SHLU, as partners in the effort to enhance labour relations. The Government disputes the facts as presented by the IUF and relates its views as follows.

303. With regard to the allegation that the single bargaining channel system introduced under the revised TULRAA has caused a series of problems, the Government explains that the system was designed to allow only one representative bargaining union designated, according to the prescribed procedures, to be in charge of the collective bargaining at each enterprise where there are at least two unions established by workers. It further explains that this system was introduced to protect the working conditions of all union members, including members of minority unions, to guarantee workers' rights to freely establish unions at the enterprise level and to address any side effects of union pluralism, such as higher bargaining costs. It further states that under this system, minority unions that have not been able to become representative are not allowed to have exclusive collective bargaining rights. In the Government's view, this is an inevitable aspect of collective bargaining rights in practice. In this respect, it refers to the situation in other countries where different bargaining channels are unified and a representative bargaining union has an exclusive right to bargain with the employer at the enterprise level. The Government explains that the TULRAA allows minority unions to participate in the process of deciding the representative bargaining union, from autonomous unification of different channels to the composition of the bargaining representatives, ensuring that the representative bargaining union stands on equal footing with the employer. The Government also indicates that the law recognizes minority unions as an important part of the representative bargaining union, allowing them to enjoy the outcomes achieved by the representative bargaining union.

304. Furthermore, the Government states that it has been implementing various supplementary measures to address problems that might arise from the single bargaining channel system. It explains, in particular, that under the TULRAA, although the single bargaining channel system should be applied in principle, autonomous bargaining (not going through the single bargaining channel system) is also permitted with the employer's consent. If there is any need for multiple bargaining channels due, for example, to a huge gap between unions in working conditions, the single bargaining channel may be divided into multiple channels under the Act. Moreover, to protect minority unions, the employer and the representative bargaining union are obligated to fulfil the duty of fair representation (which prohibits them from discriminating against any union which participates in the process of unifying bargaining channels or any member of such a union). The Government believes that this system is in conformity with the relevant freedom of association principles and indicates that it is working to ensure that the new system takes root in order to protect collective bargaining rights of minority unions and build win-win labour–management relations based on dialogue.

305. As regard unfair transfers, dismissals and practices alleged by the complainant, the Government indicates that two members of the SHLU, Yoo and Lee, filed a lawsuit demanding that their dismissals be nullified. In May 2015, in its final judgment, the Seoul High Court rejected the plaintiffs' demands. The Government also indicates that the former leader of the SHLU, Kim, requested a second trial by the National Labour Relations Commission, seeking remedies against the employer's alleged unfair labour practices and dismissals. In January 2017, the Commission ruled that the employer dismissed the workers

for their long-term absence without notice in response to the employer's reasonable transfer decisions and that such disciplinary dismissals cannot be seen as unfair dismissals or unfair labour practices. The Government indicates that, since 27 February 2017, this decision is pending in appeal before an administrative court.

306. The Government adds that it will take the necessary measures, such as implementing on-site guidance and inspections, and make institutional improvements to prevent the adverse effects (unfair dismissals, unfair labour practices and discrimination against minority unions) of the single bargaining channel system.

307. The Government transmits the observations of the Korea Employers Federation (KEF) on the issues raised in this case. In its observations, the KEF considers that the unified bargaining channel system corresponds to the ILO standards as the bargaining rights are granted to a representative trade union while operations of minority trade unions are guaranteed. It indicates that the Constitutional Court of the Republic of Korea ruled that the unified bargaining channel system is constitutional. The KEF considers that if the unified bargaining channel system is abolished and a free/voluntary bargaining system is introduced, there would be confusion in industrial sites and the position of minority trade unions would be weakened due to the power struggles.

308. The KEF provides the observations of the Sejong Investment Development Inc. (hereinafter; the company) on the allegations involving the hotel. At the outset, the company points out that the allegations submitted to the Committee have also been examined by the Court of the Republic of Korea and the Labour Commission, which rejected the SHLU's claims. Referring to the experience in various countries, it further points out that the ILO acknowledges that both multiple individual bargaining systems and exclusive negotiation by a representative trade union are in accordance with freedom of association. It adds that the most representative trade union should be selected in practice in order to promote cooperative collective bargaining and prevent conflicts, and that the Government has to make neutral rules to select a representative trade union. The company is of the view that the unified bargaining channel system is highly necessary, in particular in countries which have recently introduced multiple trade union systems in order to prevent confusion.

309. Regarding the allegation that the TULRAA fails to guarantee effective representation, bargaining rights and protection against acts of discrimination for minority trade unions and their members, the company considers that the TULRAA bans employers from dominating or interfering in the organization or operation of trade unions. It refers in this respect to sections 81.4 and 90 of the TULRAA which stipulate that "employers shall not conduct any act of domination or interference in the organization or operation of a trade union by workers" and that "a person who violates sections 44(2), 69(4), 77 or 81 shall be punished by imprisonment of not more than two years or by a fine not exceeding KRW20 million". Furthermore, according to section 29-2 of the TULRAA, a representative trade union is selected based on a democratic process and employers do not have discretionary authority to select a representative trade union to bargain with. The company further points out that the Court of the Republic of Korea considers discrimination between multiple trade unions to be an unfair labour practice (domination or interference in the organization or operation of a trade union). It refers in this respect to section 29-4 of the TULRAA which stipulates that "a representative bargaining trade union and an employer shall not discriminate against trade unions …"

310. Regarding the allegation of anti-union actions against the SHLU, the company explains that the SHLU, affiliated to the Korean Confederation of Trade Unions (KCTU), used to be the only trade union in the hotel. However, as a multiple trade union system was introduced on 1 July 2011, another trade union, the SUU, was established under the Federation of Korean Trade Unions (FKTU). The SUU became the majority trade union as well as a representative

trade union since members from the SHLU joined the SUU. The company argues that it is hard to tell the relationship between the SHLU and the SUU, but the majority of the SHLU members seemed tired of struggles and decided to withdraw from the union. The company indicates in this respect that the Court of the Republic of Korea and the Labour Relations Commission (on 29 November 2011 and 3 Avril 2015, respectively) rejected the SHLU's claim that the management carried out unfair labour practices in order to weaken the SHLU.

311. Concerning the allegation of unilateral termination of ongoing negotiations between the management and the SHLU, the company confirms that the management had stopped collective bargaining with the SHLU after the establishment of the SUU and once the Ministry of Employment and Labour (MOEL) made a decision that the SHLU was no longer representative and therefore did not have the right to collective bargaining with the management. The company argues that section 4 of the addenda to the revised TULRAA stipulates that "a trade union which is under collective bargaining at the time this Act enters into force shall be deemed a representative trade union under this Act". The MOEL interpreted the wording "at this time this Act enters into force" to mean "this Act shall enter into force on 1 January 2010", pursuant to section 1 of the addenda of the revised TULRAA. Hence, according to the administrative interpretation, the SHLU was not a representative trade union bargaining collectively with the hotel at the time the revised TULRAA entered into force on 1 January 2010. Collective bargaining between the hotel and the SHLU was initiated on 21 June 2011. The hotel had to stop collective bargaining with the SHLU because the union was no longer a representative trade union pursuant to the revised TULRAA. Afterwards, the Court of the Republic of Korea confirmed the SHLU's role as bargaining representative on the basis that negotiations had begun before 1 July 2011. The bargaining resumed following the court decision. The company further explains that most companies in the country were in a similar situation where they could only rely on the administrative interpretation of the MOEL before the Court ruled on the interpretation of section 4 of the revised TULRAA. Therefore, the fact that the company stopped the collective bargaining with the SHLU based on the administrative interpretation of the MOEL was not an anti-union action.

312. Regarding the 38-day strike by the SHLU which began on 2 January 2012 and ended through an agreement with the management, the company argues that it was illegal because the purpose of the strike was to demand withdrawal of non-regular employment and job transfers, which cannot be the subject of collective bargaining. It refers in this respect to the 1999 Supreme Court's ruling which considered that "industrial actions are legitimate only when it is authorized by an established labour union in accordance with the regulations of the Labour Union Act. However, industrial actions are not legitimate if they are conducted by a group of employees not yet established as a labour union. Industrial actions are designed to accomplish their claims concerning working conditions by executing collective bargaining agreements. Industrial actions by persons not subject to collective bargaining (e.g., a temporary body for industrial actions) cannot be allowed in order to provide assistance in the settlement of industrial disputes. Accordingly, it is necessary to prevent any irresponsible industrial action by such a group".

313. Concerning the allegations of unfair suspension of union leaders Jubo Cho and Gwanghyeon Baek on 12 February 2012, the company states that disciplinary actions were carried out because the workers refused to follow the transferring orders before the strike and thus, the disciplinary actions had nothing to do with the above mentioned action. Regarding Ms Yunhui, whose employment contract was terminated, the company states that her work performance was poor and thus, she could not be converted to regular status. The Court of the Republic of Korea considered that the management's decision not to convert her employment to regular status was appropriate due to her poor work performance and had nothing to do with the participation in the strike.

314. Regarding the allegations that the management unfairly transferred members of the SHLU in order to weaken the union, the company argues that the hotel transferred workers regardless of their union membership to maximize the efficiency of its HR management. In this regard, on 29 November 2011, the Seoul Regional Labour Relations Commission rejected the union's claim that the transfers of Jubo Cho and other workers were unfair and constituted unfair practices. The Seoul High Court ruled on 13 May 2015 that the transfer of Dongsin Lee was rather beneficial for her because the hotel intended to give her work that a physically disadvantaged worker can do, and therefore the transfer was appropriate.

315. Concerning the allegation of unfair dismissal of the former SHLU President, Sangjin Kim, the company indicates that both the Seoul Regional Labour Relations Commission and the National Labour Relations Commission on 19 September 2016 and 11 January 2017, respectively, rejected the complaint of unfair dismissal and unfair practices and ruled that his transfer was appropriate.

316. As regards the allegation that Jubo Cho and Gwanghyeon Baek were forcibly transferred on 1 June 2015 and that in July 2015 Mr Cho received a pay cut for supporting ongoing union protest, the company indicates that the Seoul Regional Labour Relations Commission made a decision on 19 May 2017 that the management's adjustment of wages for the SHLU members was not a discrimination, nor an unfair labour practice.

317. Concerning the allegations that the hotel refused to bargain collectively with the SHLU on 26 August 2015, the company argues that according to the TULRAA, an employer can only bargain with a representative trade union.

318. With regard to the allegation that the management supported the SUU to undermine the SHLU and degraded the working conditions at the hotel by reducing the number of regular workers, the company states that the number of regular workers decreased due to their voluntary resignation to move to other hotels and advised resignation in the wake of managerial difficulties in the company.

C. The Committee's conclusions

319. *The Committee notes that the complainant in this case alleges that the TULRAA, as amended in 2010, restricts the collective bargaining rights of minority unions thereby leaving employers discretionary powers as to which union to negotiate with and leads to discrimination of and pressure on members of minority trade unions. To illustrate its allegation, the complainant refers to the situation at the hotel.*

320. *The Committee notes the Government's reply on the allegations in this case and the observations of the KEF, which also outlined the views of the company which owns the hotel, transmitted by the Government.*

321. *Regarding the allegation pertaining to the amended TULRAA, the Committee notes that, as indicated by both the complainant and the Government, while the TULRAA opened the way for trade union pluralism at the enterprise level, it conferred exclusive bargaining rights to a representative union. The autonomous bargaining, that is when all unions bargain on behalf of its members, remains possible, but the employer's consent is required. The Government considers that this is in conformity with the principles of freedom of association and collective bargaining. In this respect, the Committee recalls that systems of collective bargaining with exclusive rights for the most representative trade union and those where it is possible for a number of collective agreements to be concluded by a number of trade unions within a company are both compatible with the principles of freedom of association [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 950]. The Committee therefore considers that a system*

granting exclusive collective bargaining rights to a representative trade union currently provided for by the TULRAA is compatible with the principles of freedom of association. The Committee recalls that in Case No. 1865 concerning the Republic of Korea it had examined the amended TULRRA and on that occasion welcomed the introduction of trade union pluralism at the enterprise level. The Committee understood that in introducing pluralism, the Government had sought to implement a system that would bear in mind the particularities of the Korean situation and that consultations had taken place with the social partners for over a decade on the type of system to be introduced, even though not all partners may be satisfied with the results. With regard to the provisions of the revised TULRAA concerning the unification of the bargaining channel, the Committee requested the Government to take all the necessary measures to ensure that minority trade unions that have been denied the right to negotiate collectively are permitted to perform their activities, to speak on behalf of their members and represent them in individual grievances. While noting with concern the numerous and detailed allegations of unfair labour practices upon the introduction of the unified bargaining channel system, the Committee welcomed the Government's indication of its zero tolerance policy and the establishment of an Internet reporting centre (see Case No. 1865, 363rd Report, paras 115–117).

322. *The Committee notes that the complainant considers that the new system has facilitated anti-union discrimination and interference in internal trade unions affairs and leads to the violation of trade union rights in practice. The complainant refers in this respect to the situation of the SHLU. According to the complainant, following the entry into force of the amended TULRAA, the hotel management promoted the establishment and functioning of a "compliant" union – the SUU – at the expense of the SHLU; and pressured the SHLU members to change their trade union affiliation by using unfair labour practices (transfers, pay cuts and dismissals), which led to the decline of union membership and resulted in the situation where the employer could legally refuse and did refuse to bargain collectively with the SHLU.*

323. *Regarding the first allegation, the Committee understands from the information available to it that the SUU, affiliated to the FKTU, was established on 1 July 2011, that is the date on which the amended TULRAA entered into force and allowed the creation of multiple trade unions at the enterprise level. According to the complainant, the fact that the SUU held its founding meeting at the hotel premises indicates the approval and favouritism of the new union by the management. It contends that the ensuing unfair labour practices were designed to weaken the SHLU. The complainant refers to a collective agreement signed with the SUU which allegedly imposed limitations on union membership by excluding section chiefs and thus further weakened the SHLU membership. While the Committee observes that the Government did not provide its observations on this particular allegation, it understands from the explanation provided by the KEF that the Court of the Republic of Korea and the Labour Relations Commission (on 29 November 2011 and 3 Avril 2015, respectively) rejected this claim. Unless further information is provided by the complaint regarding the effects of above mentioned collective agreement, the Committee will not pursue its examination of this matter.*

324. *The Committee notes the following allegations of unfair labour practices (transfers, demotions, suspensions, pay cuts and dismissals) against its members and leaders:*

- *Transfers of six SHLU members, including Vice-President, Jubo Cho in September 2011. On 29 November 2011, the Seoul Regional Labour Relations Commission rejected the claims that these transfers constituted unfair labour practices.*

- *Suspension for six and one months, respectively, of Jubo Cho and organizing officer of the union, Gwanghyeon Baek, in February 2012.*

- *Transfer of Junsu Park and Dujin Oh in April and May 2012.*
- *Unilateral termination of contract with Yunhui Yu after refusing to convert her employment to permanent in June 2012. The Committee notes the KEF's indication that the court has considered the management's decision to be appropriate based on her poor work performance.*
- *Transfer of Yonggi Kim and Hyeongrae Kim in 2013 for their participation in a strike.*
- *Transfer of Dongsin Lee. The Committee notes the KEF's indication that the Seoul High Court ruled on 13 May 2015 that her transfer was appropriate as it took into account her "physical disadvantage".*
- *Transfer of Hyeongrae Kim and Seunghyeop Lee in 2014. According to the complainant, Mr Kim returned to his original job only after leaving the union at the end of 2014. According to the Government, the Seoul High Court rejected Lee's demand to annul the dismissal.*
- *Transfer of SHLU President, Jinsu Ko, Jubo Cho and former SHLU President, Sangjin Kim on 12 January 2015.*
- *Daeyeol Chang was compelled to resign after his salary was dramatically reduced on 16 January 2015.*
- *Transfer of Gwanghyeon Baek and Jubo Cho on 1 June 2015.*
- *Four-month pay cut received by Jubo Cho for supporting an ongoing union protest in July 2015. The Committee notes that according to the KEF, in its 19 May 2017 decision, the Seoul Regional Labour Relations Commission considered that the management's adjustment of wages of SHLU members was neither discrimination nor an unfair labour practice.*
- *Transfer of Gisu Kim on 20 August 2015.*
- *Dismissal of former SHLU President, Sangjin Kim, in April 2016. The Committee notes that, according to the complainant, the Seoul Regional Labour Relations Commission dismissed his complaint alleging unfair dismissal and unfair labour practices. The National Labour Relations Commission rejected the union's request for a retrial on 1 January 2017. According to the Government, the decision is now pending in appeal before an administrative court.*

325. *At the outset, the Committee recalls that anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions. No person shall be prejudiced in employment by reason of trade union membership or legitimate trade union activities, whether past or present. It further recalls that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions [see* ***Digest****, op. cit., paras 769, 770 and 799].*

326. *The Committee further recalls that respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious,*

*inexpensive and fully impartial [see **Digest**, op. cit., para. 820]. The Committee observes that mechanisms to examine complaints of anti-union discrimination exist in the country and have been used by the SHUL to contest dismissals, transfers and pay cuts referred to in this case.*

327. *The Committee observes that all of the above alleged acts of anti-union discrimination took place rapidly after the entry into force of the amendments to the TULRAA allowing for pluralism at the enterprise level and which gave rise, in the case at hand, to the immediate creation of a new union in the hotel and recalls 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 [see **Digest**, op. cit., para. 786]. In view of the information available, the Committee does not consider that it has sufficient information to conclude that the trade union rights of the SHUL members were not respected.*

328. *Nevertheless, regarding these allegations and those of the refusal of the management to negotiate with the SHUL, the Committee notes the Government's indication that it is conscious of the difficulties such a system may have in practice. The Committee notes with interest the Government's statement that it will take the necessary measures, such as implementing on-site guidance and inspections, and make institutional improvements to prevent the adverse effects (unfair dismissals, unfair labour practices and discrimination against minority unions) of the single bargaining channel system. The Committee therefore encourages the Government to examine, in consultations with the social partners, the effect of the current collective bargaining system in practice with a view to providing for preventive measures against any adverse effects resulting in violation of freedom of association.*

The Committee's recommendation

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

The Committee encourages the Government to examine, in consultations with the social partners, the effect of the current collective bargaining system in practice with a view to providing for preventive measures against any adverse effects resulting in violation of freedom of association.

CASE NO. 3094

DEFINITIVE REPORT

Complaint against the Government of Guatemala presented by

- **the Federation of Bank, Service and State Employees of Guatemala (FESEBS) and**
- **the Trade Union of Workers of the Institute of Municipal Development (SITRAINFOM)**

Allegations: The complainant organizations allege that an autonomous public institution and

the Ministry of Labour and Social Security refuse to recognize the validity of a collective agreement signed by that institution, thereby refusing to acknowledge the right to collective bargaining of the workers concerned.

330. The Committee examined this case at its March 2016 meeting, when it presented an interim report to the Governing Body [see 377th Report, approved by the Governing Body at its 326th Session (March 2016), paras 329–347].

331. The Government sent new observations in communications dated 24 January, 19 April 2017 as well as two communications of February 2018.

332. 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

333. At its March 2016 meeting, the Committee made the following recommendations [see 377th Report, para. 347]:

(a) The Committee requests the Government to send, without delay, its observations in relation to the additional information submitted by the complainant organizations and to keep it informed of the outcome of the mediation process before the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining in relation to INFOM's seventh collective agreement on working conditions. In the event that the mediation process does not succeed in reaching an agreement, the Committee stresses that the dispute regarding the validity of the collective agreement should be ruled upon by a judicial body and not by the Ministry of Labour and Social Security.

(b) Recalling that it may avail itself of the technical assistance of the International Labour Office, the Committee requests the Government to take, in consultation with the trade unions concerned, the necessary measures to ensure that collective bargaining procedures in the public sector follow clear guidelines which meet both the requirements of financial sustainability and the principle of bargaining in good faith. The Committee requests the Government to keep it informed in that regard.

(c) The Committee requests the Government to take the necessary measures to ensure that the complaint brought before the Public Prosecutor's Office by SITRAINFOM gives rise to all the necessary inquiries as soon as possible and to keep it informed of their outcomes.

B. The Government's reply

334. In its communication of 24 January 2017, the Government provides information from the Public Prosecutor's Office concerning the complaint submitted on 29 August 2014 by SITRAINFOM against the authorities of the Institute of Municipal Development (hereinafter the Institute) regarding alleged harassment, coercion, threats and trade union repression. The Public Prosecutor's Office indicates that: (i) the Ministry of Labour and Social Security was asked to provide information on the current status of the collective agreement on working conditions negotiated between the Institute and SITRAINFOM; (ii) on 29 October 2014, an account was received from Mr Marvin Antonio Castañaza Mateo of the allegations made in the complaint; and (iii) security measures were granted for the following SITRAINFOM officials: Marvin Antonio Castañaza Mateo, Miguel Ángel Oxlaj Cume, Rony Estuardo

López, Santiago Yupe Peren, Julio César Castañeda, Daniel Gómez Palacios and Carlos Chávez Girón.

