INTERNATIONAL LABOUR OFFICE

Governing Body
333rd Session, Geneva, 9 June 2018

GB.333/INS/6/3

Institutional Section

INS

SIXTH ITEM ON THE AGENDA

Reports of the Committee on Freedom of Association

386th Report of the Committee on Freedom of Association

Contents

Paragraphs

Paragraphs

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 24 and 25 May and 1 June 2018, under the chairmanship of Mr Takanobu Teramoto.

2. The following members participated in the meeting: Ms Valérie Berset Bircher (Switzerland), Mr Aniefiok Etim Essah (Nigeria), Ms Molebatseng Makhata (Lesotho) and Ms Sara Graciela Sosa (Argentina); Employers' group Vice-Chairperson, Mr Alberto Echavarría and members, Mr Juan Mailhos, Mr Hiroyuki Matsui and Ms Jacqueline Mugo; Workers' group Vice-Chairperson, Mr Yves Veyrier (substituting for Ms Catelene Passchier), and member Mr Jens Erik Ohrt. The members of Japanese nationality were not present during the examination of the cases relating to Japan (Cases Nos 2177 and 2183).

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3. Currently, there are **183** 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 **13** cases (**four** definitive reports and **nine** reports in which the Committee requested to be kept informed of developments) and interim conclusions in **ten** 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 7, and any additional observations in relation to cases in paragraph 10, as soon as possible to enable their treatment in the most effective manner. Communications received after **1 October 2018** will not be able to be taken into account when the Committee examines the case at its next session.

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. 2445 (Guatemala) because of the extreme seriousness and urgency of the matters dealt with therein.

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

6. The Committee deeply regrets that it was obliged to examine the following case without a response from the Government: 3269 (Afghanistan).

Urgent appeals: Delays in replies

7. As regards Cases Nos 2318 (Cambodia), 2982 (Peru), 3076 (Republic of Maldives), 3081 (Liberia), 3113 (Somalia), 3275 (Madagascar), 3284 (El Salvador), 3293 (Brazil), and 3296 (Mozambique) 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

8. The Committee is still awaiting observations or information from the governments concerned in the following cases: 3067 (Democratic Republic of the Congo), 3203 (Bangladesh), 3260 (Colombia), 3263 (Bangladesh), 3300 (Paraguay), 3301 (Chile), 3302 (Argentina), 3303 (Guatemala), 3305 (Indonesia), 3306 (Peru), 3308 (Argentina) and 3309 (Colombia). 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

9. In Cases Nos 2265 (Switzerland), 2508 (Islamic Republic of Iran), 2609 (Guatemala), 2761 (Colombia), 2817 (Argentina), 2830 (Colombia), 2869 and 2967 (Guatemala), 3023 (Switzerland), 3027 (Colombia), 3042 and 3062 (Guatemala), 3074 (Colombia), 3089 (Guatemala), 3115 and 3120 (Argentina), 3133 (Colombia), 3135 (Honduras), 3139 (Guatemala), 3141 (Argentina), 3148 (Ecuador), 3149 and 3150 (Colombia), 3158 (Paraguay), 3161 (El Salvador), 3178 (Bolivarian Republic of Venezuela), 3179 (Guatemala), 3192 (Argentina), 3201 (Mauritania), 3211 (Costa Rica), 3212 (Cameroon), 3213 (Colombia), 3215 (El Salvador), 3221 (Guatemala), 3232 (Argentina), 3234 (Colombia), 3251 and 3252 (Guatemala), 3254 (Colombia), 3258 (El Salvador), 3259 and 3264 (Brazil), 3265 (Peru), 3277 (Bolivarian Republic of Venezuela), 3279 (Ecuador), 3280, 3281 and 3282 (Colombia), 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

10. As regards Cases Nos 2254 (Bolivarian Republic of Venezuela), 2923 (El Salvador), 3018 (Pakistan), 3032 (Honduras), 3090, 3091 and 3112 (Colombia), 3119 (Philippines), 3137 (Colombia), 3152 (Honduras), 3157 (Colombia), 3165 (Argentina), 3170 (Peru), 3184 (China), 3185 (Philippines), 3190, 3193, 3195, 3197, 3199 and 3200 (Peru), 3206 (Chile), 3207 (Mexico), 3208 (Colombia), 3216, 3217 and 3218 (Colombia), 3222 (Guatemala), 3223 (Colombia), 3224 (Peru), 3225 (Argentina), 3228 (Peru), 3230 (Colombia), 3233 (Argentina), 3239 (Peru), 3241 (Costa Rica), 3243 (Costa Rica), 3245 (Peru), 3246 and 3247 (Chile), 3248 (Argentina), 3250 (Guatemala), 3253 (Costa Rica), 3257 (Argentina), 3261 (Luxembourg), 3266 (Guatemala), 3267 (Peru), 3270 (France), 3272 (Argentina), 3274 (Canada), 3278 (Australia), 3285 and 3288 (Plurinational State of Bolivia), 3287

(Honduras), 3292 (Costa Rica), 3294 (Argentina), 3295 (Colombia), 3297 (Dominican Republic), 3298 and 3299 (Chile), 3304 (Dominican Republic), 3307 (Paraguay) 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

11. The Committee adjourned until its next meeting the examination of the following new cases which it has received since its last meeting: Nos 3311 (Argentina), 3312 (Costa Rica), 3313 (Russian Federation), 3314 (Zimbabwe), 3315 (Argentina), 3316 (Colombia), 3317 (Panama), 3318 (El Salvador), 3319 (Panama), 3320 (Argentina) and 3321 (El Salvador), 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.

Article 26 complaint

12. The Committee is awaiting the observations of the Government of Belarus in respect of its recommendations relating to the measures taken to implement the recommendations of the Commission of Inquiry.

Transmission of cases to the Committee of Experts

13. The Committee draws the legislative aspects of the following cases, as a result of the ratification of Conventions Nos 87 and 98, to the attention of the Committee of Experts on the Application of Conventions and Recommendations: 3101 (Paraguay), 3268 (Honduras) and 3283 (Kazakhstan).

Cases in follow-up

14. The Committee examined eight cases in paragraphs **15** to **65** concerning the follow-up given to its recommendations and concluded its examination with respect to **four** cases: Cases Nos 2833 (Peru), 2937 (Paraguay), 2992 (Costa Rica) and 3051 (Japan).

Case No. 2992 (Costa Rica)

15. The Committee last examined this case at its March 2014 meeting [see 371st Report, paras 256–269]. The Committee recalls that on that occasion it asked the Government: (i) to send its observations on the allegation that disciplinary proceedings had been instituted against thousands of union members who had participated in the national congress of the Secondary School Teachers' Association (APSE) and had only provided proof of their attendance in the form of a record containing signatures that were scanned; and (ii) to keep the Committee informed of any decision taken in that regard.

16. In a communication dated 12 March 2014, the Government indicates that the Ministry of Public Education informed the trade union organization representatives in good time of the requirements that needed to be fulfilled by officials attending the trade union congress who wished to take paid leave. The Government indicates that attendance at the congress was authorized subject to the condition that the officials submitted the original proof of attendance provided by the APSE during the week following the event. The Government alleges that the failure to fulfil this requirement was what gave rise to the disciplinary proceedings and that the suspension without pay applied in only 19 cases, emphasizing that

it guaranteed due process and the right to a defence in all the proceedings. The Government explains that it never had the intention of prohibiting the participation of union members in the congress but that it was a question of ensuring compliance with the obligation to prove attendance at the APSE national congress by means of a valid formal instrument.

17. *The Committee notes this information and will not pursue its examination of the case.*

Case No. 2723 (Fiji)

18. The Committee last examined this case, in which the complainants alleged acts of assault, harassment, intimidation and arrest and detention of trade union leaders and members, ongoing interference with internal trade union affairs, undue restrictions on trade union meetings and other legitimate trade union activities, the issuance of several decrees curtailing trade