335. In its communications dated 24 January and 19 April 2017, the Government provides information from the independent mediator of the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining (hereinafter "the Committee for the Settlement of Disputes") concerning the mediation process under way between the Institute and SITRAINFOM on the process of negotiating the seventh collective agreement of that institution. The mediator states specifically that: (i) the mediation process before the Committee for the Settlement of Disputes began in 2015, making considerable progress towards the adoption of the collective agreement; (ii) the change of the Institute's executive committee, following the change of government in January 2016, caused a delay in the approval process for the agreement; (iii) before resuming mediation, the new executive committee established a roadmap based on the various opinions issued by the competent bodies relating to the content of the collective agreement and taking into account the Government Agreement for Containing Costs; (iv) the mediation process resumed on 14 December 2016, with SITRAINFOM proposing not to negotiate a new collective agreement, but instead to define for 2017 the entry into force of the previously negotiated agreement, paying the extraordinary one-off bonus for 2015 contained in that agreement, but cancelling, as a goodwill gesture, the payment corresponding to 2016; (v) the director of the Institute made a commitment to submit this proposal to the executive committee of the Institute and agreed to a further session of mediation on 3 February 2017; (vi) at the session on 3 February 2017, the director of the Institute said that the executive committee had carried out a financial analysis, which had demonstrated that the payment of the extraordinary one-off bonus contained in the collective agreement would risk destabilizing the institution; (vii) the director of the Institute proposed establishing a bipartite committee to analyse the respective financial documents and submit within 20 days proposals to facilitate the resumption of collective bargaining; and (viii) the Committee for the Settlement of Disputes has overseen the establishment of that committee and has requested the parties to proceed rapidly with the process in order to reach agreements and continue the mediation.

336. In its first communication of February 2018, the Government sends new information provided by the President of the Institute. It states that, through Resolution 314-2017, the Institute's executive committee decided to approve the signing of the VII collective agreement on working conditions. It is specifically indicated in the said Resolution that: (i) based on the financial reports and calculations made, the sources of financing of the VII collective agreement, which correspond to the Institute's own funds, have been identified; (ii) the legal counsel of the Institute ruled that the said agreement complies with the legal and financial requirements established in article 94 of Decree 50-2016 of the Congress of the Republic (Law of the General Budget of Income and Expenditures of the State for the Fiscal Year of 2017); (iii) management has been instructed to delegate to the negotiating commission of the collective agreement the necessary actions so that the Second Court of Labour and Social Security finalizes the collective dispute that has been referred to it and approves the conciliation agreement, now called the VII collective agreement on working conditions; and (iv) once the process before the Labour and Social Security Court is finalized, the Institute's management will submit the file to the Ministry of Labour and Social Security for the approval of the said collective agreement.

337. In its second communication of February 2018, the Government sends a letter from the General Secretary of SITRAINFOM addressed to the Deputy Minister of Labour Administration. In this letter, the General Secretary of SITRAINFOM indicates that: (i) thanks to the accompaniment of the Deputy Minister of Labour, Mr Francisco Abraham Sandoval García, the collective conflict between the Institute and SITRAINFOM has been overcome in its administrative phase; (ii) the VII collective agreement on working conditions

of the Institute was signed on 20 November 2017 and approved by the Institute's executive committee on 30 November 2017; (iii) however, the definitive fulfilment of the obligations by the State of Guatemala requires the signing of the agreement at the jurisdictional level before the Second Court of Labour and Social Security that deals with the collective economic and social dispute submitted by SITRAINFOM; and (iv) due to the fact that the file at issue has not yet been retrieved at the said court, it has not yet been possible to sign the aforementioned agreement.

C. The Committee's conclusions

338. *The Committee recalls that this case concerns: (i) the cancellation, in 2014, by the Ministry of Labour and Social Security, of the registration of the seventh collective agreement on working conditions (hereinafter the collective agreement) signed in October 2013 by SITRAINFOM and INFOM, an autonomous public institution (hereinafter the Institute), and the subsequent refusal by that public institution to give effect to that collective agreement, which had initially been registered by the Ministry of Labour and Social Security; and (ii) allegations of pressure on the representatives of SITRAINFOM to accept the renegotiation of the collective agreement.*

339. *The Committee also recalls that, in its previous examination of the case, a brief reference had been made to additional information sent by the complainant organizations in January 2016 concerning the negotiation of the collective agreement and it had requested the Government to send its observations in that respect. The Committee notes that, in that additional information, the complainant organizations alleged that: (i) following the cancellation of the registration of the seventh collective agreement of the Institute, negotiations with the employer had resumed in July 2015; (ii) on 14 September 2015, with the support of the Ministry of Labour and Social Security and the Committee for the Settlement of Disputes, an amended version of the agreement had been approved with the Institute's executive committee; (iii) following that approval, the executive committee, with the intention of further delaying the implementation of the agreement, had requested various public bodies to issue opinions on the financial viability of the new agreement; and (iv) ignoring the requests made by the Committee for the Settlement of Disputes and by the Ministry of Labour and Social Security, the Institute's executive committee had refused to give effect to what had been signed.*

340. *In this respect, the Committee notes that in the first semester of 2017 the Government sent the information provided by the independent mediator of the Committee for the Settlement of Disputes on the process of mediation carried out between the Institute and SITRAINFOM, indicating that: (i) the mediation process began in 2015 and the same year considerable progress was made towards the approval of a collective agreement; (ii) the approval process for the collective agreement was delayed by the new executive committee of the Institute, appointed following the change in government in January 2016, taking up its functions; (iii) the new executive committee decided, before resuming mediation, to establish a roadmap based on the various opinions relating to the content of the collective agreement issued by the competent bodies and taking into account the Government Agreement for Containing Costs; (iv) the mediation process resumed in December 2016 with a proposal by SITRAINFOM to define for 2017 the entry into force of the previously negotiated agreement and to agree the payment of the extraordinary one-off bonus for 2015 contained in that agreement but to cancel the payment corresponding to 2016; (v) on 3 February 2017, the Institute's executive committee rejected the union's proposal, considering that the payment of the extraordinary one-off bonus would risk destabilizing the institution, and proposed in exchange establishing a bipartite committee to analyse the respective financial documents and submit within 20 days proposals to facilitate the resumption of collective bargaining; and (vi) the Committee for the Settlement of Disputes is still awaiting the results of the work of the abovementioned bipartite committee in order to resume the mediation.*

341. *The Committee also takes note that, in February 2018, the Government sent a communication from the President of the Institute and another one from the General Secretary of SITRAINFOM, from which it appears that: (i) thanks to the accompaniment of the new Deputy Minister Of Labour Administration, the Institute and SITRAINFOM resumed discussions during the second semester of 2017; (ii) the Institute identified funds of its own to finance the execution of the VII collective agreement on working conditions; (iii) the legal counsel of the Institute ruled that the said agreement complies with the legal and financial requirements established by law; (iv) based on the foregoing, the VII collective agreement on working conditions of the Institute was effectively signed on 20 November 2017 and approved by the Institute's executive committee on 30 November 2017; and (v) it is still pending that the Second Court of Labour and Social Security, before which the collective dispute had been submitted, recognizes that the signing of the agreement constitutes a conciliation agreement that puts an end to the said conflict and that the Minister of Labour and Social Security approves the agreement.*

342. *The Committee welcomes the developments described in the previous paragraph, which took place more than ten years after the negotiation of the VII collective agreement of the Institute began and more than four years after the initial signing of the agreement whose approval had finally been cancelled by the Ministry of Labour and Social Security. Recalling that mutual respect for the commitment undertaken in collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground [see* ***Digest of principles and decisions of the Committee of Freedom of Association****, fifth (revised) edition, 2006, para. 940], the Committee expects that the Government will take the necessary measures so that the collective agreement of the Institute and SITRAINFOM, approved on 30 November 2017 by the Institute's executive committee, will enter into force as soon as possible.*

343. *More generally, the Committee recalls that, in its previous examination of the case, observing the existence of difficulties in determining the rules applicable in the public sector for "ad referendum" bargaining and for the verification of the financial viability of the content of negotiations, the Committee asked the Government to take, in consultation with the trade unions concerned, the necessary measures to ensure that collective bargaining procedures in the public sector followed clear guidelines which met both the requirements of financial sustainability and the principle of bargaining in good faith. Even though in the present complaint the accompaniment of the parties by the Ministry of Labour and Social Security allows a glimpse of the upcoming resolution of the conflict, the Committee also notes that it is clear from the elements provided by the complainant organization and the Government that the achievement of a solution was preceded by a long phase of uncertainty marked by the signature on two occasions (2013 and 2015) of agreements that were then rendered ineffective by the request, subsequently submitted by the executive committee of the public entity, of opinions of several public entities on the financial viability of the content of the agreements reached. Noting that these elements confirm the need to clarify in a general manner the rules applicable to collective bargaining in the public sector and recalling that it may avail itself of the technical assistance of the International Labour Office, the Committee again requests the Government to take the necessary measures in this respect, in consultation with the trade unions concerned.*

344. *With respect to the criminal complaint filed in August 2014 by SITRAINFOM regarding alleged harassment, coercion, threats and trade union repression by the executive committee of the public entity at that time, the Committee takes note of the information provided by the Government in January 2017 whereby: (i) the case is currently at the investigation stage before the Public Prosecutor's Office, which, on 29 October 2014, received an account of the alleged events from Mr Marvin Antonio Castañaza Mateo, General Secretary of SITRAINFOM; and (ii) security measures were granted for seven SITRAINFOM officials. While taking due note of the measures granted, the Committee observes that three-and-a-*

half years after the filing of the complaint, the Public Prosecutor's Office has still not handed down a decision on it and that, apart from the hearing for the General Secretary of SITRAINFOM, it has received no information about any other measures taken by the Public Prosecutor's Office to investigate the alleged facts. 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 again asks that all the necessary measures will be taken to ensure that the complaint brought before the Public Prosecutor's Office by SITRAINFOM gives rise to all the necessary inquiries as soon as possible.*

The Committee's recommendations

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

(a) The Committee expects that the Government will take the necessary measures so that the collective agreement of the Institute and SITRAINFOM, approved on 30 November 2017 by the Institute's executive committee, will enter into force as soon as possible.

(b) Recalling that it may avail itself of the technical assistance of the International Labour Office, the Committee again requests the Government to take, in consultation with the trade unions concerned, the necessary measures to ensure that collective bargaining procedures in the public sector follow clear guidelines which meet both the requirements of financial sustainability and the principle of bargaining in good faith.

(c) The Committee again asks that all the necessary measures will be taken to ensure that the complaint brought before the Public Prosecutor's Office by SITRAINFOM gives rise to all the necessary inquiries as soon as possible.

CASE NO. 3152

DEFINITIVE REPORT

Complaint against the Government of Honduras presented by the Trade Union of Postal Workers of Honduras (SITRAHONDUCOR)

Allegations: The complainant organization alleges the failure to deduct union dues from all workers in the enterprise

346. The complaint is contained in a communication from the Trade Union of Postal Workers of Honduras (SITRAHONDUCOR) dated 25 May 2016.

347. The Government sent its observations in communications dated 2 March and 28 August 2017.

348. 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

349. In its communication dated 25 May 2016, the complainant organization indicates its decision to withdraw the allegations contained in two previous communications. It also states that, on 23 November 2015, representatives of the Directorate of Legal Services of the Ministry of Labour and Social Security (STSS), of the Post Office of Honduras (HONDUCOR, hereinafter the Enterprise), of SITRAHONDUCOR and of the Workers' Confederation of Honduras (CTH) signed a special accord in which they agreed, among other things, that the director of the Enterprise would request the STSS to issue an opinion on the dues to be deducted from the workers of the Enterprise, on the basis of Decree-Law No. 30 of 15 March 1973 and clause 27 of the prevailing collective agreement, and would make those deductions for all employees, with the exception of employees in a position of trust. The opinion in question concerns the deductions payable by non-unionized workers benefiting directly from a collective agreement on working conditions in force, for a sum equal to the ordinary union dues. The documents provided by the complainant organization include legal opinion No. 225/DSL/2015 of 4 November 2015 from the Directorate of Legal Services of the STSS, which concluded that "if an employee wishes to voluntarily leave the trade union association to which he or she belongs and if the individual directly enjoys the labour gains achieved by the trade union, he or she should also pay the percentage equivalent to the ordinary dues already established by the trade union, as per article 60-A of the Labour Code in force, as the enjoyment of those labour gains or rights brings with it obligations for the individual with the trade union association".

350. The complainant organization alleges that, in 2015, the salary deductions that should have been made of an amount equivalent to 1 per cent of the monthly salary did not cover all the workers benefiting from the prevailing collective agreement on working conditions and that, consequently, they should contribute an amount equal to the ordinary dues paid by the workers affiliated to the organization. It adds that the amounts that were deducted from the workers' salaries by the Enterprise management as union dues were not transmitted to SITRAHONDUCOR and that, in February 2016, the sums in question were reimbursed to the employees.

B. The Government's reply

351. The Government sent its observations in response to the complainant organization's allegations in communications dated 2 March 2017 and 28 August 2017.

352. In its communication dated 2 March 2017, the Government confirms that the Enterprise requested the STSS to issue an opinion on deducting 1 per cent from the salary of all employees. The Directorate of Legal Services of the STSS stated that trade unions are associations that individuals are free to join and to leave and that, if workers benefit from the collective agreement, they should pay the 1 per cent but there should be an option of not having the amount deducted if the individual does not benefit from the labour gains.

353. The Government explains, secondly, that the SITRAHONDUCOR has ignored all requests to provide the necessary documentation for the deduction of union dues, in accordance with article 526 of the Labour Code. The provision in question states: "In order to proceed with the deduction of union dues, the trade union must submit the following documents to the enterprise: (a) a copy of the relevant excerpt of the union's general assembly minutes in which authorization was given to deduct the dues, by a majority vote of the total number of

members; the copy of the document must be provided with a list of all the participants; (b) the payroll, in duplicate, certified by the president, the secretary and the legal adviser, of all the members registered at the time of the authorization, who will have their union dues deducted even if they have voted against the authorization or have expressed their wish to no longer have their dues deducted; and (c) for individuals who join the union at a later date, notifications of new membership, certified as per the previous clause". It also indicates that over 400 employees of the Enterprise requested the enterprise's highest authorities not to deduct the 1 per cent of their monthly salary for union dues. The Government adds that, owing to the problems between employees of the Enterprise and SITRAHONDUCOR members, the Enterprise's legal advisory department, through the General Labour Inspectorate, requested the STSS to appoint a mediator. It states that, in the Enterprise, the rights to freedom of association and to organize have always been respected, there have been no violations of the provisions of a treaty or international Convention, and every attempt has been made to maintain order and a healthy working environment.

354. In its communication dated 28 August 2017, the Government states that the Enterprise, which is attached to the Ministry of Infrastructure and Public Services (INSEP), was instructed to deduct the union dues. The Government sends a copy of a communication dated 21 August 2017, in which the Director-General of the Enterprise states that SITRAHONDUCOR was requested to provide the information relating to the Integrated Financial Administration System (SIAFI) to be able to proceed with the transfers.

C. The Committee's conclusions

355. *The Committee observes that the allegations relate to the non-deduction, in 2015, of the amounts equivalent to ordinary trade union dues from all workers benefiting from the prevailing collective agreement on working conditions (with the exception of employees in a position of trust); they also relate to the reimbursement to the employees, in February 2016, of the amounts retained by the Enterprise*

356. *The Committee notes that, according to the Government: (i) a worker can voluntarily leave the trade union association to which he or she belongs and only those non-unionized workers benefiting from the collective agreement on working conditions have an obligation to pay the trade union; (ii) the complainant organization has ignored all the requests for the documentation required by law in order to proceed with the deduction of the union dues; and (iii) the suspension of salary deductions coincided with complaints by employees of the Enterprise.*

357. *The Committee also observes that, in the legal opinion dated 4 November 2015, in response to a request relating to the contributions to be deducted from workers of the Enterprise, the Directorate of Legal Services of the Ministry of Labour and Social Security (STSS) concluded that there is an obligation to contribute when the employee directly enjoys the labour gains achieved by the trade union, on the basis, among others, of clause 27 of the prevailing collective agreement between the Enterprise and SITRAHONDUCOR, and the relevant provisions of the Labour Code.*

358. *Finally, the Committee observes that the situation appears to be close to being resolved, as in its most recent communication the Government states that the Enterprise has been ordered to deduct the trade union dues, with the complainant organization having been requested to provide the necessary information to make the bank transfer.*

359. *With regard to the collection of the trade union dues and their management, the Committee recalls that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided. It should also be recalled that trade union dues*

do not belong to the authorities, nor are they public funds, but rather they are an amount on deposit that the authorities may not use for any reason other than to remit them to the organization concerned without delay. The Committee also recalls that when legislation admits trade union security clauses, such as the withholding of trade union dues from the wages of non-members benefiting from the conclusion of a collective agreement, those clauses should only take effect through collective agreements [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 475, 479 and 480].*

360. *The Committee trusts that, once the necessary information has been obtained to order the bank transfer, the Government will proceed without delay to pay back to the complainant organization the amounts retained, either as trade union dues or as contributions by non-affiliated workers benefiting from the prevailing collective agreement on working conditions.*

The Committee's recommendation

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

The Committee trusts that, once the necessary information has been obtained to order the bank transfer, the Government will proceed without delay to pay back to the complainant organization the amounts retained, either as trade union dues or as contributions by non-affiliated workers benefiting from the prevailing collective agreement on working conditions.

CASE NO. 3202

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

Complaint against the Government of Liberia
presented by
the National Health Workers' Association of Liberia (NAHWAL)
supported by
– the International Trade Union Confederation (ITUC)
– ITUC–Africa and
– Public Services International (PSI)

Allegations: The complainant organization alleges the refusal to grant trade union status to NAHWAL as well as the dismissal of workers and other acts of retaliation following a strike, including the dismissal of the complainant's General Secretary and President, the refusal to hear the complainant's grievances and the extremely low level of cooperation offered on

addressing issues relating to employment conditions in the public health sector

362. The complaint is contained in a communication from the National Health Workers' Association of Liberia (NAHWAL) dated 21 March 2016. Public Services International (PSI), the International Trade Union Confederation (ITUC) and ITUC–Africa associated themselves with the complaint and provided additional information in communications dated 24 March, 17 October and 31 October 2016, respectively. NAHWAL provided additional information in a communication dated 19 September 2017.

363. The Government provided its observations in a communication dated 16 May 2017.

364. Liberia has ratified both 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

365. In its communications of 21 March 2016 and 19 September 2017, the complainant indicates that, by 2007, thousands of workers in the public health sector worked under unfavourable conditions including: long hours; an insufficient number of staff; and being engaged for significant periods of time (between five and ten years) without employment status which meant a lack of job security, social security or pension entitlements, and coverage under the workers' health insurance policy. Furthermore, those workers who were on the Government's employment roster lacked employment letters and job descriptions, had low salaries and were unable to take annual leave due to understaffing and a centralized procedure for granting leave. NAHWAL indicates that it made efforts to engage with the authorities to address these issues, including engagement with the Ministry of Health and the Civil Service Agency in 2010 and 2011. While they had initially worked well together to address these issues, the complainant alleges that the Ministry aborted the consultation without any notice to NAHWAL.

366. NAHWAL specifically disputes the Government's statements that the General Secretary of the union incited labour protests and disconnected oxygen and intravenous tubes from patients in critical condition in July 2012. To the contrary, the complainant indicates that aggrieved workers who after having served for more than a year had not received their first incentives requested the General Secretary to intervene on their behalf with the hospital administrator. When the administrator stated that there was nothing he could do and that the workers could leave their jobs if they wished, the reaction of those voluntary workers was to stop coming to work as they could not continue to borrow money for transport fares. NAHWAL states that it then called on the other colleagues to assist where those colleagues did not come to work while they continued to look for an amicable solution to the conflict. As the stay-away action of the concerned workers drew public concern, a journalist spoke to the General Secretary about the issues concerned which led to his suspension. Two suspension letters, one for one month and the other three days later for an indefinite period, were attached to the complaint. The complainant points out that neither of these letters refer to allegations of the disconnection of oxygen or intravenous tubes and moreover the Ministry's own legal counsel found the suspension to be illegal and without due process and advised that the General Secretary be reinstated (a copy of the Legal Advice dated 6 November 2012 was attached to the complaint). The complainant considers these remarks by the Government to be very serious allegations with severe implications of character assassination and consider that the Government must provide any evidence in its possession to support such statements if they are to be taken seriously.

367. The complainant organization indicates that, in February 2013, a petition was submitted by health workers, in close collaboration with NAHWAL, to the legislature. The petition concerned letters of employment, job descriptions and a plan for a salary scheme for health workers. NAHWAL alleges that, following an initial meeting with the Ministry of Health in April 2013, it did not receive a response to its subsequent communications presented between April and July 2013 to the Ministry of Health and members of the legislative committee on health. Following this lack of response, frustrated health workers decided to go on strike, commencing 22 July 2013. Subsequently, negotiations were undertaken and a technical committee was established to examine the issues with the Deputy Minister of Health and the General Secretary of the union participating as key representatives. The technical committee made a number of recommendations, including increasing the salaries of all categories of health-care workers, and as a result, funds were allocated to the Ministry of Health's budget for 2013–14. NAHWAL alleges, however, that on the advice of the Ministry of Health, the increase of salaries was not approved by the President. NAHWAL considers that, not only was this a usurpation of the powers that are rather accorded to the legislative branch in budgetary matters, but that it also demonstrated a lack of good faith on the part of the Ministry in its participation in the technical committee where no disagreement had been raised in relation to the committee's recommendations. Subsequently, the Ministry, in collaboration with the Civil Service Agency, published a new plan to come into effect in January 2014 that removed incentives for health-care workers. In this respect, the complainant indicates that it received many complaints from health workers about the procedure for taking this decision which did not involve the workers and was published in the local daily on 30 December 2013 to take effect on 1 January 2014.

368. The complainant organization indicates that, in reaction, health-care workers once again went on strike and alleges that the Government threatened that workers who failed to report to work would be dismissed. On 18 February 2014, 22 health workers across the country believed to be leaders of NAHWAL were dismissed, including the President of NAHWAL, Mr Joseph S. Tamba, and the organization's General Secretary, Mr George Poe Williams. According to NAHWAL, a number of state and civil society groups appealed to NAHWAL members and leaders to return to work, indicating that they would convince the Government to look into health workers' concerns and promised that the dismissals would not take effect. In this context, NAHWAL called off the action and health workers returned to work. However, on 28 February 2014, upon returning to work following leave, the organization's General Secretary was given a dismissal letter dated 18 February 2014.

369. The complainant organization adds that in April 2014, at the beginning of the Ebola outbreak in the country, a demonstration was organized during the West African Health Organization summit to present a petition drawing attention to the risk that the Ebola virus posed to health workers in the country. The demands included training, protective gear and motivational packages (hazard pay and death benefits). NAHWAL considers that, had their demands been listened to, the deaths of many health workers could have been prevented. The union indicates that many workers died without employment status, leaving their dependents without support. Workers subsequently demanded formal contracts which would include safety provisions, hazard pay and death benefits, and to this end, staged a go-slow in October 2014.

370. The complainant organization alleges that both Mr Williams and Mr Tamba have been blacklisted by the Government. Additionally, a number of punitive actions have been carried out against NAHWAL's members, including the failure to pay the Chairperson of its Bong County chapter (Ms Martha Morris) for eight months, the transfer of the Chairperson of its Rivercess County chapter (Mr Borris Grupee) the day following his participation in a collective action to a village with no mobile phone access to disconnect him from the organization's members, the demotion of the General Secretary of its Grand Bassa County chapter (Mr Suku), and the threat of dismissal of the Chairperson of its Lofa County chapter.

The ITUC indicates that NAHWAL has repeatedly brought these discriminatory measures to the attention of the Ministry of Labour as well as the Civil Service Agency, but remedies were not provided to the workers and no dissuasive sanctions were imposed on those responsible for the infringements. NAHWAL further alleges that the Government is taking measures to undermine the organization, and is attempting to create divisions by providing benefits, including vehicles, to leaders of member organizations under the NAHWAL umbrella.

371. Finally, the complainant organization provides a copy of its request for trade union status dated 30 January 2014 and indicates that it has still not received an official reply to its request, despite efforts to follow up with the Ministry of Labour. It alleges that the then President of the country had indicated that any official who issued a trade union certificate for the union would be fired. In this respect, the ITUC states that the lack of transparency, and the length of the registration procedure imply that the Ministry of Labour has discretionary powers concerning the registration of trade unions which practically amounts to a requirement for previous authorization. The ITUC states that the Government's refusal to register NAHWAL has had serious implications on the union's ability to effectively represent its members, in particular through collective bargaining, and to collect union dues. As a demonstration of its legitimacy in representing workers' interests in the health sector, the complainant provides a copy of a letter from the Liberia Labour Congress (LLC) dated 30 September 2016 in which the LLC advises NAHWAL of its acceptance of its request for affiliation.

B. The Government's reply

372. The Government, through the Ministry of Health, provides a reply to the complaint in a communication dated 16 May 2017. The Government refers to the challenges of a post-conflict country following 15 years of war. In particular, the Government states that most of the trained health workers had fled the country during the war years and the public health system had collapsed. The few health workers who had remained were employed by international non-governmental organizations (INGOs) and humanitarian organizations that had stepped in to help run the sector in the absence of a stable and effective Government. Non-professional volunteers were trained to serve as aides. Once the elected Government took over in 2006, a gradual process of transition commenced for the Government to absorb facilities and staff giving rise in March 2017 to 10,875 health workers on the Government payroll, an increase of over 400 per cent since 2006.

373. In these circumstances, audits had been necessary to clean the payroll of any ghost workers and another independent payroll audit was under way in May 2017. The Government refers to a number of allegations and demands made by Mr Williams (the General Secretary of NAHWAL) concerning a variety of matters related to the terms and conditions of engagement with health workers, including as regards a salary increment recommended by the technical committee to address health workers concerns (including Mr Williams) of the Legislature Health Committee. This increment was not formally endorsed by the Ministry of Health but the Government emphasizes that this was not a matter of principle, rather that it was impossible to implement such an increment within the total national budget. On this point, the Government indicates that it would welcome the ILO's guidance on how best to address health workers' demands in the face of severe resource constraints. The Government confirms that the Ministry of Health and the Civil Service Agency published a plan to remove health workers from incentive payments, but emphasizes that it was done in order to enable it to move them onto the payroll. The Government contends that focusing on the removal from incentive payments had radically misled workers as it had not been clarified that the steps were actually planned to provide workers with stability. In the Government's opinion, this and other misrepresentations by Mr Williams and Mr Tamba (NAHWAL

President), the propagation of false information and the circulation of misleading rumours are what led to the major strike action.

374. The Government asserts that both Mr Williams and Mr Tamba were dismissed on account of acts that were not only inimical to the effective discharge of statutory duties but also in violation of the laws of the Republic of Liberia. In this respect, the Government refers to gross insubordination, obstruction of government functions by public servants and refers to the Labor Practices Law which was in effect at the time, which prohibited purposely promoting, facilitating and inciting strikes against the Government. The Government adds that these dismissals came after years of illegal actions by both men and alleges that that Mr Williams committed dangerous acts with respect to a patient in critical condition and allowed journalists to take and publish photographs of patients without their consent.

375. During 2013 and 2014, the Government states that countless individuals and groups came to the table to plead with NAHWAL organizers to see reason and to proceed peacefully and constructively in their activities. The Government claims that the union's actions were carried out by a small group of insurgents staging illegal, deadly strikes based on false pretences in the midst of a very fragile society, while the rest of society begged them to see reason and put a stop to the havoc they were wreaking.

376. The Government states that it would need further details on the other allegations of anti-union discrimination in order to be able to investigate them. As for the transfer of Mr Grupee to a rural facility, the Government replies that it is a normal and frequent occurrence for a health worker to be transferred from one facility to another and should not be referred to as punitive. As regards the allegations relating to Ms Morris and Mr Suku, the Government states that it has no record.

377. The Government affirms that it has worked closely with professional associations of doctors and nurses, all of whom concern themselves with the interests and well-being of health workers and have petitioned the Government to address grievances related to salaries and payroll issues. These negotiations have proceeded professionally, even when contentious, and the Government challenges NAHWAL's claim that it is an umbrella organization to these associations.

378. The Government states that it did not communicate with the police in relation to the West African Health Organisation (WAHO) Ministers' meeting and disavows the union's claims that the Government failed to provide hazard pay and death benefits or training and protective gear.

379. Finally, as concerns the allegation that the Government refused to grant NAHWAL a trade union certificate, the Government states that there is no opposition to health workers organizing themselves and advocating for their interests if they do so legally and with respect for the rights and safety of patients. The Government indicates that the legislation relevant to trade union recognition has changed since the time of NAHWAL's application and is now covered by the Decent Work Act, which requires the submission of the union constitution.

C. The Committee's conclusions

380. *The Committee notes that this case concerns allegations relating to the suspension and later dismissal of trade union leaders following industrial action and other acts of anti-union discrimination, interference in the internal affairs of NAHWAL and failure to grant trade union status to the organization.*

381. *With regard to the allegations concerning 22 workers dismissed in February 2014, the Committee understands that 20 of those workers have been reinstated, while according to*

the complainant, and concurred by the Government, Mr George Poe Williams and Mr Joseph S. Tamba, the General Secretary and President of NAHWAL, respectively, have not been reinstated. With regard to the allegations concerning the dismissal of Mr Williams and Mr Tamba on 18 February 2014, the Committee observes that these dismissals occurred during the undertaking of industrial action in February 2014 organized by NAHWAL and that the two individuals have not been able to find employment in the public health sector since. The Committee notes the Government's reply that both Mr Williams and Mr Tamba were dismissed on account of illegal actions spanning a period of years that were not only inimical to the effective discharge of statutory duties but also in violation of the laws of the Republic of Liberia and refers to gross insubordination and obstruction of government functions by public servants. The Government adds that these acts were contrary to the Labor Practices Law which was in effect at the time, which prohibited purposely promoting, facilitating and inciting strikes against the Government. While the Government further alleges specific acts placing a patient in danger and allowed journalists to take and publish photographs of patients without their consent in 2012 when the General Secretary was first suspended, the complainant insists that this constitutes character assassination and has no grounding in fact and provides in this regard a copy of the Legal Advice given to the Minister of Health finding that the suspension was illegal and calling for his reinstatement.

382. *The Committee recalls that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. 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. The Committee further recalls 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 of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 799 and 803]. The Committee requests the Government to ensure that an independent inquiry is held without delay into the dismissals of Mr Williams and Mr Tamba and expects that, should it be found that these unionists were dismissed for the exercise of legitimate trade union activities, the Government will take the necessary measures of redress, including reinstatement without loss of pay. The Committee requests the Government to keep it informed of developments in this regard.*

383. *With regard to allegations relating to other acts of anti-union discrimination, the Committee notes that the complainant alleges specific punitive acts against Martha Morris, the Chairperson of its Bong County chapter, Borris Grupee, the Chairperson of its Rivercess County chapter, Mr Suku, the General Secretary of its Grand Bassa County chapter, as well as the threat of dismissal of Washington Kezelee, the Chairperson of its Lofa County chapter. The Committee notes the Government's indication that it would need further details on these allegations of anti-union discrimination in order to be able to investigate them. As regards more specifically the transfer of Borris Grupee to a rural facility, while the Government states that this is only the manifestation of a normal and frequent occurrence in the health-care sector and should not be referred to as punitive, the Committee notes the complainant's indication that this transfer occurred immediately after a nationwide strike action. In light of the lack of detailed information on these allegations and in relation to their current status, the Committee invites the complainant to furnish detailed information on these allegations to the Government with a view to determining the appropriate redress should it be found that these individual suffered from anti-union retaliation. The Committee requests the Government to keep it informed of developments in this regard.*

384. *With regard to interference in the affairs of the trade union, the Committee takes note of the complainant's allegations concerning acts of favouritism by the Government towards leaders of member organizations of NAHWAL in an attempt to create divisions, including the provision of vehicles. While observing the general nature of the information provided, the Committee wishes to emphasize that respect for the principles of freedom of association requires that the public authorities exercise great restraint in relation to intervention in the internal affairs of trade unions; they should not, for example, do anything which might seem to favour one group within a union at the expense of another [see* ***Digest****, op. cit., para. 859].*

385. *With regard to the allegations concerning the registration of the trade union, the Committee notes NAHWAL's indication that it applied for trade union status three years prior to the complaint, and that it has not received an official reply from the Government. The Committee notes the Government's indication that trade union registration is now covered by the Decent Work Act of 2015 which requires requests for registration to be accompanied by the constitution of the organization concerned. The Committee regrets that no action had apparently been taken on the complainant's January 2014 request for registration and is bound 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]. While noting with concern the delay of three years since the initial request, the Committee, observing that a new Act requires the submission of the union constitution in order to be registered, invites the complainant to resubmit its request for registration in accordance with the new law and requests the Government to take rapid action for its registration. The Committee requests the Government to keep it informed in this respect.*

386. *The Committee takes due note of the information provided by both the Government and the complainant that the issues in this case arose within a context of budgetary and other challenges facing a country which had emerged from 15 years of war and was confronted by a devastating health epidemic, which carried with it a significant risk to the health-care workers responding to the tragedy. The Committee invites the Government to take measures to promote social dialogue between the complainant organization and the health service authorities concerned with a view to addressing outstanding issues and reminds it that ILO technical assistance is available in this respect should it so desire.*

The Committee's recommendations

387. ***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 ensure that an independent inquiry is held without delay into the dismissals of the General Secretary of NAHWAL, Mr George Poe Williams, and the President of NAHWAL, Mr Joseph S. Tamba, and expects that, should it be found that these unionists were dismissed for the exercise of legitimate trade union activities, the Government will take the necessary measures of redress, including reinstatement without loss of pay. The Committee requests the Government to keep it informed of developments in this regard.

(b) The Committee invites the complainant to furnish detailed information on the allegations of anti-union discrimination with respect to a number of its county chapter officers to the Government with a view to determining the appropriate redress should it be found that these individuals suffered from anti-union

retaliation. The Committee requests the Government to keep it informed of developments in this regard.

(c) The Committee invites the complainant to resubmit its request for registration in accordance with the new law and requests the Government to take rapid action for its registration. The Committee requests the Government to keep it informed in this respect.

(d) The Committee invites the Government to take measures to promote social dialogue between the complainant organization and the health service authorities concerned, with a view to addressing outstanding issues and reminds it that ILO technical assistance is available in this respect should it so desire.

CASE NO. 3205

DEFINITIVE REPORT

Complaint against the Government of Mexico presented by the Union of Workers of the Government of the State of Chiapas (USTRAGECH)

Allegations: Revocation of the official recognition and registration of a public sector trade union organization in the state of Chiapas and dismissal of members of its central executive committee

388. The complaint is contained in communications dated 14 March and 22 September 2016 from the Union of Workers of the Government of the State of Chiapas (USTRAGECH).

389. The Government sent its observations in a communication dated 2 March 2017.

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

A. The complainant's allegations

391. In its communications dated 14 March and 22 September 2016, the Union of Workers of the Government of the State of Chiapas (USTRAGECH) alleges that the registration and official recognition *(registro y toma de nota)* of the union was revoked by the Public Sector Employment Tribunal (hereinafter: the Tribunal) and also alleges the dismissal of 11 members of its central executive committee during the process of establishing the union.

392. The complainant organization indicates that: (i) after industrial action to defend the rights of workers of the government of the state of Chiapas at the end of 2013, several meetings took place with a view to establishing a trade union; (ii) at some of these meetings, in particular on 17, 24 and 31 October and 7 November, the members of the union's central executive committee were elected; (iii) on 30 November 2013, a constituent assembly was held with the participation of 1,529 workers, who signed the corresponding documents in the presence of a notary; (iv) since it was not possible to complete all the constituent formalities before

the Christmas holidays in 2013, the union waited until January 2014 to submit the application for registration; (v) at the same time, on 10 January 2014, the Ministry of Public Finance and the Ministry of Infrastructure (the employer entities concerned) announced the dismissal of 11 workers who were members of the union's central executive committee; (vi) on 9 May 2014, the Tribunal of the state of Chiapas, having accepted the application for registration, advised that two points required rectification to fulfil the legal requirements for registration; (vii) on 27 June 2014, it was verified that the rectification had been undertaken, and on 3 July the registration and official recognition of the complainant organization were granted; (viii) on 10 July 2014, the Tribunal issued the decision of registration and official recognition (a copy of which is attached by the complainant), which was adopted by the Presiding Magistrate and all the other magistrates, and the text of which indicates that fulfilment of the legal requirements was verified (including the free choice of the workers to form a union and, in particular, explicitly emphasizing the fact that the union had attached documents (cheque stubs indicating the posts held by the members) demonstrating that these were ordinary workers (and not workers occupying positions of special responsibility – *trabajadores de confianza*)); accordingly, the decision granted registration and official recognition of the union, which comprised 1,529 workers, together with the central committee which the union had elected; (ix) one day later, on 11 July 2014, the complainant requested certified copies of its registration and official recognition; however, the Tribunal was closed for the holiday period and its work did not resume until 4 August 2014, when the general secretary of the complainant organization repeated the request for certified copies to be issued; (x) since he did not receive the requested copies, the general secretary was obliged to hold a meeting with the Presiding Magistrate, who explained that the certified copies of official recognition would not be issued, on the orders of the then Minister of the Interior (according to the complainant, the Presiding Magistrate explained that the Minister of the Interior had claimed that the workers held positions of special responsibility; the Presiding Magistrate did not agree, since he considered that these were ordinary workers, but he was not in a position to oppose the political authority and advised the general secretary of the complainant organization to see the Minister of the Interior; and (xi) since the Minister of the Interior was on holiday, the general secretary was unable to contact him and, on the advice of his lawyer, opted to take legal action against the revocation of official recognition decided upon by the same Tribunal that had granted it only days earlier. The complainant states that its judicial defence strategy has not been successful so far, despite multiple appeals being lodged. In conclusion, the complainant notes with regret the lack of legal certainty in the judicial decisions, objects to the revocation, as a result of political pressure, of its registration and official recognition by the same Tribunal that had granted them only days earlier.

393. As regards the dismissals of 11 members of its executive committee, the complainant organization considers that these were motivated by political persecution. It states that two appeals against unjustified dismissal were lodged with the same Tribunal that first granted and then revoked the official recognition of the union. The complainant points out in its additional information that the appeals for seven of the trade unionists concerned (Mr José Francisco Lázaro Camacho, Mr Robicel Heleria Loranca, Ms Esthela Trujillo Cruz, Mr Jorge Antonio Fernández Martínez, Ms Dora María Ruíz Martínez, Ms Blanca Dalia Sánchez Jerez and Mr José Manuel Fonseca Gerardo) were rejected and it attaches copies of the corresponding judicial decisions. Lastly, it indicates that a number of complaints were lodged with the judicial authorities of the state of Chiapas concerning the conduct of a number of public servants who dismissed the members of the committee. The complainant cites the corresponding complaint registration numbers (162-101-1301-2014, 163-101-1301-2014 and 168-101-1301-2014) and indicates that it has not been informed of any further developments – except with regard to applications that had to be submitted to shelve one of the complaints – by the Public Prosecutor's Office, with subsequent confirmation from the state judge. In the complainant's opinion, this is evidence of the

collusion that exists between state bodies to deny access to justice, as a result of which it was obliged to have recourse to a federal judge.

B. The Government's reply

394. In its communication of 26 May 2016, the Government sent the observations of the authorities concerned (the Public Sector Employment Tribunal (hereinafter: the Tribunal) of the judicial authority, the Ministry of the Interior and the Public Prosecutor's Office, all of the state of Chiapas) in reply to the complainant's allegations.

Allegation of revocation of official recognition and registration of the complainant organization

395. As regards the allegation of revocation of registration and official recognition, the Government indicates that: (i) on 24 January 2014, the complainant organization applied for official recognition of its registration; (ii) on 3 July 2014, the Tribunal granted official recognition and ordered the registration of the complainant organization, notifying it on 10 July; and (iii) on 14 July 2014, the same Tribunal adopted a decision whereby it cancelled the official recognition and registration that it had granted and informed the union thereof on 5 August 2014. According to the Government, the Tribunal cited as grounds for the aforementioned decision the fact that, when the submitted documentation was checked, the notary public did not appear to have established that the workers who had attended the assembly had declared in person that it was their "free choice as workers to establish a trade union" and that the documents submitted as proof that the workers did not hold positions of special responsibility were "not recent". The Tribunal stated that the ruling did not entail revocation but invalidation of the previous act until the union fulfilled two procedural conditions, namely by providing proof that it was the free choice of the workers to form a union and by including the employment certificate of each employee to show that these were not workers occupying positions of special responsibility.

396. The Government states that, further to this second ruling of 14 July 2014, on 7 August the complainant organization lodged an indirect *amparo* (protection of constitutional rights) application on account of the refusal to issue the requested certified copies, subsequently expanding the scope of the legal action by challenging the decision of 14 July 2014 invalidating the official recognition and registration of the union. On 27 October 2014, the First District Court of the state of Chiapas decided to grant *amparo* with respect to the issuing of the certified copies of the official recognition documents but dismissed the challenge to the decision of 14 July 2014 on grounds of being out of time – inasmuch as the 15-day deadline for the union to contest the decision, since the notification thereof on 5 August 2014, had elapsed. The complainant appealed against this ruling of 27 October 2014 and, on 1 October 2015, the First Collegiate Tribunal upheld the ruling, ordering the case to be closed.

397. Moreover, on 5 September 2014 the complainant organization lodged an appeal for annulment with the Tribunal against the notification of 5 August 2014 (which notified the decision to revoke the registration and official recognition and was deemed the basis for the start of the time period for challenging the decision). The complainant alleged that the notification was not in line with the law and that it had no knowledge of it until 2 September. This appeal for annulment gave rise to a series of judicial proceedings and appeals which are still awaiting final settlement: (i) on 10 September 2014, the Tribunal dismissed the appeal for annulment; (ii) the complainant lodged an indirect *amparo* appeal on 13 October 2014; (iii) on 18 February 2015, the Sixth District Court of the state of Chiapas decided the *amparo* appeal in favour of the complainant and asked the Tribunal to issue a duly substantiated new decision with respect to the appeal for annulment; (iv) on 23 February

2015, the Tribunal issued a new decision in which it once again fully dismissed the appeal for annulment; (v) however, on 31 March 2015, the Sixth District Court issued a formal injunction ordering the Tribunal to respect the ruling, on the grounds that it had not fully complied with it; (vi) on 17 June 2015, the Tribunal again declared the appeal for annulment to be inadmissible; (vii) on 17 July 2015, the union lodged an indirect *amparo* appeal against this declaration; (viii) on 17 December 2015, the Sixth District Court granted *amparo* to the union and ordered the Tribunal to issue another duly substantiated decision with respect to its dismissal of notarial proof presented by the complainant demonstrating that its representatives were not present when the notification was supposedly made on 5 August 2014; (ix) on 27 January 2016, the Tribunal issued a new decision, again declaring the appeal for annulment to be inadmissible; (x) on 6 April 2016, the Fourth District Court for Amparo and Federal Proceedings (previously the Sixth District Court of the state) ruled that the Tribunal had not fully complied with the *amparo* ruling, arguing that it had omitted to express clearly the grounds for considering that the appeal for annulment was out of time, and also the reasons for considering that the time period for bringing the appeal for annulment should commence on 5 August; (xi) on 11 April 2016, the Tribunal issued a new decision in which it reiterated its declaration that the appeal for annulment was inadmissible; (xii) on 31 May 2016, the Fourth District Court for Amparo and Federal Proceedings decided that the Tribunal had complied with the decision and with the *amparo* ruling and, on 29 June 2016, it ordered the case to be closed; and (xiii) lastly, in February 2016, the complainant lodged another indirect *amparo* appeal against the decision of 27 January 2016 relating to the appeal for annulment, which was admitted and is pending. The Government indicates that once it has information on the outcome of these proceedings it will inform the Committee accordingly.

398. In conclusion, the Government considers that the complainant organization has had recourse to all available channels to assert its rights and interests as a union. Furthermore, the Government recalls that the complainant has the right and possibility to submit a new application for official recognition and registration but that to date there is no evidence that the union has taken remedial action to fulfil the procedural conditions to demonstrate that it is indeed expressing the will of the workers.

Allegations of political persecution and dismissals of members of the central executive committee of the complainant organization

399. As regards the allegations of dismissals, the Government reports on developments in the two labour cases, emphasizing that they are of an individual nature and do not relate to any union disputes or violations of trade union rights.

400. With regard to labour case 102/F/2014 (a complaint lodged by Mr José Francisco Lázaro Camacho, Mr Robicel Heleria Loranca, Ms Esthela Trujillo Cruz, Mr Jorge Antonio Fernández Martínez, Ms Dora María Ruíz Martínez and Ms Blanca Dalia Sánchez Jerez, requesting reinstatement in their posts, the payment of outstanding wages, overtime pay and payment for statutory rest days, holidays, bonuses, half-hour breaks and recognition of seniority), the Government states that: (i) on 14 March 2014, the Tribunal admitted the complaint; (ii) on 22 May 2014, the representative of the government ministry concerned argued that the workers concerned were workers occupying positions of special responsibility, and so they were only entitled to wage protection and social security benefits; (iii) on 12 July 2016, the Tribunal considered that the workers concerned occupied positions of special responsibility and issued a ruling releasing the ministry from any obligation to reinstate the workers or pay outstanding wages, overtime pay or holiday pay, but ruled that the respondent should pay a proportion of the bonus for 2014, recognize the workers' seniority and register them with the social security and service institute for state workers, with payment of the corresponding dues and contributions.

401. With regard to labour case 103/A/2014 (a complaint lodged by Ms Elizabeth Zamora Meza, Mr Marco Antonio López López, Ms Zoila Ordoñez Ruíz and Ms Paulina Jiménez Miranda, requesting reinstatement in their posts, the payment of outstanding wages, overtime pay and payment for statutory rest days, holidays, bonuses, half-hour breaks and recognition of seniority), the Government states that: (i) on 26 March 2014, the Tribunal admitted the complaint; (ii) on 16 May 2014, the representative of the government ministry concerned argued that the complainants had been dismissed after voluntarily relinquishing their duties and that these were workers occupying positions of special responsibility and so they were only entitled to wage protection and social security benefits; (iii) on 21 January 2015, the Tribunal stated that it would hold the hearing on 17 August 2015 but the complainant lodged an indirect *amparo* appeal, claiming procedural delays, which was granted and as a result of which the hearing was scheduled for 22 May 2015; (iv) the ministry concerned lodged two appeals to combine the cases, as a result of which the scheduled hearings were suspended and the cases in question were combined; (v) on 20 June 2016, the evidentiary hearing was held but the corresponding ruling has not yet been issued since evidence still needed to be examined; and (vi) however, on 2 August 2016, the Tribunal issued a definitive ruling in which the ministry concerned was released from any obligation to reinstate Mr Marco Antonio López López but was instructed to settle some of his financial claims.

402. The Government adds, with regard to the allegations of unjustified dismissals, that the intervention of the State Commission for Human Rights (CEDH) should be highlighted. On 14 January 2014, the workers concerned filed a complaint with the CEDH against the employing entities alleging misuse of authority, cruel and/or degrading treatment and harassment at work, as a result of the termination of their duties. The complainants stated that they were non-unionized ordinary workers in active service. After conducting its investigation and analysing the facts, the CEDH decided on 20 January 2014 that it was not competent to deal with this dispute between employers and workers, it referred the complainants to the competent body (the Tribunal) and decided to close the case.

403. As regards the alleged complaints to the judicial authorities, the Government indicates that the relevant consultations were held with the Public Prosecutor's Office of the state of Chiapas in relation to the registration numbers indicated by the complainant organization (162-101-1301-2014, 163-101-1301-2014 and 168-101-1301-2014) and no reference to the existence of those registrations was found. The Government affirms that, since there has been no indication of the authorities before which the complaints in question were brought, it is not in a position to make comments in this respect.

404. In conclusion, as regards the allegation of political persecution, the Government considers that the complainant organization has not supplied information to substantiate the allegation.

C. The Committee's conclusions

405. *The Committee observes that the complaint is concerned with allegations of revocation of the official recognition and registration (toma de nota y registro) of the complainant organization, and also of political persecution and dismissals of members of its central executive committee.*

406. *As regards the allegation of revocation of the official recognition (registration) of the trade union, the Committee notes the Government's indication: (i) that the contested decision of the Public Sector Employment Tribunal (hereinafter: the Tribunal) did not entail revocation but invalidation of the previous act (of registration and official recognition) until the union fulfilled two procedural conditions, namely by providing proof that it was the free choice of the workers to form a union and by including the employment certificate of each employee to show that these were not workers holding positions of special responsibility (trabajadores de confianza); and (ii) that the complainant did not attempt to fulfil these requirements and*

instead lodged a long series of judicial appeals and applications for amparo (protection of constitutional rights). As regards these proceedings, the Committee observes that, according to the Government's statements, although the courts ruled in favour of the complainant in several amparo appeals (at times questioning the grounds put forward by the competent authority – the Tribunal – for some of its decisions), the challenge to the invalidation of the trade union registration was rejected, on the grounds that it had been submitted outside the applicable time limit. Moreover, the Committee has taken note of the fact that the last amparo appeal that was pending went against the complainant (on 3 October 2016, the Fourth District Court for Amparo and Federal Proceedings dismissed the amparo, on the grounds that the contested decision had been replaced by a subsequent decision issued by the Tribunal on 11 April 2016). Furthermore, the Committee observes that: (i) the Tribunal, as the competent authority for registration, during its examination of the file in the months following the submission of the application for official recognition and registration, identified the particulars that were missing from the application and communicated what was needed to comply with the law, whereupon the complainant fulfilled all the additional requirements imposed; (ii) on the basis of the amended application, the Tribunal unanimously granted the official recognition and registration, by a decision indicating that fulfilment of the various legal requirements had been verified (including the free choice of the workers to form a union and, in particular, explicitly pointing out that the union had attached documents proving that the workers concerned were ordinary workers and not workers holding positions of special responsibility); (iii) five days later, the Tribunal, of its own accord, modified its position, stating that two particulars that it had considered verified in its previous decision (the standard status of the workers and their wish to form a union) required the provision of further proof. While the Committee has no means of assessing the implications of the two additional requirements imposed by the competent authority and the difficulties that might be involved in achieving compliance (for example, whether it implies reconvening a constituent assembly which would require the renewed attendance of all 1,529 workers concerned and obtaining the relevant supporting documentation from each of them), the Committee recalls that although the founders of a trade union should comply with the formalities prescribed by legislation, these formalities should not be of such a nature as to impair the free establishment of organizations [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 276]. The Committee expects the Government to take all necessary steps, in consultation with the complainant, to ensure the registration and official recognition of the complainant organization as quickly as possible.*

407. *As regards the dismissals of the workers appointed to the central executive committee of the complainant organization, the Committee notes that various legal proceedings were instituted and that, according to the information provided, while the rulings relating to three workers are still pending, in all the other cases, which have already been settled, the Tribunal rejected the allegation that the dismissals were unjustified. Moreover, the Committee notes that the Government emphasizes that all these judgments are individual and do not relate to any trade union issues. This being the case, and observing that discrimination is alleged on various grounds (in particular, on the basis of sex and in relation to lack of appreciation) in the legal proceedings brought by the complainant but is not alleged on anti-union grounds, the Committee will not pursue its examination of this allegation.*

The Committee's recommendation

408. ***In the light of its foregoing conclusions, and trusting that the issue of the registration and official recognition of the complainant organization can be resolved as quickly as possible, the Committee invites the Governing Body to decide that this case does not call for further examination.***

CASE NO. 3244

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

Complaint against the Government of Nepal presented by the Joint Trade Union Coordination Centre (JTUCC)

Allegations: The complainant organization denounces the adoption in 2016, without consultation of the workers' organizations, of the Industrial Enterprises Act and the Special Economic Zone Act, which deny the right to strike to workers in industrial enterprises and in the special economic zone, as well as the publication of the 2016 notification under the Essential Services Act prohibiting the exercise of the right to strike in 17 sectors

409. The complaint is contained in a communication from the Joint Trade Union Coordination Centre (JTUCC) dated 17 November 2016.

410. The Government forwarded its response to the allegations in a communication dated 22 May 2017.

411. Nepal has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), but has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. The complainants' allegations

412. In a communication dated 17 November 2016, the complainant organization indicates that the JTUCC is a common centre for all registered trade union confederations (the General Federation of Nepalese Trade Unions (GEFONT), the Nepal Trade Union Congress (NTUC), the All Nepal Federation of Trade Unions (ANTUF), the Confederation of Nepalese Professionals (CONEP), the Madhesi Trade Union Confederation (MTUC), the National Employees Federation of Nepal (NEFON), the National Democratic Federation of Nepalese Trade Unions (NDFONT), the National Democratic Confederation of Trade Unions-Independent (NDCONT-I), the Nepal Inclusive Trade Union Federation (NITUF) and the National Democratic Confederation of Nepalese Trade Unions (NDCONT) of Nepal).

413. The complainant states that, recently, Parliament has adopted the Industrial Enterprises Bill in line with the draft submitted by the Ministry of Industry. According to the preamble of the Bill, the main aim is to provide facilities concessions and a tax rebate to industry by the Government and to create an investment-friendly environment, increase export and enhance national productivity and employment opportunities. The Bill contains no provisions on rights, remuneration and benefits of the workers nor their duties and responsibilities. However, section 47 of the Bill (in the final text it will be section 45) contains the provision entitled "Industrial Human Resources" under the chapter "Miscellaneous Provisions". The section reads as follows:

Industrial Human Resources

(1) The human resources required for any industry shall be recruited from among Nepali citizens.

…

(6) The principle "No work, no pay" applies in the Industry to increase industrial productivity and create sound industrial relations. It shall be implemented as per the existing labour and other prevailing laws.

(7) The workers and employees of the Industry should not involve in any activity which create obstacles to the operation of the Industry or any action like strike or "*bandh*".

However, this subsection may not have any adverse effects on peacefully submitting a genuine demand before management by workers and employees and settling it mutually.

(8) In case the dispute under subsection (7) could not be settled, the dispute shall be referred to the tribunal constituted under the prevailing law, and the decision of the tribunal shall be final and binding.

414. The complainant organization indicates that Parliament also adopted the Special Economic Zone Act 2073 BS (2016), which contains a similar provision banning all strikes by workers.

415. According to the complainant, the Government normally consulted trade union confederations on all matters relating to labour and employment and discussed them within the framework of the Central Labour Advisory Committee. Nepal has ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), on 21 March 1995. The JTUCC was consulted during the elaboration of the Labour Act and the Social Security Act, but never during the drafting of the Industrial Enterprises Act 2073 BS (2016), which contains the anti-labour provision cited above. During the discussion called by the relevant parliamentarian subcommittee on the Act, the JTUCC requested in vain the removal of the anti-labour provision.

416. The complainant organization provides context to the situation in the country indicating that Nepali industry is faced with mass actions of social protest (*bandh* in Nepali language) called by political parties, caste groups, regional groups and parties, and employers themselves. In 2016, a more than five-month-long *bandh* was called by Madheshi parties in the southern part of Nepal, and the local unit of the employers' organization was equally involved. In 2017, almost the whole transport sector has been paralysed due to employer protest action entailing closure of enterprises, called by the Transport Employers Federation to reduce the traffic fines. During the last decade, out of the total actions called by all groups, around 64 per cent were called by political parties and allied organizations; 30 per cent were called by the Federation of Nepalese Chamber of Commerce and Industry and its affiliate industrial federation or local chapter; and only 6 per cent were strikes called by the trade union federations and affiliates in Nepal. The ratio of strikes may be even less when calculating it according to the Work Days Lost formula.

417. The complainant denounces that, notwithstanding the above, the Act does not prohibit: (i) *bandh* called by political parties and allied organizations; (ii) national *bandh* or *bandh* in any region called by the employers' organization; and (iii) any lockout called by an employer in any industry. Moreover, the Act imposes the so-called "No work, no pay" principle, even where actions have been called by employers, political parties and allied organizations. The complainant therefore believes that this provision is an anti-labour provision, which cannot be accepted.

418. According to the complainant, a strike is suspension of work on the part of workers. It is an inherent right of workers to suspend the work if the remuneration or benefit or work environment is not favourable to them. Similarly, workers should not be made liable for any kind of forceful stoppage of work by employers or political parties and caste or regional

groups. It is a gross injustice to workers if their payment is stopped (in the name of the so-called principle of "No work, no pay") due to a *bandh* or other action, which is not called by workers.

419. In the complainant's view, the 2016 Industrial Enterprises Act recently passed by Parliament is not in conformity with the provisions of the Constitution of Nepal and ILO Conventions Nos 87 and 98. Article 34 of the Constitution of Nepal reads as follows:

> Right to labour
>
> (1) Every worker shall have the right to be protected by fair labour practice.
>
> Explanation: For the purposes of this article, "worker" means a labourer or worker who does physical or mental work for an employer in consideration for remuneration.
>
> (2) Every worker shall have the right to fair remuneration, facilities and contributory social security.
>
> (3) Every worker shall have the right to form and join trade unions and to engage in collective bargaining, in accordance with the law.

420. The complainant believes that, without the right to strike, the right to bargain collectively could not exist, and that the prohibition on the right to strike by the 2016 Industrial Enterprises Act and the 2016 Special Economic Zone Act is a clear violation of Convention No. 98, ratified by Nepal. As a member State of the ILO, Nepal is also obliged to respect and enforce the provisions of Convention No. 87, because it is a fundamental labour standard under the ILO Declaration on Fundamental Principles and Rights at Work of 1998. Similarly, the provision of the recently passed Bill runs counter to the Labour Act and the Trade Union Act, which guarantee the unions' right to organize, assemble, peacefully demonstrate, and bargain collectively, including the legitimate right to strike. It also violates the agreement between the employers' organization and trade unions signed on 14 October 2014 and submitted to the Ministry of Labour during the drafting of the Labour Bill 2014, which is still under the consideration of Parliament.

421. The complainant criticizes that, despite the repeated recommendations made by the Committee in Cases Nos 2120 and 2340, the Government still violates Conventions Nos 87 and 98. The Government has curtailed the rights of workers, for instance through the misuse of the Essential Services Act in the following 17 services by publishing a notification in the *Official Gazette* of 25 April 2016: postal service; all types of broadcasting and print media; telecommunication and mass media service; transportation including road, air and marine; work related to civil aviation and maintenance of aircraft and security; service on railway station and government storages; mint and government print service; manufacturing equipment of defence and allied; electricity supply service; drinking water supply service; hotel, motel, restaurant, resort and other tourism-related similar services; import and distribution of petroleum goods; hospital, health centres and manufacturing of medicines and establishment of distributive services; banking services; garbage collection, transfer and recycling service; insurance service; and import, export, storage and distribution of daily consumer goods (foodstuff, lentils, rice, salt, edible oil).

422. In the complainant's view, not every service can be considered essential. Moreover, the 2016 Industrial Enterprises Act has banned the right to strike in all sectors, in direct violation of the fundamental principles and rights at work. In Cases Nos 2120 and 2340, the Government had already been requested by the Committee to take the necessary measures to repeal its notification in the *Official Gazette* declaring hotel, motel, restaurant, and tourist accommodations as falling within the scope of essential services and thus prohibiting strikes in these services by virtue of the Essential Services Act. However, the Government continued to violate the recommendations made by the Committee and to enforce the

Essential Services Act prohibiting strikes every six months, with the last notification published in 2016.

423. The complainant believes, therefore, that: the anti-labour provision under the 2016 Industrial Enterprises Act (clause on Industrial Human Resource) should be repealed; the provision containing a ban on the right to strike in the 2016 Special Economic Zone Act should be repealed; the Essential Services Act and the notification published under it should be repealed; all unfair practices such as the repeated issuing of orders prohibiting strikes should be stopped; and the right to prior consultation with trade unions on issues affecting their interests should be ensured.

B. The Government's reply

424. In a communication dated 22 May 2017, the Government states that articles 33 and 34 of the Constitution of Nepal guarantee the right to employment and the right to labour as fundamental rights and, with a view to enforcing these fundamental rights, article 46 provides the right to constitutional remedies in accordance with articles 133 and 144.

425. The Government indicates that section 46(6) of the 2016 Industrial Enterprises Act provides for the principle "No work, no pay" to increase industrial productivity and create sound industrial relations. Section 46(6) is not, in itself, an independent provision – it shall be implemented as per the existing labour and other prevailing laws. The principle does not run counter to the Labour Act and other prevailing laws and does not infringe the rights of workers.

426. As far as section 45(7) of the 2016 Industrial Enterprises Act is concerned, which provides that the workers and employees of the industry should not be involved in any activity which creates obstacles to the operation of the industry like a strike or *bandh*, the Government highlights that the proviso ensures that workers and employees are not prevented from peacefully submitting their genuine demands to the management and settling them by mutual understanding. According to the Government, since section 45(8) provides that, in cases where a dispute fails to get settled pursuant to section 45(7), it may be referred for the purposes of dispute settlement to the Tribunal constituted under the prevailing laws, and the decision of the Tribunal shall be final and binding on both parties, section 45(7) has not affected the rights of workers and employees to submit their demands in a peaceful manner.

427. The Government further refers to section 42 of the 2016 Special Economic Zone Act which provides that, notwithstanding anything contained in the existing laws, the workers and employees of an industry established in the special economic zone shall not have the right to be involved in any activity which creates obstacles to the industry and its production like a *bandh*, strike or agitation. The Government believes that this provision should also be taken positively, since, pursuant to this Act, which is applicable to the special economic zone where exports are encouraged by establishing an export processing zone and export promotion house, a contract shall be signed with the workers and employees working in the special economic zone (section 40(1)), and facilities and welfare benefits under the contract signed in accordance with section 40(2) shall not be less favourable than the ones guaranteed by the existing laws.

428. In the Government's view, even if an Act enacted fulfilling the procedures and formalities required by the existing laws is faulty, a petitioner should, in the first place, resort to the remedies provided by the existing laws of Nepal. The action of the petitioner to resort to the international mechanism immediately, without resorting to the national mechanism, is, in itself, faulty.

429. The Government adds that a separate Trade Union Act, 2049 (1993) is in place, in order to make legal provisions for the registration and operation of trade unions, with a view to protecting and promoting the professional and occupational rights and interests of the workers and the self-employed. These legal provisions have ensured trade union rights. Similarly, the Labour Act is in force to make provisions for the rights, interests, benefits and security of the workers and employees. This Act has ensured such rights as the right to collective bargaining and the right to launch strikes. The Government has, with a view to making provision for the rights, interests and benefits of the workers, and to develop good labour relations by making clear provisions on the rights and duties of the workers and employees, introduced a new Labour Bill to Legislature (Parliament), which was prepared also taking into consideration the recent discussions held with the employees and trade unions. The Government emphasizes that it is responsible and sensitive to labour matters.

430. In conclusion, the Government states that the provisions contained in the recently enacted 2016 Industrial Enterprises Act and the 2016 Special Economic Zone Act have, in no way, affected the rights enshrined in Conventions Nos 87 and 98 as afforded by the Constitution of Nepal and the Labour Act.

C. The Committee's conclusions

431. *The Committee notes that, in the present case, the complainant organization denounces the adoption in 2016, without consultation of the workers' organizations, of the 2016 Industrial Enterprises Act and the 2016 Special Economic Zone Act, which deny the right to strike to workers in industrial enterprises and in the special economic zone, as well as the publication of the 2016 notification under the Essential Services Act prohibiting the exercise of the right to strike in 17 sectors. In this regard, the Committee notes the context in the country as described by the complainant, with recurrent mass actions of social protest called by various stakeholders, including political parties and other groups (64 per cent), employers' organizations (30 per cent) with 6 per cent being strikes called by trade unions, but observes that the complainant's allegations centre upon whether the abovementioned legislative restrictions to the exercise of workers' right to strike, run counter to the principles of freedom of association.*

432. *As regards the alleged failure of the Government to consult the relevant workers' organizations prior to the adoption in 2016 of the Industrial Enterprises Act and the Special Economic Zone Act, the Committee notes that the Government neither contests nor responds to this allegation and recalls that it had previously drawn the attention of the Government to the importance of prior consultation of the workers' organizations before the adoption of any legislation affecting their rights [see 340th Report, Case No. 2412 (Nepal), para. 1139]. The Committee once again emphasizes the value of consulting organizations of employers and workers during the preparation and application of legislation which affects their interests [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 1072] and urges the Government to ensure the full application of this principle in the future.*

433. *Furthermore, the Committee observes that, in the Government's view, the adoption of the abovementioned legislation does not violate the rights of workers, since workers in industrial enterprises may still peacefully submit their genuine demands to management and settle them by mutual understanding or before the Tribunal, and since the contract to be signed with the workers in the special economic zone will afford them facilities and benefits no less favourable than those provided by law. In this regard, the Committee recalls that the right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests [see* ***Digest****, op. cit., para. 522]. Nevertheless, the right to strike is not an absolute right and may be restricted or prohibited in certain conditions. 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). What is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country. Moreover, 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 indicated on previous occasions the services that do not constitute essential services in the strict sense of the term. The Committee further recalls that the principle regarding the prohibition of strikes in essential services might lose its meaning if a strike were declared illegal in one or more undertakings which were not performing an "essential service" in the strict sense of the term, that is services whose interruption would endanger the life, personal safety or health of the whole or part of the population. The Committee also recalls that salary deductions for days of strike give rise to no objection from the point of view of freedom of association principles [see ***Digest*** *op. cit., paras 522, 576, 583, 582, 587 and 654].*

434. *Observing the extensive scope of application of the two Acts, in particular the fact that the 2016 Industrial Enterprises Act covers virtually all national industries, the Committee requests the Government: (i) to provide information as to how the strike prohibitions in the 2016 Industrial Enterprises Act and the 2016 Special Economic Zone Act interact with the newly adopted 2017 Labour Act, which the Committee understands guarantees the right to strike; and (ii) to take all necessary measures to amend the provisions generally banning strike action in the 2016 Industrial Enterprises Act and the 2016 Special Economic Zone Act to bring them into line with the abovementioned principles, and to keep it informed of the progress made in this respect. As regards the 2016 notification issued under the Essential Services Act, the Committee notes that the list of sectors where strike may be prohibited is excessively broad, and recalls that, in previous cases concerning Nepal, it had requested the Government to take the necessary measures to repeal similar notifications in the* Official Gazette *[see 328th Report, Case No. 2120 (Nepal), para. 540, and 336th Report, Case No. 2340 (Nepal), para. 647]. The Committee deeply regrets the repeated actions of the Government despite its previous recommendations, and urges the Government to immediately take the necessary measures to restrict the prohibition on strike action to essential services in the strict sense of the term, and to keep it informed of the measures taken in this regard.*

The Committee's recommendations

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

(a) The Committee urges the Government to ensure in the future the full application of the principle that organizations of employers and workers should be consulted during the preparation and application of legislation which affects their interests.

(b) The Committee requests the Government to provide information as to how the strike prohibitions in the 2016 Industrial Enterprises Act and the 2016 Special Economic Zone Act interact with the newly adopted 2017 Labour Act, and to take all necessary measures to amend the provisions generally banning strike action in the 2016 Industrial Enterprises Act and the 2016 Special Economic Zone Act to bring them into line with the principles on freedom of association. The Committee requests to be kept informed of the progress made in this respect.

(c) As regards the 2016 notification issued under the Essential Services Act, recalling the need to take measures to restrict the prohibition on strike action to essential services in the strict sense of the term, the Committee urges the Government to take the necessary measures without delay and invites it to avail itself of the technical assistance of the Office in this regard. It requests the Government to keep it informed of the measures taken in this respect.

CASE NO. 3168

DEFINITIVE REPORT

Complaint against the Government of Peru presented by the National Federation of Mining, Metal, Iron and Steel Workers of Peru (FNTMMSP)

Allegations: The complainant organization alleges anti-union practices carried out by a mining company, including press and radio campaigns against the trade union and subjecting union officials to workplace rotation without their consent, in order to break up the union

436. The complaint is contained in a communication from the National Federation of Mining, Metal, Iron and Steel Workers of Peru (FNTMMSP) dated 4 August 2015.

437. The Government sent its observations in a communication dated 2 February 2016.

438. Peru 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 complainant's allegations

439. In a communication dated 4 August 2015, the National Federation of Mining, Metal, Iron and Steel Workers of Peru (FNTMMSP) alleges that the mining company Antamina, a limited company (hereinafter "the mining company"), used press and radio communications to damage the reputation of the Antamina Workers' Union (SUTRACOMASA), and that it transferred two trade unionists, without just cause and without their consent, in order to break up the trade union organization. The FNTMMSP indicates that, on 22 July 2015, SUTRACOMASA filed a complaint with the National Labour Inspection Authority (SUNAFIL) regarding these anti-union practices.

440. First, the FNTMMSP alleges that the mining company used press and radio (Radio Yanacancha, which is owned by the company) communications to cause damage to the honour, standing and reputation of SUTRACOMASA. The FNTMMSP attaches to its complaint a copy of the following communications, the alleged aim of which was to reduce membership of SUTRACOMASA and ultimately eliminate the union: (i) a communication dated 15 November 2014, in which the company rejects the version of events recounted by SUTRACOMASA officials regarding an accident involving a trade unionist and underlines

that this was the first incident to occur since 10 November, the date when a strike declared illegal by the labour authority began; (ii) a communication dated 21 November 2014, in which the company blames SUTRACOMASA officials for blocking entry to the operations centre and threatening and verbally abusing workers who had decided not to comply with the stoppages; (iii) a communication No. 6, issued by the Vice-President for Human Resources, in which the company reiterates its desire for dialogue and states that calling a strike was unwarranted, given that not all avenues of negotiation between the parties had been exhausted; (iv) a communication dated 3 December 2014, in which the General Secretary of SUTRACOMASA was directly discredited, claiming that he lies and makes inaccurate statements and that he had made groundless allegations, which the company had to refute; (v) a communication dated 16 January 2015 which, purporting to clarify information provided by the trade union, implied that the trade union was spreading lies; and (vi) a communication dated 14 July 2015, in which the company announced that the benefits provided for under a collective agreement will be granted regardless of whether or not workers were members of SUTRACOMASA, thereby encouraging members to resign from the trade union and precipitating its breakup. The FNTMMSP attaches to the complaint copies of letters of resignation submitted between November 2014 and January 2015 by almost 200 members of SUTRACOMASA. Lastly, regarding the radio communications, the FNTMMSP indicates that, despite the fact that SUTRACOMASA requested radio airtime in order to exercise its right to reply, those requests were rejected verbally, with no formal response to its request provided.

441. Second, the FNTMMSP alleges that the mining company violated the trade union immunity of Mr Edwin Farromeque Romero and Mr Henry Bruno Rojas, who were transferred from their workplaces without just cause, with the intention of breaking up SUTRACOMASA. With regard to Mr Farromeque Romero, the FNTMMSP reports that, on the date of his transfer, he was the sole applicant for the position of Assistant General Secretary at the Huarmey base, and the company had therefore violated article 30 of the Collective Labour Relations Act, which provides that "trade union immunity guarantees that certain workers may not be dismissed or transferred to other establishments within the same company, without clearly demonstrated just cause or without their consent. Worker consent is not required if the transfer will not prevent them from carrying out their trade union official duties", which is complemented by article 31, which states that "trade union immunity is enjoyed by … (d) candidates for trade union office or representation for thirty (30) calendar days prior to the election process and up to thirty (30) calendar days after the election process has been concluded".

B. The Government's reply

442. In a communication dated 2 February 2016, the Government transmits its observations, as well as the observations of the mining company. First, the Government indicates that the anti-union practices alleged in this complaint were reported on 22 July 2015 by SUTRACOMASA to SUNAFIL, the body responsible for promoting, supervising and monitoring compliance with legislation on social, labour and occupational safety and health matters. In this regard, the Government states that, on 15 October 2015, and having carried out the second and final inspection visit to the company, SUNAFIL prepared its report (attached by the Government) which concludes that it found no evidence of labour-related violations.

443. With regard to the transfer of the workers Mr Farromeque Romero and Mr Rojas, the Government states that they are currently working in their usual workplace at the concentrator plant located in the Port of Punta Lobitos (PPL) in the town of Huarmey. Moreover, the mining company claims that the transfer to the mine, which took place on 30 March 2015, was not implemented with a view to affecting their right to freedom of association, but was a temporary measure duly justified given the existence of a training

programme. As detailed by the company, it has a training programme for the "concentrator", which meant that the workers in question were rotated so that they could undergo comprehensive training in the various duties involved in operating the plant. The Government attached a copy of the letters sent by the company to the workers on 15 September 2015, in which it informed them that, as they had completed their six-month rotation period, they were to return to their previous positions on 8 October. The Government indicates that, as confirmed by SUNAFIL in its inspection report, Mr Farromeque Romero and Mr Rojas returned to their workplaces on 8 and 13 October 2015 respectively.

444. The mining company refers in detail to the rotation-based training programme (cross-training), which was initiated in 2013, and the company also indicates the numbers of workers that participated in the programme in that year and those that were subject to rotation for a period of six months. As indicated by the company, the programme suffered delays for reasons beyond its control, but in January 2015 it was ready to proceed with the rotation of workers who had still not taken part in the programme. In the specific case of workers at the PPL concentrator plant, four workers had yet to be rotated and, as two of these were not in a position to take up the rotation, the programme continued with the two remaining workers, Mr Farromeque Romero and Mr Rojas, who were aware of the programme and were informed early on about their rotation and the temporary nature of the transfer. The company emphasizes that, in Mr Farromeque Romero's case, his temporary transfer at no time prevented him from carrying out his duties in SUTRACOMASA, as he was granted leave for trade union activities during that period. In its report of 15 October 2015, SUNAFIL concludes that, given that Mr Farromeque Romero and Mr Rojas returned to their workplaces on 8 and 13 October respectively, it was unable to continue with the investigation.

445. Concerning the press and radio communications issued by the company, the mining company states that they were simply for information purposes and were disseminated in November and December 2014, during periods in which SUTRACOMASA called for, and encouraged its members to take part in, two strikes that were declared unlawful because of the failure to provide a list of the names of workers who would cover essential posts during the stoppages. In addition, the company states that the communications were limited to clarifying the company's position on the false and inaccurate allegations made during the stoppages and that, from reading those communications, there is no evidence of any references or statements being made that might impede the free exercise of the right to freedom of association or even harm the good image of the trade union organization.

446. With regard to the failure to grant radio airtime to SUTRACOMASA, the mining company states that the Yanacancha radio station was founded in 2007 by the Yanacancha Civil Association, in order to provide an opportunity to share information with the workers. The Yanacancha association hired Prodial Comunicación Integral PLC (hereinafter "PCI") to manage and operate the radio station. Concerning the request from SUTRACOMASA to have 30 minutes of airtime twice a day to broadcast trade union information, the company claims that it had no legal obligation to grant airtime on a private radio station, whose purpose was to create a channel of communication between the company and its workers, in particular given that none of the company's communications were offensive towards the trade union organization. In this regard, in its report, which is attached by the Government, SUNAFIL concluded that any decisions relating to the use of radio broadcasts were the sole responsibility of the PCI, and thus there has been no violation of the right of freedom of association, and that under paragraph 37 of the current collective agreement SUTRACOMASA is free to disseminate within the workplace any trade union communications it considers to be relevant, as well as to make use of other mass media channels, including the Internet and the San Pedro satellite radio.

C. The Committee's conclusions

447. *The Committee observes that, in the present case, the complainant alleges that a mining company used press and radio communications to cause damage to the honour, standing and reputation of SUTRACOMASA, with a view to reducing membership of the union and that, in addition, the company violated the trade union immunity of Mr Edwin Farromeque Romero and Mr Henry Bruno Rojas, who were subjected to workplace rotation without just cause and without their consent, in order to break up the trade union.*

448. *The Committee observes that, as indicated by the complainant and the Government, SUTRACOMASA reported alleged anti-union practices on 22 July 2015 to SUNAFIL, the body responsible for promoting, supervising and monitoring compliance with legalization on social, labour and occupational safety and health matters. In that regard, the Committee observes that the Government attached a copy of the SUNAFIL's inspection report, issued on 15 October 2015, which concludes that it found no evidence of any labour-related violations.*

449. *With regard to the transfer of Mr Edwin Farromeque Romero (who, on the date of his transfer, was applying for a union leadership post) and Mr Henry Bruno Rojas, the Committee observes that their transfer took place on 30 March 2015 and that, on 15 September of that year, the mining company sent them a letter (attached by the Government) informing them that, as they had completed their six-month rotation period, they were to return to their previous positions on 8 October. The Committee observes that, as indicated by the company and confirmed by SUNAFIL in its inspection report, the workers returned to their workplaces on 8 and 13 October 2015 respectively.*

450. *While observing that the workers were transferred without their consent, the Committee notes that the complainant attached a copy to its complaint of the letters sent by the mining company to the workers on 25 February 2015. Those letters indicated that their transfers were part of the training programme run by the company for workers at the concentrator plant, and that it was a temporary transfer in order to receive comprehensive training in the various duties that are involved in the plant. The Committee also notes that, as indicated by the company, the training programme was initiated in 2013 and that, under the programme, other workers from the company were also transferred on a temporary basis. Furthermore, there is no evidence of the allegations that, once transferred, the workers were prevented from carrying out trade union activities. In Mr Farromeque Romero's case, the Committee notes that, as indicated by the mining company, his transfer did not prevent him from carrying out his duties in SUTRACOMASA, as he was granted leave for trade union activities during that period. Under the circumstances, the Committee will not pursue the examination of this allegation.*

451. *With regard to the communications issued by the mining company, both press communications and radio communications broadcast on Yanacancha radio (owned by the company), the Committee observes that the complainant and the Government attached a copy of those communications, from which it is evident that: (i) the complaint refers to communications disseminated in November and December 2014, that is to say at a time when SUTRACOMASA called for, and encouraged its members to take part in, two strikes that were declared unlawful because of the failure to provide a list of the names of workers who would cover essential posts during the stoppages; (ii) in almost all of the communications, the company directly criticizes the trade union and the actions carried out by its officials during the stoppages, challenging the veracity of their statements; and (iii) in those communications the company also emphasized that it remained open to dialogue.*

452. *The Committee also observes that, during the period in which the communications were issued, almost 200 workers resigned from the trade union. While it is true that some of them*

stated in their letters that they disagreed with the actions carried out by the union officials in connection with the stoppages, most submitted letters of resignation without explaining their reasons for doing so. While the Committee's attention is drawn to the high number of resignations tendered to the trade union during the stoppages, the Committee also notes that the complainant makes no reference to direct pressure from the company to force workers to resign from the trade union, nor does it allege that during that period it was not free to disseminate union communications it considered relevant, either inside or outside the workplace.

453. *In this regard, the Committee draws attention to the Communications within the Undertaking Recommendation, 1967 (No. 129), which stipulates that employers and their organizations as well as workers and their organizations, should, in their common interest, recognize the importance of a climate of mutual understanding and confidence within undertakings that is favourable both to the efficiency of the undertaking and to the aspirations of the workers. Similarly, the communication methods should in no way derogate from freedom of association; they should in no way cause prejudice to freely chosen workers' representatives or to their organizations or curtail the functions of bodies representative of the workers in conformity with national law and practice. In view of the above, the Committee encourages the parties, making possible use of the Government's facilitative role, to make every effort to establish relations based on dialogue and mutual respect.*

The Committee's recommendation

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

The Committee encourages the parties, making possible use of the Government's facilitative role, to make every effort to establish relations built on dialogue and mutual respect.

CASE NO. 3174

DEFINITIVE REPORT

Complaint against the Government of Peru presented by the National Federation of Judicial Employees of Peru (FNTPJ)

Allegation: The complainant organization alleges that the administration of the judiciary is ignoring its instructions to transfer the contributions of its members to its economic and financial secretary

455. The complaint is contained in a communication from the National Federation of Judicial Employees of Peru (FNTPJ) dated 29 September 2015.

456. The Government sent its observations in a communication dated 25 July 2016.

457. Peru 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 complainant's allegation

458. In its communication dated 29 September 2015, the complainant organization alleges that the administration of the judiciary (hereafter, "the employing administration") is ignoring its instructions to transfer the contributions of its members to its economic and financial secretary, Mr Cristhian Gertrudis Guerrero Arias, thus putting the organization's survival at risk. The complainant organization explains that members' dues had been paid in the same way since the organization's establishment and that the employing administration had always transferred them to the economic and financial secretary of the serving executive board.

459. The complainant organization nevertheless indicates that, at the end of 2014, a faction led by Mr William Nicho Alor opposing the appointment of Mr Max Roger Ruiz Rivera, who had been officially elected General Secretary for a term of office from 23 September 2013 to 22 September 2015, declared itself the General Secretariat of the FNTPJ allegedly by removing him from office with a resolution that was not authentic. This created political turmoil within the union, but did not divest him of the powers and functions that he had held as General Secretary since the beginning of his term of office.

460. The complainant organization indicates that, against this backdrop of political turmoil, as of February 2015 the employing administration decided initially not to transfer the contributions and to withhold them, and then later to transfer them to the FNTPJ rather than to the economic and financial secretary. It did this despite knowing that the FNTPJ, as a union, does not carry out any commercial or other corporate activity that would require a taxpayers' registry number (RUC), so it cannot collect the dues when they are transferred in that way. The complainant organization draws attention to the numerous communications sent by its General Secretary between March and July 2015, including a notarized letter dated 4 June 2015, in which it called for the reinstatement of the previous practice, namely, the transfer of its dues to the economic and financial secretary of the serving executive board. The complainant organization states that the employing administration ignored these communications, not only by failing to respond, but also by continuing not to transfer the contributions to the economic and financial secretary. It also indicates that it has not been granted a meeting with the president of the judiciary to explain its position regarding the collection of its dues.

461. Lastly, the complainant organization finds the employing administration's conduct to constitute a substantial alteration of its executive administrative relations that substantially affects its performance, restricting and impeding freedom of association.

B. The Government's response

462. In its communication dated 25 July 2016, the Government explains that the complaint presented by the complainant organization arose as the result of a conflict within that organization over who held the post of general secretary – the subject of a dispute between Mr Max Roger Ruiz Rivera and Mr William Nicho Alor.

463. The Government indicates that, on 18 June 2015, the Office of the Legal Adviser of the general management of the judiciary, in the light of the uncertainty within the complainant organization regarding its representation and who was responsible for collecting the cheques used to pay union dues, assessed the possibility of making judicial deposits of the union

contributions with a view to protecting the interests of affiliated workers, as provided for under section 64 of Act No. 29497 approving the New Procedural Labour Law.

464. The Government indicates that, based on the Office of the Legal Adviser's assessment, the Department for Human Resources and Well-Being of the judiciary issued a memorandum dated 6 July 2015, addressed to the sub-department of the Treasury, explaining that, as there was an internal dispute within the complainant organization, the recommendations of the Office of the Legal Adviser should be implemented. In other words, as the status of the representatives of the FNTPJ executive board remained uncertain, the possibility of judicially depositing the FNTPJ union dues so as to avoid any criminal proceedings being brought against the employing administration for unlawful appropriation or abuse of authority, should be examined. Consequently, the sub-department of the Treasury was requested to make the necessary arrangements with the Public Prosecutor of the judiciary to deposit the complainant organization's dues with the competent judicial body. In response, the sub-department of the Treasury indicated that, from 5 August 2015, cheques that were to be issued to the FNTPJ would be issued to the Banco de la Nación (the Bank of the Nation) with a view to judicially depositing them with the duty labour court until the union representation dispute was resolved, and specified that at no point did it have the union members' dues at its disposal.

465. The Government indicates that shortly afterwards, on 26 August 2015, following receipt of memorandum no. 180-2015-CEN/FNTPJ-SG-MRRR submitted by the executive board of the FNTPJ and stating that the legal representation of the FNTPJ would continue to be provided by the General Secretary, Mr Max Roger Ruiz Rivera, until 22 September 2015, the Office of the Legal Adviser of the general management of the judiciary issued report No. 496-2015-OAL-GG/PJ stating that, as the issue of who held the post of general secretary of the complainant organization had been clarified, the cheques for union dues should no longer be judicially deposited.

466. The Government further indicates that, as there is no existing provision or agreement between the employing administration and the complainant organization determining that the union dues must be paid to a particular individual, the Office of the Legal Adviser of the general management of the judiciary concluded that the cheques pertaining to those amounts must be made payable to the complainant organization and then transmitted to the duly authorized economic and financial secretary of that organization.

467. The Government also emphasizes that the employing administration did not ignore the various communications from the complainant organization but rather it carried out coordination work, solicited legal opinions and sent internal communications. This led to the adoption of the recommendations issued by the Office of the Legal Adviser of the general management of the judiciary, which led initially to the union contributions being deposited with the competent judicial body and later to the cheques being made payable to the complainant organization to be forwarded to its economic and financial secretary.

468. Lastly, the Government states, for the reasons given above, that the employing administration has not violated the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), that its actions have respected the principles and standards on that subject, and that its relationship with the complainant organization is smooth and continuous.

C. The Committee's conclusions

469. *The Committee observes that, in the present case, the complainant organization alleges that the employing administration: (i) initially decided not to transfer the contributions of its*

members but rather to withhold them; and (ii) later decided to transfer them directly to the FNTPJ rather than to its economic and financial secretary.

470. *With regard to the withholding of union dues by the employing administration, the Committee notes the Government's statement that, owing to a political dispute within the complainant organization, those dues were transferred to the Banco de la Nación (the Bank of the Nation) with a view to judicially depositing them with the duty labour court until the internal conflict regarding the representation of the complainant organization had been resolved, and that at no point did the administration have the union members' dues at its disposal. The Committee recalls that in the case of internal dissention within one and the same trade union federation, by virtue of Article 3 of Convention No. 87, the only obligation of the Government is to refrain from any interference which would restrict the right of the workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes, and to refrain from any interference which would impede the lawful exercise of that right [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 1117]. In the present case, observing that both the Government's statement and the complainant organization's allegations indicate that, because of a dispute over the executive management of the complainant organization as well as over who held the post of its economic and financial secretariat , the employing administration merely made judicial deposits of the union contributions for a limited period, without ever having those contributions at its disposal, and regularized the situation as soon as the issue of who held the post was clarified, the Committee considers that the principles of freedom of association were not violated. Consequently, the Committee will not pursue its examination of this allegation.*

471. *Regarding the decision of the employing administration to transfer the contributions to the complainant organization, and not to its economic and financial secretary as was previously the case, the Committee notes that, according to the information provided by the Government, there is no provision or agreement between the employing administration and the complainant organization that determines that the contributions must be made payable to a particular person. That being the case, inasmuch as the cheques pertaining to the union dues were transferred to the complainant organization as soon as the issue of who held the post of economic and financial secretary had been clarified, and trusting, in the light of the difficulties alleged regarding the cashing in of the cheques made payable to the complainant organization, that the authorities will provide the necessary support to the complainant organization so that it can complete the necessary formalities to effectively receive the contributions in question, the Committee will not pursue its examination of this allegation.*

The Committee's recommendation

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

CASE NO. 3204

DEFINITIVE REPORT

Complaint against the Government of Peru presented by the Single Federation of Workers in Civil Construction and Similar Activities of Peru (FUTCCASP)

Allegations: The complainant alleges that violence in the construction sector has been exacerbated by the activities of trade union confederations at the expense of organizations not affiliated to them; it further alleges a refusal to negotiate a list of grievances and administrative suspension from the registry of trade union organizations

473. The complaint is set out in a communication dated 25 August 2014 from the Single Federation of Workers in Civil Construction and Similar Activities of Peru (FUTCCASP).

474. The Government provided its observations in a communication dated 17 December 2014.

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

A. The complainant's allegations

476. In its communication of 25 August 2014, the complainant states that it has represented thousands of workers in the construction sector since 2011 and that it is an independent organization that is not affiliated to either of the country's trade union confederations (the Confederation of Workers of Peru (CTP) and the General Confederation of Workers of Peru (CGTP)), because it objects to how they are run. The complainant alleges that the climate of violence and insecurity prevailing in the construction sector has been exacerbated by a smear campaign carried out by the aforementioned trade union confederations, at the expense of trade union organizations not affiliated to them.

477. The complainant considers that the violence in the construction sector is being recklessly stoked by the Federation of Civil Construction Workers of Peru (FTCCP) and the trade union confederations to harm trade unions and federations that are not aligned with them, in order to preserve the status they had enjoyed up until over ten years ago as a single trade union. It specifically alleges that the FTCCP and the trade union confederations are using their representation on the boards of certain entities (such as the National Service of Training for the Construction Industry (SENCICO) and the National Board of the Fund for the Construction of Housing and Recreational Centres for Civil Construction Workers (CONAFOVICER)) to give preferential treatment to their members, at the expense of members of other trade union organizations. Regarding SENCICO, the complainant alleges that, even though it signed a framework agreement on 20 March 2014 on training and certification for its members, until the date on which the present complaint was submitted, no training activities had actually taken place. According to the information it had received, this was because an additional specific agreement must be approved by the SENCICO board,

which has not explained the excessive delay in approving that specific agreement. Regarding CONAFOVICER, the complainant alleges that the FTCCP and the CGTP control that entity's funds, are preventing free access by workers and trade union leaders who are not part of their trade union structure, and turn down the complainant's requests to benefit from and use the infrastructure of the recreational centres, giving preference to their affiliated workers.

478. The complainant further alleges that Government representatives, acting in collusion with the leaders of the trade union confederations, have publicly stated that they intend to cancel the registrations of organizations not affiliated to those confederations. It also alleges that, under Supreme Decree No. 007-2014-TR (amending Supreme Decree No. 006-2013 on the registration of trade union organizations in the construction sector), the Administrative Labour Authority is empowered to suspend the registration of trade union organizations whose activities clearly and obviously demonstrate that their purpose has become unlawful, even where the judicial authorities have not ruled on the lawfulness of those activities. According to the complainant, it is up to the judicial authorities to determine whether or not a specific activity is unlawful; Ministry officials have neither the experience nor the authority under the Constitution of Peru to make such a determination. The complainant further considers that the law in question is arbitrary and discriminatory, because the Ministry's officials are granted this special attribute in respect only of trade union organizations established since January 2004 and only until 31 December 2015, with no indication of the reasons for that disparity.

479. In addition, the complainant alleges that, for the fourth consecutive year, the Peruvian Chamber of Construction (CAPECO) has refused to negotiate a national list of grievances and that the Labour Ministry has declared every year that CAPECO's refusal is well-founded. According to the complainant, CAPECO argues that a collective bargaining process has been initiated with the FTCCP, with which it has been negotiating for years, that is the subject of a 2003 ruling by the Constitutional Court (STC No. 261-2003-AA/TC). The complainant points out that the Court's ruling was issued in a context that was very different from the current one and that it upheld the single national list by branch of activity as opposed to the list by site that the government of the day wished to impose. The complainant advocates a single national list of grievances, on the grounds that the special nature of the sector precludes the negotiation of lists by site. It nonetheless demands that it take part in the negotiations on the single list, which, in its view, should bring together representatives of all trade union organizations representing workers.

B. The Government's reply

480. In its communication dated 17 December 2014, the Government submits information provided by CAPECO and the general secretariat of the Ministry of the Interior. Regarding the allegations relating to violence in the construction sector, the Government refers to a report by the general secretariat of the Ministry of the Interior indicating that the national police have taken action to combat violence and crime in the civil construction sector, inter alia: instances of duress exerted by union leaders on the employer; conflicts between unions for control of sites within the same territory; organizations that are registered as trade unions and pretend to defend the workers' interests, but that in reality use their trade union status to extort payments from employers, pseudo-union leaders and workers. The Government points out that, in such cases, the police action is limited to investigating the crimes and delivering the results to the prosecuting authorities for formulation of the corresponding charge.

481. The Government further points out that the National Registry of Workers in Civil Construction (RETCC) and the National Registry of Civil Construction Works (RENOCC) are intended to safeguard labour rights and eliminate violence at civil construction sites, since it is thanks to their implementation that information is obtained on the construction

works being carried out and that preventive action can be coordinated to combat the climate of violence in which civil construction workers are contracted. The Government indicates that all contracting and subcontracting firms carrying out work at civil construction sites whose individual costs exceed 50 tax units are registered on the RENOCC, and that registration is automatic, free of charge and processed using a computer application approved by the Ministry of Labour and Employment Promotion.

482. Regarding the alleged refusal of CAPECO to negotiate a list of grievances, CAPECO indicates that no agreement exists with the complainant for negotiation at branch level. Consequently, every time that the FUTCCASP presented a list at branch level, CAPECO filed an objection with the Administrative Labour Authority. CAPECO stresses the free and voluntary nature of collective bargaining and states that, in accordance with the provisions of Peru's Law on Collective Labour Relations, the parties must agree on the scope of the bargaining and that, in the case at hand, there is no agreement with the complainant to start negotiations at branch level. It further indicates that the Constitutional Court has ruled on various occasions that CAPECO and the FTCCP are validly engaged in negotiations by branch in the civil construction sector because they have continued to negotiate, over the years and before and after the entry into force of the Law on Collective Labour Relations (the Government cites as an example a resolution issued by the Second Chamber of the Constitutional Court on 26 March, 2003).

C. The Committee's conclusions

483. *The Committee observes that, in the present case, the complainant (FUTCCASP) alleges that: (i) the climate of violence prevailing in the civil construction sector has been exacerbated by a smear campaign carried out by the trade union confederations, at the expense of organizations not affiliated to them; (ii) the Administrative Labour Authority is empowered to suspend the registration of trade union organizations in the absence of any court ruling to that effect; and (iii) for the fourth consecutive year, CAPECO has refused to negotiate a list of grievances presented by the FUTCCASP.*

484. *The Committee notes, first, the complainant's general allegation that the climate of violence and insecurity prevailing in the construction sector has been exacerbated by a smear campaign carried out by the FTCCP and the country's trade union confederations (the CGTP and the CTP), at the expense of trade union organizations not affiliated to them. More specifically, the complainant alleges the following: (i) the FTCCP and the trade union confederations are using their representation on the boards of certain entities (such as SENCICO and CONAFOVICER) to give preference to their members, at the expense of members of other trade unions; (ii) Government representatives, working in collusion with the leaders of the trade union confederations, have publicly stated that they intend to cancel the registrations of organizations not affiliated to those confederations; and (iii) by virtue of Supreme Decree No. 007-2014-TR, the Administrative Labour Authority is empowered to suspend the registration of a trade union organization whose activities clearly and obviously demonstrate that its purpose has become unlawful, without the judicial authorities having ruled on the lawfulness.*

485. *Regarding the climate of violence prevailing in the construction sector, the Committee notes that the Government indicates that the national police are acting to fight the violence and crimes occurring in the sector, inter alia, the existence of mafia gangs and pseudo-unions engaging in extortion, and problems spawned by inter-union conflict. Considering that the Committee is already examining the problem of violence in the civil construction sector in connection with Case No. 2982, the Committee will concentrate, in the present case, on the other, more concrete allegations mentioned above.*

486. *Regarding the allegation that the FTCCP and the trade union confederations are using their representation on the boards of SENCICO and CONAFOVICER to give preferential treatment to their members, at the expense of the members of other trade union organizations, the Committee, while observing that the Government does not reply on this point, observes that these are inter-union allegations and that the complainant has not provided the necessary information or details on the anti-trade union nature of the problem. Recalling that questions of trade union rivalry do not, in principle, fall within the remit of the ILO Conventions on freedom of association, the Committee will not pursue its examination of this allegation.*

487. *Regarding the allegation that Government representatives, acting in collusion with the trade union confederations, have publicly declared that they intend to cancel the registrations of organizations not affiliated to those confederations, the Committee observes that the Government does not reply on that point. It further observes that, while the newspaper clippings appended by the complainant show that the Government intends to cancel the registrations of pseudo-unions that are fronts for extortionists and gunmen, they do not show that the Government is acting in collusion with the confederations to harm organizations not affiliated to them. The Committee will therefore not pursue its examination of this allegation.*

488. *The Committee further notes the allegation that, by virtue of the third additional final provision of Supreme Decree No. 007-2014-TR (which introduced modifications to the rules governing the registration of trade union organizations in the civil construction sector), the Administrative Labour Authority is empowered to suspend the registration of a trade union organization whose activities clearly and obviously demonstrate that its purpose has become unlawful, even if the judicial authorities have not ruled on the lawfulness. In that regard, the Committee notes that, in its reply, the Government simply indicates that the RETCC and the RENOCC are intended to safeguard labour rights and eliminate violence at civil construction sites, since they serve to obtain information on ongoing construction works and to coordinate action to prevent violence in the contracting of civil construction workers.*

489. *The Committee observes that the third additional final provision of the abovementioned decree expressly establishes the following: (i) exceptionally, and for the sole purpose of guaranteeing security in the civil construction sector, the Administrative Labour Authority shall suspend the registration of a trade union organization whose activities clearly and obviously demonstrate that its purpose has become unlawful; (ii) the Administrative Labour Authority has a period of ten days in which to request the judicial dissolution of the trade union organization by the competent court and to request, simultaneously, an interim measure aimed at maintaining the suspension; (iii) suspension from the registry is extinguished if, after the ten-day period, no request is made for judicial dissolution or if the corresponding interim measure is not requested; (iv) the administrative suspension of the registration is likewise extinguished by the notification of the resolution rejecting the interim measure; and (v) this administrative power is extraordinary and applies only to trade union organizations established since January 2004 and only until 31 December 2015.*

490. *Given the exceptional nature of the Administrative Labour Authority's power to suspend trade union registrations, the purpose of which is to guarantee security in a sector characterized by violence and the existence of criminal groups and pseudo-unions (a matter being examined by the Committee in the context of Case No. 2982), and observing that the measure is limited in time and must be confirmed by the courts, the Committee considers that the decree in question provides sufficient guarantees to ensure respect for freedom of association. Consequently, the Committee will not pursue its examination of this allegation.*

491. *Regarding CAPECO's refusal to negotiate a national list of grievances presented by the complainant, the Committee notes that the latter, while advocating a single national list,*

given the special nature of the sector, considers that the negotiations should involve representatives of all trade union organizations representing workers. In that regard, the Committee notes the Government's statements that: (i) the single amended text of the Law on Collective Labour Relations (which comprises Decree-Law No. 25593 and Law No. 27912) states that the level at which negotiations take place shall be established by mutual agreement, in other words, that there must be a mutual agreement to start negotiations at a specific level; (ii) the negotiations must be free and voluntary, and CAPECO is not obliged to negotiate with the complainant; and (iii) CAPECO has agreed to negotiate only with the FTCCP pursuant to various Constitutional Court rulings indicating the existence of an obligation to negotiate the list of grievances of the construction sector with that trade union organization.

492. *In that regard, the Committee recalls that, for a trade union at the branch level to be able to negotiate a collective agreement, it should be sufficient for the trade union to establish that it is sufficiently representative. In this case, while observing that neither the complainant nor the Government has provided information on the representativeness of the different trade union organizations in the civil construction sector, the Committee notes that the complainant does not assert that it is the most representative organization in the sector and does not question the level of representativeness of the FTCCP, with which COPECO has been negotiating. As a result, the Committee will not pursue its examination of this allegation.*

The Committee's recommendation

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

CASE NO. 3209

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

Complaint against the Government of Senegal presented by
– the Independent Union of Tax and Domain Officers (SAID) and
– the Authentic Union of Customs Inspectors and Officers (AIOD)

Allegations: The complainant organizations demand that customs officials be able to enjoy trade union rights and allege retaliation against their leaders

494. The Independent Union of Tax and Domain Officers (SAID) and the Authentic Union of Customs Inspectors and Officers (AIOD) presented the complaint in communications dated 3 and 31 March and 7 June 2016.

495. The Government sent its observations in communications dated 23 May and 7 July 2017.

496. Senegal 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 complainants' allegations

497. In their communications of 3 and 31 March and 7 June 2016, the complainant organizations expressed their regret to the fact that Senegal is the only member of the West African Economic and Monetary Union (WAEMU) whose customs officials are not represented by a trade union. This observation, made by the committee on follow-up to the regional forum of WAEMU customs workers at a meeting held in Dakar in December 2011, led the AIOD's members to call for the amendment of Act No. 69-64 of 30 October 1969 on Customs Staff Regulations in order to bring it into line with International Labour Organization (ILO) Convention No. 87, ratified by Senegal, and with the Universal Declaration of Human Rights.

498. The complainants are of the view that the provisions of section 8 of the aforementioned Customs Staff Regulations are in breach of the provisions of Articles 2, 3 and 8 of Convention No. 87, noting that "customs personnel of any grade level, whether in active service, on secondment or on standby, are bound at all times by the following rules: They are not eligible; they do not have the right to strike or to organize; and their freedom of expression, movement, assembly and association is, by decree, subject to the needs of the service". Not only do these legal provisions deprive customs officials of the freedom to exercise their right to organize (including the right to freedom of assembly and expression); they are also the main obstacle to the establishment of a WAEMU regional federation of unions of customs officials and a federation of unions of financial authorities in Senegal (including tax, treasury and customs officials).

499. The complainants allege that AIOD members and supporters have been subjected to arbitrary, disproportionate retaliatory measures since December 2011, when they attended the meeting of the committee on follow-up to the regional forum of WAEMU customs workers. For example, the General Director of Customs notified two customs inspectors, Mr Ndiaga Soumaré and Mr Pape Djigdjam Diop, of disciplinary measures contained in decisions taken on 8 and 16 December 2011, suspending them from work for 30 days for alleged "participation in a public meeting relating to trade union activities and taking a position that discredits institutions". Subsequently, pursuant to MEF/DGD/DPL/BP services notes Nos 01467 and 01480 of 13 and 20 December 2011, the Ministry of the Economy and Finance dismissed the aforementioned customs inspectors from their posts as Heads of the Criminal Investigation and Narcotics Department (BICS) and of the Corporate and Private Sector Regulatory Department (BREP), respectively.

500. In addition, the names of the two customs inspectors, unlike those of their colleagues on the same career progression track, did not appear on the list of promotions in the customs inspectors and officials unit for 2013 and prior years, contained in Presidential Decree No. 2013-733 of 7 June 2013. Consequently, they were not eligible for promotion to the level of principal inspector, grade two, step one, even though they met the legal requirement for time served after receiving a diploma from the National School of Public Administration (ENA). The Personnel and Logistics Director's explanation of the omission of Mr Soumaré's name from the Presidential Decree was that although he was "very intelligent and professional, his conduct had nevertheless been unsatisfactory. His advocacy, which ran counter to the current provisions of the Customs Staff Regulations, prevented him from being assessed in a positive light". Only after 11 months was Mr Soumaré's name finally included in the list of inspector promotions (Presidential Decree No. 2014-572 of 6 May 2014) and it was 13 months before he was assigned. The administrative measures taken against Mr Soumaré and Mr Diop were clearly intended to penalize them for expressing their support for the unionization of customs workers and constitute a breach of Convention No. 87.

501. The complainant organizations protest the scope of the judgments of the country's highest authorities, namely the Constitutional Council and the Administrative Chamber of the Supreme Court, on the issue at hand (see attached) and maintain that these rulings run counter to the position of the Committee on Freedom of Association. Specifically, they invoke Constitutional Court ruling No. 2/C/2013 of 18 July 2013 and Supreme Court ruling No. 61 of 12 December 2013. Both rulings were based on one of the Committee's cases relating to the exercise of the right to strike (Case No. 1719, 304th Report, and Case No. 2383, 336th Report), on the basis of which the Council and the Court concluded that in the ILO's view, "freedom of association is not absolute and lawmakers may prohibit the exercise of this freedom where necessary". The complainant organizations consider that by basing their judgment on the reports of the Committee on Freedom of Association and concluding that section 8 of the Customs Staff Regulations did not violate the right to freedom of association or the Universal Declaration of Human Rights, the Constitutional Council and the Administrative Chamber of the Supreme Court misinterpreted the Committee's conclusions.

502. The complainant organizations draw attention to the principle set out by the Committee on Freedom of Association during its examination of a case in which it clearly indicated that customs officials are covered by Convention No. 87 and therefore have the right to organize (Case No. 2288, 333rd Report). However, the various procedural appeals (amendment of a decision on purely procedural grounds) lodged since 2013 for breach of Convention No. 87 are still pending. According to the SAID and the AIOD, this amounts to denial of justice.

503. Lastly, the complainant organizations note that, in parallel to the legal proceedings, the Ombudsperson, an independent administrative authority, has received two appeals pertaining exclusively to regularization of the administrative status of the sanctioned customs workers. The first was lodged on 13 September 2012 in response to the administrative authority's refusal to appoint Mr Soumaré, nine months after he had been relieved of duty, in breach of section 20 of Act No. 69-64 of 30 October 1969 (the Customs Staff Regulations Act). The second, lodged on 17 June 2013, was prompted by the omission of Mr Soumaré's name from the list of promotions to the grade of principal customs inspector, grade two, step one, contained in Presidential Decree No. 2013-733. The complainant organizations object to the statement, in the annual report of the Ombudsperson (2012–13), that "neither freedom of association nor the right to strike is absolute and lawmakers may restrict or prohibit the freedom of association and the right to strike of customs officials, including where there is an overriding need". Not only does this statement exceed the mandate of the Ombudsperson, who may not intervene in court proceedings or question the soundness of a judicial ruling; it also restricts customs officials' protection from acts of anti-union discrimination.

B. The Government's reply

504. In its communications of 23 May and 7 July 2017, the Government provided its comments in response to the allegations made by the SAID and the AIOD.

505. First, the Government states that if the AIOD wished to become an affiliate of the SAID, it did not send legal notification to the labour administration responsible for the enforcement of the national legislation governing trade union rights. In the case in point, the aforementioned affiliation has no legal basis since, in accordance with section 8 of Act No. 69-64 of 30 October 1969 (the Customs Staff Regulations Act), this category of civil servant, which has paramilitary status, is strictly prohibited from exercising the right to organize or participating in trade union activities.

506. This breach of section 8 of the Customs Staff Regulations led to the disciplinary measures imposed on Mr Soumaré and Mr Diop, both of whom were principal customs inspectors and

AIOD leaders. Both of them lodged a complaint of abuse of power with the Supreme Court, which referred the case to the Constitutional Court through an unconstitutionality procedure so that the Council could review the constitutional validity of section 8 of Act No. 69-64 of 30 October 1969. Subsequently, in its ruling No. 2/C/2013 of 18 July 2013, the Court ruled that section 8 was consistent with the Constitution of Senegal. For its part, the Supreme Court, after reviewing the other substantive grounds raised and the Act's compliance with ILO Convention No. 87, ruled that section 8 was consistent with the principles of the right to organize under the Convention and dismissed the claimants' complaint in ruling No. 61 of 12 December 2013. Consequently, the AIOD lodged a complaint raising a number of issues with the Committee on Freedom of Association. In support of its allegations, the AIOD also mentioned sections 8 and 25 of the Constitution of Senegal, which guarantee exercise of the fundamental freedoms, including the right to organize and the right to strike, respectively.

507. The Government recalls that, pursuant to section 8 of the Customs Staff Regulations, customs personnel of any grade level, whether in active service, on secondment or on standby, are bound at all times by rules which, among other things, prohibit them from exercising the right to strike and the right to organize. Nevertheless, it should be noted at the outset that, in Senegal, customs officials are part of the paramilitary, which ensure the State's defence and security. Therefore, owing to the nature of their functions, they are governed by specific provisions, including crucial restrictions that are essential in light of the overriding need to ensure national security and public welfare at all times. Consequently, in its examination of the constitutionality of section 8 of the Customs Staff Regulations in the case referred to it by the Supreme Court, the Constitutional Court stated, in ruling No. 2/C/2013 of 18 July 2013, that "neither freedom of association nor the right to strike is absolute" and that, pursuant to section 25 of the Constitution of Senegal on the exercise of this freedom and right, "it is the constituent's understanding that there are restrictions on freedom of assembly and the right to strike owing to the need to strike a balance between the defence of professional interests and the public good".

508. The Government recalls that in a prior case examined by the Committee on Freedom of Association, the Committee had deemed that "officials working in the administration of justice and the judiciary are officials who exercise authority in the name of the State and whose right to strike (part of the freedom of association) could thus be subject to restrictions, such as its suspension or even prohibition" (Case No. 2383, 336th Report). The Government notes that the Administrative Chamber of the Supreme Court, per its ruling No. 61 of 12 December 2013 relating to the claimants' complaint of abuse of power, dismissed AIOD's appeal. Indeed, after reviewing the issue of the compliance of section 8 of the Customs Staff Regulations with Senegal's Constitution, its section 98 in particular, the Supreme Court concluded that this article did in fact comply with international standards governing the right to organize, especially since this article had already been deemed to comply with the Constitution, which already incorporates these various international instruments. In support of its ruling, the Supreme Court fittingly cited a case which had been reviewed by the Committee on Freedom of Association, in which the Committee had concluded that "the prohibition of the right to strike of customs officials, who are public servants exercising authority in the name of the State, is not contrary to the principles of freedom of association" (Case No. 1719, 304th Report). In the light of the above, the Government is of the view that neither the freedom of association nor the right to strike is absolute, and the lawmaker may restrict or prohibit the exercise of this freedom and right in the event of an overriding need relating to defence, national security, or ensuring the public good, as under section 8 of Act No. 69-64 of 30 October 1969 on Customs Staff Regulations.

509. As regards the allegation that the administrative measures imposed on Mr Soumaré and Mr Diop are in breach of Convention No. 87, the Government notes that, during the meeting of the committee on follow-up to the regional forum of WAEMU customs officials, held in

Dakar on 1 and 2 December 2011, in which Mr Soumaré and Mr Diop had taken part and represented AIOD, Mr Soumaré, in his opening statement, had suggested that Customs Staff Regulations be brought into line with constitutional provisions on the right to organize. Subsequently, both principal customs inspectors were subjected to disciplinary measures (30-day suspension from work) for alleged "participation in a public meeting relating to trade union activities and taking a position that discredits institutions". In accordance with section 8 of the Customs Staff Regulations, Mr Soumaré and Mr Diop do not have the right to strike, or to organize. Their freedom of expression, movement, assembly and association is, by decree, subject to the needs of the service. These are the grounds for the administrative measures taken by the authority in response to the complainants' actions.

510. In addition, the Government is of the view that the claim by Mr Soumaré and Mr Diop of a breach of their right to organize pursuant to Conventions Nos 87 and 98 is unfounded, since customs officials do not have the right to organize or to strike. The Government notes further that the disciplinary measures taken against the complainants are not meant to undermine the freedom of association or call into question the relevance of Conventions Nos 87 and 98. Rather, their aim is to penalize the clear violation by the complainants of the provisions of the Customs Staff Regulations. It is on this basis that the competent administrative authority imposed the relevant sanctions in order to enforce the law and implement the relevant disciplinary measures.

511. With regard to compliance of the rulings of the Constitutional Court and the Supreme Court with ILO Convention No. 87 and the Universal Declaration of Human Rights, the Government recalls that the Constitutional Court, to which the Supreme Court had referred a case to examine the constitutional validity of section 8 of the Customs Staff Regulations, had concluded, in its ruling of 18 July 2013, that this provision was indeed in line with the Constitution. In its ruling of 12 December 2013, the Administrative Chamber of the Supreme Court also confirmed the constitutionality of this provision and the consistency of Customs Staff Regulations with Convention No. 87 and dismissed the complainant's complaint on the merits.

512. Contrary to the complainants' allegations, the respective rulings of both the Constitutional Court and the Administrative Chamber of the Supreme Court had been based not solely on the reports of the Committee on Freedom of Association, but also on other legal instruments, namely the International Covenant on Economic, Social and Cultural Rights of 16 December 1966 and the Universal Declaration of Human Rights, reaching the conclusion that section 8 of the Customs Staff Regulations was not in breach of the Constitution.

513. Lastly, with regard to the allegation that the 2012–13 report of the Ombudsperson is in breach of ILO Convention No. 87, the Government reaffirms the conclusions in the report: "that neither freedom of association nor the right to strike is absolute and that lawmakers may restrict or prohibit customs officials from exercising that freedom and right, including where there is an overriding need". The Ombudsperson also noted that "customs staff, as a paramilitary corps, provide a public service which cannot tolerate deliberate interruption that endangers the functioning of the State. The general interest is thus able to justify the prohibition by the legislator of the right to strike and freedom of association to the customs personnel". The Government emphasizes that while the Ombudsperson is an independent administrative authority, it is required to respect the institutions of the Republic, including its judicial institutions, as well as the laws governing the various administrative functions. Therefore, the Ombudsperson must respect the final rulings issued by national courts. In its report, the Ombudsperson is merely respecting the ruling issued by a higher court at first and last instance. This type of ruling applies erga omnes to all state entities and is equally binding on the Ombudsperson and the Supreme Court, which had referred the aspects of the case that raised issues of constitutionality while ruling on the issues raised therein. In conclusion,

the position expressed by the Ombudsperson in its report should not be deemed to constitute interference in court proceedings.

C. The Committee's conclusions

514. *The Committee notes that this case relates to allegations of denial of union rights of customs officials, and retaliatory measures taken against union leaders calling for a legislative amendment to that end. This case is submitted by the Independent Union of Tax and Domain Officers (SAID) and the Authentic Union of Customs Inspectors and Officers (AIOD), affiliated thereto.*

515. *Firstly, the Government asserts that AIOD's affiliation with SAID was not legally notified to the labour administration responsible for ensuring enforcement of national legislation governing union rights, and therefore has no legal basis since the Customs Staff Regulations expressly prohibit this category of civil servant, which has paramilitary status, from exercising the right to organize or to participate in union activities. The Committee recalls that, under the terms of the special procedures for the examination in the International Labour Organization (ILO) of complaints alleging violations of freedom of association (paragraph 32 of the procedures), the Committee has full freedom to decide whether an organization may be deemed to be an employers' or workers' organization within the meaning of the ILO Constitution, and it does not consider itself bound by any national definition of the term. In this case, the Committee is of the view that the denial of the customs officials' union rights is clearly a matter that is relevant to an organization that represents this category of worker.*

516. *The Committee notes that, according to the complainants, the provisions of section 8 of the Customs Staff Regulations are a breach of the provisions of ILO Convention No. 87, whereby workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization (Article 2); public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof (Article 3); 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 this Convention (Article 8). Section 8 of the Customs Staff Regulations states that "customs personnel of any grade level, whether in active service, on secondment, or on standby, are bound at all times by the following rules: They are not eligible; they do not have the right to strike or to organize; their freedom of expression, movement, assembly and association is, by decree, subject to the needs of the service". This article thus runs counter to the provisions of Convention No. 87 by denying customs officials the freedom to exercise their right to organize (including the right to freedom of assembly and of expression). It also impedes the establishment of a federation of unions of the financial authorities in Senegal (including tax, treasury and customs officials) and of a regional federation of unions of customs officials in the West African Economic and Monetary Union (WAEMU). In support of its allegations, AIOD also notes that the provisions of sections 8 and 25 of Senegal's Constitution guarantee fundamental freedoms, including freedom of association and the right to strike. The Committee takes note of the Government's statement that, in Senegal, customs officials are part of the paramilitary, which ensures the State's defence and security. Therefore, owing to the nature of their functions, they are governed by specific provisions, including crucial restrictions that are essential in light of the overriding need to ensure national security and the public good at all times. In 2013, the higher courts (the Constitutional Council and the Supreme Court) concluded that "neither freedom of association nor the right to strike is absolute", and pursuant to section 25 of Senegal's Constitution on this freedom and right, "it is the constituent's understanding that there are restrictions on the freedom of assembly and the right to strike owing to the need to strike a balance between the defence of professional interests and the public good".*

517. *The Committee notes that the Government recalls a case previously examined by the Committee, in which it concluded that "officials working in the administration of justice and the judiciary are officials who exercise authority in the name of the State and whose right to strike (part of the freedom of association) could thus be subject to restrictions, such as its suspension or even prohibition (Case No. 2383 (United Kingdom), 336th Report (2005)). According to the Government, the Supreme Court reviewed the issue of the compliance of section 8 of the Customs Staff Regulations with Senegal's Constitution and concluded that this article did in fact comply with international standards governing the right to organize, especially since it had already been deemed to comply with the Constitution. In support of its ruling, the Supreme Court cited a case which had been reviewed by the Committee on Freedom of Association, in which the Committee had concluded that "the prohibition of the right to strike of customs officials, who are public servants exercising authority in the name of the State, is not contrary to the principles of freedom of association" (Case No. 1719 (Nicaragua), 304th Report (1996)). In the light of the foregoing, the higher courts (the Constitutional Court and the Supreme Court) concluded that neither freedom of association nor the right to strike is absolute and lawmakers may restrict or prohibit the exercise of this freedom and right, including in the event of an overriding need relating to defence, national security or the public good pursuant to section 8 of Act No. 69-64 of 30 October 1969 (the Customs Staff Regulations Act). The Constitutional Court, to which the Supreme Court had referred a case to examine the constitutional validity of section 8 of the Customs Staff Regulations, had concluded, in its ruling of 18 July 2013, that this provision was indeed in line with the Constitution. In its ruling of 12 December 2013, the Administrative Chamber of the Supreme Court also confirmed the constitutionality of this provision and the consistency of Customs Staff Regulations with Convention No. 87 and dismissed the complainant's complaint on the merits.*

518. *The Committee takes note of the complainants' position that these rulings run counter to the Committee's position and that the Constitutional Council and the Administrative Chamber of the Supreme Court misinterpreted the Committee's conclusions. The complainant organizations maintain that on the contrary, the Committee has clearly established the principle that customs officials are covered by Convention No. 87 and therefore have the right to organize (Case No. 2288 (Niger), 333rd Report (2004)).*

519. *The Committee recalls that, pursuant to Convention No. 87, workers, without distinction whatsoever, shall have the right to establish and to join organizations of their own choosing. While Article 9 of the Convention does authorize exceptions to the scope of its provisions for the police and the armed forces, the Committee would recall that the members of the armed forces who can be excluded should be defined in a restrictive manner. [See* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 226.] Consequently, the Committee recalls the principle that customs officials are covered by Convention No. 87 and therefore have the right to organize [see* ***Digest****, op. cit., para. 233]. The Committee also clarified, during its examination of a case, that the functions exercised by employees of customs and excise, immigration, prisons and preventive services should not justify their exclusion from the right to organize (see Case No. 2432 (Nigeria), 343rd Report (2006)).*

520. *The Committee nevertheless notes 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) [see* ***Digest****, op. cit., para. 576]. The Committee recalls that it already formulated conclusions establishing that certain customs officials exercise authority in the name of the State. In such cases, the right may be restricted. During its examination of a case, the Committee also recalled that when the right to strike is restricted or prohibited, the workers should be afforded adequate protection so as to compensate for the restrictions*

imposed on their freedom of action in the event of disputes with their employers. Such restrictions to the right to strike should include appropriate, impartial and rapid conciliation and arbitration procedures, in accordance with the various steps in which those concerned should be able to participate, and in which the rulings should be implemented rapidly and completely (see Case No. 2288 (Niger), 333rd Report (2004)).

521. *While welcoming the interest in its conclusions and principles, the Committee notes that Constitutional Court ruling No. 2/C/2013 of 18 July 2013 and Supreme Court ruling No. 61 of 12 December 2013 seem to represent a broader interpretation of the Committee's aforementioned position on customs officials' right to organize.*

522. *The Committee is of the view that section 8 of Act No. 69-64 of 30 October 1969 (the Customs Staff Regulations Act) is not consistent with the rights of all workers, including customs officials, to establish and join organizations of their own choosing. Consequently, the Committee proposes that the Government take the necessary steps to amend this provision in order to remove the prohibition of customs officials' exercise of their trade union rights. Nevertheless, the Committee, recognizing the particular nature of the duties performed by this category of personnel, is of the view that the restriction on and prohibition of the right to strike (in accordance with section 8, at present) are not inconsistent with the principles of freedom of association per se but should include appropriate, impartial and rapid conciliation and arbitration procedures, in accordance with the various steps in which those concerned should be able to participate, and in which the rulings should be implemented rapidly and completely. Consequently, the Committee requests the Government to ensure that some form of compensatory guarantee is provided to customs workers in so far as their right to strike is restricted or denied and to keep the Committee informed of all such measures taken in that regard.*

523. *The Committee takes note of the complainants' allegation that the administrative measures taken against the two AIOD leaders, Mr Ndiaga Soumaré and Mr Pape Djigdjam Diop, reflect the authorities' clear intention to penalize them for supporting the unionization of customs officials during the meeting of the committee on follow-up to the regional forum of WAEMU customs officials, held in December 2011. The Committee notes that in December 2011, the General Director of Customs notified Mr Soumaré and Mr Diop of disciplinary measures suspending them from work for 30 days for alleged "participation in a public meeting relating to trade union activities and taking a position that discredits institutions". Subsequently, the aforementioned customs inspectors were dismissed from their posts as Heads of the Criminal Investigation and Narcotics Department (BICS) and of the Corporate and Private Sector Regulatory Department (BREP), respectively. Lastly, the Committee takes note of the allegations pertaining to discriminatory measures in respect of Mr Soumaré's career advancement, including the claim that he was unassigned for 13 months and had to wait 11 months before he could be included in the list of promotions pertaining to colleagues in the same career progression track.*

524. *The Committee notes that, according to the Government, the Customs Bureau decided to sanction Mr Soumaré and Mr Diop for alleged "participation in a public meeting relating to activities of a trade union nature, and taking of a position that discredits institutions" because they had suggested, during the meeting of the WAEMU committee on follow-up to the regional forum of customs officials, that the Customs Staff Regulations be brought into line with the Constitution's provisions on trade union rights. The Government asserts that in accordance with section 8 of the Customs Staff Regulations, Mr Soumaré and Mr Diop do not enjoy freedom of expression, movement, assembly or association. Therefore, the administrative measures taken by the authority are justified by the complainants' actions. In addition, the Government is of the view that Mr Soumaré and Mr Diop have no basis for invoking a breach of their trade union rights under ILO Conventions Nos 87 and 98 since their status as customs officials denies them the right to exercise freedom of association and*

the right to strike. Therefore, the disciplinary measures imposed on Mr Soumaré and Mr Diop sought not to violate their right to freedom of association, but rather to impose appropriate sanctions for a clear violation of the law, which they failed to respect.

525. *The Committee notes with concern that, according to information from the Government and the complainant organizations, Mr Soumaré and Mr Diop were subjected to disciplinary measures merely for advocating, within a representation mandate, recognition of their trade union rights. The Committee urges the Government to ensure that they are no longer penalized on these grounds and that the judicial appeals relating to the measures taken by the administrative authorities are treated taking these recommendations into account.*

The Committee's recommendations

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

(a) The Committee proposes that the Government take the necessary measures to amend section 8 of Act No. 69-64 of 30 October 1969 (the Customs Staff Regulations Act) in order to remove the prohibition of customs workers' exercise of their trade union rights.

(b) The Committee requests the Government to ensure that appropriate, impartial and rapid conciliation and arbitration procedures are afforded to customs workers as compensatory guarantees when their right to strike is restricted or denied, and that it keep the Committee informed in that regard.

(c) The Committee urges the Government to ensure that Mr Soumaré and Mr Diop are no longer penalized merely for calling for recognition of their union rights and that the judicial appeals relating to the measures taken by the administrative authorities are treated taking the Committee's recommendations into account.

CASE NO. 3240

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

Complaint against the Government of Tunisia presented by the Tunisian Workers' Federation (UTT)

Allegations: The complainant organization denounces obstacles to the free exercise of the right to organize in certain enterprises, its exclusion from national social dialogue, and the failure of the Government to establish the social dialogue bodies provided for in the Labour Code

527. The complaint is contained in a communication dated 15 August 2016 from the Tunisian Workers' Federation (UTT).

528. The Government sent its observations in a communication dated 29 May 2017.

529. 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

530. In a communication dated 15 August 2016, the UTT states that it was established in May 2011 as a result of the trade union pluralism advocated by the national Constitution. It cites a total of 1,500 affiliated trade unions, spread over all regions and sectors of activity. The UTT estimates that it has 150,000 members, representing 6.5 per cent of the active population.

531. In general terms in its complaint, the UTT denounces obstacles to the exercise of freedom of association faced by affiliated organizations in enterprises, particularly the exercise of the right to information, the right of assembly and the right to engage in collective bargaining. The complainant also indicates that its leaders, unlike those of other trade unions, have been refused leave of absence for trade union purposes, even though this is provided for in enterprise regulations. In support of its allegations, the UTT supplies a copy of provisions of the respective staff regulations of both the Maritime and Ports Authority and the Grain Marketing Board, which state that "where an employee is appointed as a permanent representative of one of the unions of which staff are members, he/she shall be granted a period of secondment, at the request of the union, for the whole of his/her union term of office. During the period of secondment, he/she shall retain his/her right to be promoted …".

532. More specifically, the complainant organization alleges the unjustified dismissal of trade union officials by Carthage Cement (hereinafter: the enterprise). Mr Faisal Zoghbi, the general secretary of the primary UTT-affiliated union at the enterprise, was dismissed by the management on the same day that the latter was notified of the establishment of the union. With regard to Mr Zoghbi, the complainant denounces the following: (i) the management of the enterprise deprived him of his company car on the day it was notified of the establishment of the union (18 December 2015); (ii) the management decided to transfer him to other duties the same day; and (iii) the management decided to dismiss him on 21 December 2015 despite the fact that his direct supervisor had granted him annual leave a few days earlier (19 December 2015). The UTT also denounces intimidation of union members.

533. Moreover, the UTT recalls that section 355 of the Labour Code provides for the establishment of a national committee on social dialogue, whose prerogatives would include determining the representativeness of trade unions in the event of a dispute regarding the most representative status of one or more unions (section 39 of the Code). The UTT states that this committee has never been set up and that the Government is using the situation as justification for approving representative status only for the Tunisian General Federation of Labour (UGTT) and the Tunisian Federation of Industry, Commerce and Craft Trades (UTICA), thereby excluding the other legally constituted representative organizations from social dialogue. The UTT indicates that the national committee for social dialogue would be the appropriate forum for managing the new situation of trade union pluralism which has existed since 2011.

534. Lastly, the UTT denounces the fact that it has still not received its due share of the Public Economic Development Fund in the same way as the other workers' and employers' unions, in accordance with section 58 of the Finance Act of 25 December 1974.

535. In conclusion, the UTT calls on the Committee on Freedom of Association to remind the Government of its international commitments relating to freedom of association, the right to

collective bargaining and the protection of workers' representatives. The Government should also be required to take the necessary steps to remove the obstacles to the exercise of freedom of association and to finally engage in inclusive social dialogue with all the legally established trade unions.

B. The Government's reply

536. The Government provided its observations in reply to the allegations of the UTT in a communication dated 29 May 2017. As regards the allegations of anti-union measures against the general secretary of the primary UTT-affiliated union in a cement company, the Government indicates that it requested information directly from the enterprise. In its reply, the enterprise indicates that Mr Zoghbi was a sales representative who was transferred to a different department in December 2015. The latter refused to take up his new post and was therefore summoned before the disciplinary board in January 2016. The board decided to dismiss him. The Government explains that the enterprise did not seek authorization from the director-general of the labour inspection and conciliation services to dismiss Mr Zoghbi, a trade union representative, in accordance with section 166 of the Labour Code. Under this provision of the Labour Code, the director-general of the labour inspection and conciliation services must issue a reasoned opinion within ten days of submission of a request for authorization. If this opinion is disregarded, the dismissal becomes arbitrary with regard to its form. In this regard, the Government indicates that Mr Zoghbi took legal action to appeal against his dismissal.

537. As regards the complainant organization's allegations concerning the supposed failure of the Government to fulfil its international commitments and those contained in the Labour Code, the Government indicates that, under section 170 of the Labour Code, the labour inspectorate is responsible for: (i) enforcing the legislation, regulations and collective agreements relating to or deriving from employment relations; (ii) providing information and technical advice to employers and workers on the most effective means of applying the labour legislation; (iii) notifying the competent authorities of any defect or abuse which is not specifically covered by the legal provisions in force; (iv) drawing up statistics concerning conditions of work and employment in all sectors of activity under its control (section 179 of the Labour Code); and (v) assisting governors in their conciliation mission (section 172 of the Labour Code). The labour inspectorate is also responsible for dealing with individual disputes and supervising conciliation between the social partners, in order to oversee disputes and monitor social dialogue structures within the enterprise, with a view to overcoming the difficulties faced by the social partners. However, the law does not stipulate that the inspectorate should intervene in the trade union election process, which is a function that belongs to union representatives.

538. The Government also indicates that the Ministry of Social Affairs treats all the social partners on an equal footing in observance of the principles of freedom of association, including trade union pluralism. In this context, the Ministry of Social Affairs works with all the social partners to establish a system for determining trade union representativeness on the basis of consensus among all the parties which is compatible with the specific economic and social realities and the system of labour relations in Tunisia. This process of determination has the support of the ILO. In this regard, further to the establishment of a tripartite committee for this purpose, an agreement has been reached with a view to: (i) defining the system for establishing trade union representativeness (absolute or relative representativeness; different levels – national, regional, sectoral and institutional); (ii) establishing precise and objective criteria for determining union representativeness; (iii) specifying the competencies of unions according to their degree of representativeness; (iv) specifying the different facilities granted to unions according to their representativeness; (v) determining the body responsible for evaluating the degree of representativeness of

unions; and (vi) determining the body responsible for dealing with appeals relating to the outcome of the evaluation of union representativeness.

539. The Government adds that the question of determination of trade union representativeness will also be examined by the national council for social dialogue, the establishment of which is the subject of a bill recently submitted to Parliament.

C. The Committee's conclusions

540. *The Committee notes that the present case is concerned with allegations of obstacles to the free exercise of the right to organize in an enterprise, exclusion of the complainant organization from national tripartite consultations, and failure of the Government to fulfil its obligation to establish social dialogue bodies as provided for in the Labour Code.*

541. *The Committee notes the general allegations of the UTT concerning obstacles to the free exercise of freedom of association faced by affiliated organizations, in particular the right to information, the right of assembly and the right to collective bargaining. The Committee notes the specific indication concerning the situation of union officials at the enterprise, in particular the general secretary of the primary union affiliated to the UTT, Mr Faisal Zoghbi, who was allegedly the victim of discriminatory measures from the day that the management was notified of the establishment of the union, namely: (i) confiscation of his company car; (ii) transfer to other duties; and (iii) unjustified dismissal. The Committee notes the reply of the Government, which requested information directly from the enterprise. The Government indicates that Mr Zoghbi was a sales representative who was transferred to another department in December 2015. Since the latter refused to take up his new post, he was summoned before the disciplinary board in January 2016 and then dismissed. The Committee also notes the Government's indication that the enterprise did not seek authorization from the director-general of the labour inspection and conciliation services, as required by section 166 of the Labour Code, and that Mr Zoghbi took legal action to appeal against his dismissal. In this regard, the Committee observes that section 166 of the Labour Code provides that any dismissal of a staff delegate, whether titular or substitute, envisaged by the employer must be submitted by the latter to the competent regional labour inspectorate, and that the dismissal is considered wrongful if the established procedure is not followed or the labour inspector's opinion is disregarded, unless a genuine and substantive reason for the dismissal is established in the competent courts. Section 166 also provides that the employer and the worker concerned shall retain their right to appeal to the competent courts.*

542. *The Committee sees fit to recall 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]. The Committee, noting the indication that Mr Zoghbi took legal action to appeal against his dismissal, requests the Government to keep it informed of the outcome of the legal appeals and any follow-up action. In view of the time that has elapsed since the events were reported, the Committee highlights the fact that providing adequate protection against acts of anti-union interference and discrimination calls for rapid appeal procedures and the imposition of sufficiently dissuasive penalties for any infringements.*

543. *As regards the complainant organization's allegations that trade union leaders are being refused leave of absence for trade union purposes, even though this is provided for in staff or enterprise regulations, the Committee's view is that a systematic refusal to grant secondment for representative purposes, as provided for in the regulations in force, without good reason is not conducive to harmonious labour relations and should therefore be avoided. With regard to the granting of free time to workers' representatives, the Committee recalls that the granting of facilities to representatives of public employees' organizations, including the granting of free time, must not impair the efficient operation of the administration or service concerned.*

544. *Moreover, the Committee notes the assertion of the UTT that the absence of a national committee for social dialogue, as provided for by the terms of section 355 of the Labour Code, whose prerogatives would include settling any disputes regarding trade union representativeness, serves as a pretext for the Government to approve representative status for the UGTT and UTICA only, and to exclude all other legally constituted representative organizations from social dialogue, at all levels. The Committee notes the Government's statement that it treats all the social partners equally and observes the principles of freedom of association, including trade union pluralism. According to the Government, the Ministry of Social Affairs works with all the social partners to establish a system for determining trade union representativeness which is the subject of consensus among all the parties and is compatible with specific economic and social realities and the established system of labour relations. This process of determination has the support of the ILO. An agreement has been reached with a view to: (i) defining the system for establishing trade union representativeness (absolute or relative representativeness; different levels – national, regional, sectoral and institutional); (ii) establishing precise and objective criteria for determining union representativeness; (iii) specifying the competencies of unions according to their degree of representativeness; (iv) specifying the different facilities granted to unions according to their representativeness; (v) determining the body responsible for evaluating the degree of representativeness of unions; and (vi) determining the body responsible for dealing with appeals relating to the outcome of the evaluation of union representativeness. The Government adds that a bill was recently submitted to Parliament for the establishment of a national council for social dialogue, which will also examine the question of trade union representativeness.*

545. *The Committee refers to various cases concerning Tunisia which it has examined in recent years and its long-standing recommendations 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 (see Cases Nos 2994 and 3095). While appreciating the information supplied once again on the measures taken in this regard with technical assistance from the Office, the Committee expects the Government to complete without delay the tripartite consultations which have been initiated. The Committee once again underlines the need to ensure that these consultations are inclusive by taking steps to extend their scope to all workers' and employers' organizations concerned, in order to take the various views into consideration. The Committee also considers that it is only on this condition that any privileges agreed upon for certain organizations vis-à-vis others – on the basis of clearly established representativeness – will be understood and accepted. The Committee expects the Government to report tangible progress in this respect in the near future.*

546. *The Committee notes the allegations of the UTT that it has still not received its due share of the Public Economic Development Fund in the same way as the other workers' and employers' organizations, in accordance with section 58 of the Finance Act of 25 December 1974. The Committee requests the Government to send its comments on this matter.*

The Committee's recommendations

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

(a) The Committee requests the Government to keep it informed with regard to the outcome of the legal appeal lodged by Mr Zoghbi against his dismissal in January 2016, and with regard to any follow-up action.

(b) The Committee expects the Government to complete the tripartite consultations which have been initiated to lay down clear and pre-established criteria for determining trade union representativeness. The Committee once again underlines the need to ensure that these consultations are inclusive by taking steps to extend their scope to all workers' and employers' organizations concerned, in order to take the various views into consideration. The Committee expects the Government to report tangible progress in this respect in the near future.

(c) The Committee requests the Government to send its comments in reply to the allegations of the UTT that it has still not received its due share of the Public Economic Development Fund, in accordance with section 58 of the Finance Act of 25 December 1974.

CASE NO. 3016

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

Complaint against the Government of the Bolivarian Republic of Venezuela presented by
– the Union of Workers of the Ministry of Science and Technology (SITRAMCT)
– the National Alliance of Cement Workers (ANTRACEM) and
– the National Union of Workers of Venezuela (UNETE)

Allegations: Non-compliance with clauses of various collective agreements and anti-union practices in public cement enterprises, as well as dismissals and persecution of trade union activists and officials in those enterprises

548. The Committee last examined this case at its October–November 2015 meeting, where it presented an interim report to the Governing Body [see 376th Report, paras 1009–1038, approved by the Governing Body at its 325th Session (November 2015)].

549. The Government sent its observations in a communication dated 2 September 2016.

550. 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

551. At its meeting in October–November 2015, the Committee made the following interim recommendations on the allegations presented by the complainant organizations [see 376th Report, para. 1038]:

(a) The Committee urges the Government to promote collective bargaining without delay in the enterprise CEMEX de Venezuela CA.

(b) The Committee urges the Government to take measures to ensure the implementation of the wage clauses of the collective agreement in the enterprise Venezolana de Cementos SACA.

(c) The Committee invites the complainants to indicate whether, after the strike referred to in the allegations, agreements were signed regarding the violations of the collective agreement in the enterprise CA Vencemos.

(d) The Committee requests the Government to ensure full compliance with the collective agreements in the public enterprises in the cement sector.

(e) As regards the union member Mr Manuel Rodriguez (whose wages were allegedly cut in violation of the collective agreement), the union member Mr Alexander Santos (who, according to the allegations, was subjected to a wage cut and harassment), and the union official Mr Ulice Rodríguez (suspension of wages and benefits, on a decision of the enterprise Venezolana de Cementos SACA and the arbitrary reduction of his wages by 80 per cent in violation of the collective agreement), the Committee regrets that the Government has not informed it of whether the three union members in question did actually file judicial proceedings or of the possible outcomes of any such proceedings. The Committee invites the Government and the complainant organizations to keep it informed in this regard.

(f) Observing that the union organization the UNETE submitted allegations and documents in June and July 2014, according to which Mr Orlando Chirinos was dismissed (following further dismissal proceedings) and the dismissal proceedings against Mr Ulice Rodríguez have been maintained in retaliation for the complaints filed with the ILO high-level tripartite mission in January 2014, the Committee requests the Government to provide, as a matter of urgency, additional information on these allegations and on the grounds for dismissal given in the proceedings under examination concerning the union members Mr Ulice Rodríguez, Mr José Vale, Mr Adrián Zerpa and Mr Waldemar Pastor Crawther Sánchez, and to keep it informed of the progress of the different proceedings.

(g) The Committee requests the Government to submit these problems to tripartite dialogue with trade union organizations and employers in the cement sector with a view to expediting the identification of effective solutions to the various problems raised in the complaint, and to keep it informed in this regard.

B. The Government's reply

552. In its communication of 2 September 2016, the Government provides its observations on the Committee's recommendations.

553. Regarding recommendation (a) (to promote collective bargaining without delay in the enterprise CEMEX de Venezuela CA), the Government informs the Committee that the enterprise changed its name to Venezolana de Cementos SA (hereinafter "cement enterprise No. 1") and that there are currently 47 collective agreements in the cement industry. The Government requests the Committee to ask the complainants for more information regarding the trade unions and enterprises concerned, while reiterating that the Government promotes and guarantees collective bargaining in the cement industry, as in all other sectors.

554. Regarding recommendation (b) (measures to ensure the implementation of the wage clauses of the collective agreement in the enterprise Venezolana de Cementos SACA (hereinafter

"cement enterprise No. 2"), the Government reports that this enterprise informed the Government that it complies with wage clauses and upholds workers' other labour rights. The Government adds that, should there be a violation of collective agreements, the workers can file a complaint with the labour inspectorates, as provided for in law.

555. Regarding recommendation (d) (to ensure full compliance with the collective agreements in the public enterprises in the cement sector), the Government states that, in general, it guarantees and monitors compliance with collective agreements in the cement industry, as in all other sectors. The Government adds that all workers in the country have the right to collective bargaining and that legislation provides for mechanisms to settle through conciliation any disputes arising in relation to compliance with collective agreements.

556. Regarding recommendation (e) (complaints and judicial proceedings filed by three trade union members), the Government provides the following information:

(i) Mr Ulice Rodríguez referred his case to the labour inspectorate, which decided that the issue should be resolved by judicial process. In the course of these proceedings, the worker alleged that the enterprise had failed to make payments correctly on a number of items, estimating the amount owing to be 31,741.40 Venezuelan bolivars (US$3,144 according to the official exchange rate). The Government reports that, on 23 November 2015, the Eighth High Court of the District Labour Tribunal of the Caracas metropolitan area issued a ruling partially in favour of the complainant and ordered the enterprise to pay the outstanding amounts specified in the ruling.

(ii) With regard to Mr Alexander Santos, the Trujillo State Inspectorate was responsible for handling the procedure for reinstatement and payment of wages due. In 2009, the Inspectorate, in an administrative decision, ruled in favour of the worker. However, the enterprise failed to comply with the decision. With regard to the judicial proceedings, the Government states that there was no way of verifying whether any legal action had been taken by the worker, and therefore asks the Committee to request more information from the complainants.

(iii) With regard to Mr Manuel Rodríguez, no information was received, and the Government therefore requests the Committee to seek more detailed information from the complainants.

557. Regarding recommendation (f) (allegations of anti-union dismissal proceedings), the Government denies that trade unions or workers who have lodged complaints with the ILO have been subject to reprisals or any other measures, and states that it respects the free exercise of democracy and freedom of expression. The Government informs the Committee that: (i) with regard to Mr Orlando Chirinos, a ruling was made in favour of the dismissal proceedings on 20 June 2014, but the worker may appeal against this decision in the courts; (ii) with regard to Mr Pastor Crawther, the charges of misconduct invoked as a reason to authorize his dismissal were declared inadmissible and the dismissal was therefore not authorized; (iii) with regard to Mr Adrián Zerpa, the proceedings were withdrawn by the enterprise, closing the case in question; (iv) with regard to Mr Ulice Rodríguez, the labour inspectorates reported that there were currently no active dismissal proceedings; and (v) with regard to Mr José Vale, following an exhaustive review of inspectorate records, no proceedings against him were found.

558. Regarding recommendation (g) (to submit these problems to tripartite dialogue in the cement sector), the Government indicates that, as is the customary practice in the country, labour inspectorates have set up round tables for bargaining, dialogue and conciliation between trade union organizations and enterprises in the cement industry and other sectors. The Government, for example, refers to a dialogue round table set up in the offices of the Lara

State Labour Inspectorate, Pio Tamayo, between cement enterprise No. 2 (Planta Lara) and the Union of Cement Workers in Lara State (SINTRACEL).

559. Lastly, the Government draws attention to the complainants' failure to provide the information requested on several occasions, as well as the lack of willingness by the complainants to move forward with the complaint, and asks that the case be closed.

C. The Committee's conclusions

560. *The Committee observes that, concerning recommendations (a), (b),(d) and (g) regarding the promotion of collective bargaining, tripartite dialogue and respect for collective agreements in the cement industry, the Government provides general information. In particular, regarding the promotion of collective bargaining without delay in cement enterprise No. 1, the Government reiterates its commitment to collective bargaining and requests more details from the complainants to enable it to reply – without providing further information on any negotiating tables set up and agreements concluded. In addition, regarding the recommendation to take measures to ensure that the clauses of the collective agreements, particularly the wage clauses of the collective agreement with cement enterprise No. 2, are implemented, the Government reports that the enterprise concerned claims that it is complying with wage clauses and upholds other labour rights and recalls that the workers can file complaints about non-compliance with collective agreements. Furthermore, the Committee observes that the complainants have not provided any additional information for more than three years. In these circumstances, the Committee urges the Government to provide more detailed information concerning recommendations (a), (b),(d) and (g) of its previous examination of the case, regarding the promotion of collective bargaining, tripartite dialogue and respect for collective agreements in the cement industry. Furthermore, it invites the Government to address all outstanding matters relating to these issues by setting up a dialogue round table with the interested organizations, and requests the Government to keep it informed in this regard, as well as of the number and coverage of agreements concluded in the enterprises concerned.*

561. *Regarding recommendation (c), the Committee observes that the complainants have failed to provide the information requested of them and, given the time that has elapsed, the Committee will not pursue its examination of this aspect of the case.*

562. *Regarding recommendation (e), in which the Committee had requested the Government and the complainants to provide information on the complaints and judicial proceedings filed by the three trade union members, the Committee notes the information provided by the Government: a legal ruling partially in favour of Mr Ulice Rodríguez in his complaints relating to incorrect amounts paid by the enterprise; and an administrative decision in favour of Mr Alexander Santos regarding reinstatement and payment of wages due. However, as the enterprise failed to comply with the decision, there is no way of verifying whether any subsequent legal action had been taken, and it has not been possible to obtain any information relating to Mr Manuel Rodríguez. As no additional information has been received from the complainants, the Committee once again invites them to provide any detailed information at their disposal and requests the Government, on the basis of that information, to state whether Mr Alexander Santos and Mr Manuel Rodríguez did actually file judicial proceedings and to provide information on the outcome of such proceedings, and to provide a copy of the court decision ruling partially in favour of Mr Ulice Rodríguez.*

563. *Regarding recommendation (f) (allegations of anti-union dismissal proceedings), the Committee observes that the Government reports that, in four of the five alleged cases, the dismissal proceedings were unsuccessful or did not take place. With regard to the only case in which dismissal was authorized (Mr Orlando Chirinos), the Committee observes that the application for dismissal was declared admissible, given the prior authorization by the*

labour inspectorate on the grounds of an allegation (dereliction of duty) that is unchallenged by the complainants. As no additional information has been received from the complainants in this regard, the Committee will not pursue its examination of this allegation.

The Committee's recommendations

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

(a) The Committee urges the Government to provide more detailed information concerning recommendations (a), (b),(d) and (g) of its previous examination of the case, regarding the promotion of collective bargaining, tripartite dialogue and respect for collective agreements in the cement industry. Furthermore, it invites the Government to address all outstanding matters relating to these issues by setting up a dialogue round table with the interested organizations, and requests the Government to keep it informed in this regard, as well as of the number and coverage of agreements concluded in the enterprises concerned.

(b) The Committee once again invites the complainant organizations to provide any detailed information at their disposal and requests the Government, on the basis of that information, to state whether Mr Alexander Santos and Mr Manuel Rodríguez did actually file judicial proceedings and to provide information on the outcome of such proceedings, and to provide a copy of the court decision ruling partially in favour of Mr Ulice Rodríguez.

CASE NO. 3187

DEFINITIVE REPORT

Complaint against the Government of the Bolivarian Republic of Venezuela presented by
– the United Trade Union of Workers in the Steel and Allied Industries of the State of Bolívar (SUTISS) and
– the National Union of Workers of Venezuela (UNETE)

Allegations: Persecution, detention and criminal prosecution of three steel workers in retaliation for their trade union activities

565. The complaint is contained in communications dated 5 November 2015 and 11 April 2016 from the United Trade Union of Workers in the Steel and Allied Industries of the State of Bolívar (SUTISS) and the National Union of Workers of Venezuela (UNETE).

566. The Government sent its observations in a communication dated 2 September 2016.

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

A. The complainant's allegations

568. In its communications of 5 November 2015 and 11 April 2016, the complainant organizations allege the persecution, detention and criminal prosecution of workers Mr Leinys Yeleida Quijada Jiménez, Mr Rederick Julia Leiba Guzmán and Mr Heberto Tadeo Bastardo Morao because of their participation in a workers' protest at the state-owned Orinoco steel corporation (SIDOR, hereinafter "the steel company") over its failure to comply with the 2014–16 collective agreement.

569. The complainants allege that: (i) the workers in question were initially targeted by the Bolivarian National Intelligence Service (SEBIN) through activities such as surveillance of their family homes and the planting of weapons so as to bring charges against them; (ii) on 19 September 2014, they were illegally detained after being falsely accused following an alleged anonymous complaint made to SEBIN; (iii) SEBIN claimed that it had found the workers in possession of a firearm, but the weapon had been planted by SEBIN, whose records refer to two anonymous witnesses who the defence was unable to verify; (iv) as a result of these actions, the three workers have remained in detention since 19 September 2014; (v) on 7 November 2014 (two days after the established deadline), the Public Prosecutor's Office brought formal charges against the three workers as the co-perpetrators of the criminal offences of illicit trafficking in arms and criminal conspiracy; and (vi) the defence filed a number of actions and appeals to end their detention but these efforts were unsuccessful (on the date the complaint was filed, the outcome was still awaited of the appeal lodged with the Constitutional Division of the Supreme Court of Justice against the Court of Appeal's ruling that the application for a writ of *amparo* to seek the release of the workers was inadmissible).

B. The Government's reply

570. In its communication dated 2 September 2016, the Government provides its observations and refutes the complainants' allegations. The Government states that the workers Mr Leinys Yeleida Quijada Jiménez, Mr Rederick Julia Leiba Guzmán and Mr Heberto Tadeo Bastardo Morao have been released and have not been subjected to any form of persecution. The Government reports that, according to the judicial authorities, an investigation was conducted into the alleged commission of the criminal offences of illicit trafficking in firearms and criminal conspiracy, at the request of the Attorney-General's Office. However, the Government emphasizes that the judicial authorities confirmed that the citizens in question are not being held in detention.

571. Furthermore, the Government has sent a communication signed by the three workers concerned, as well as by the organization secretary of their union (the complainant organization SUTISS), in which they: (i) deny that they were detained or persecuted for trade union activities by the Government; (ii) claim that they did not feel represented by the president of SUTISS (who signed the complaint) or by UNETE (the other complainant organization); (iii) consider the situation to be related to an intra-union dispute; and (iv) state that they do not wish this dispute to be considered by the Committee on Freedom of Association and request it not to pursue its examination of the complaint. The Government also reports that the steel company's president confirmed that the citizens concerned are workers in the company and that there is an internal dispute within their trade union (SUTISS). The Government considers that the case in question involves an intra-union dispute, in which the Government has not intervened in any way, fully complying with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Government therefore requests that, in line with previous decisions of the Committee relating to intra-union disputes, it does not pursue its examination of this case.

C. The Committee's conclusions

572. *The Committee observes that the complaint concerns allegations of anti-union discrimination involving the persecution, detention and criminal prosecution of three workers (Mr Leinys Yeleida Quijada Jiménez, Mr Rederick Julia Leiba Guzmán and Mr Heberto Tadeo Bastardo Morao) from the steel company. The Committee notes that, on the one hand, the complainants allege that the authorities detained these workers after they were falsely accused of criminal offences relating to the possession of weapons, in retaliation for their participation in a protest against the failure to comply with a collective agreement. On the other hand, the Committee notes that the Government states that, according to information from the judicial authorities, the workers concerned are not detained and were simply investigated for the alleged commission of criminal offences unrelated to trade union activities. In addition, the Committee notes the communication provided by the Government in which the workers concerned and an official of one of the complainant organizations deny that the trade union had been persecuted by the Government, state that they are not held in detention, consider that the complaint had arisen from an intra-union dispute, and request the Committee not to pursue its examination of the case.*

573. *The Committee observes that, beyond stating that these workers participated in a protest against the failure to comply with a collective agreement, the complainants provide no further evidence of the alleged anti-union motives. Moreover, from the Government's reply and the statements of the workers affected submitted by the Government, these workers are not currently detained nor have been subjected to any form of persecution for their trade union activities and they do not support this complaint. On the understanding that none of the criminal proceedings referred to in the complaint are still ongoing and given that no additional information has been received from the complainants in the past two years, the Committee will not pursue its examination of the case.*

The Committee's recommendation

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

Geneva, 16 March 2018 *(Signed)* Mr Takanobu Teramoto
Chairperson

Points for decision: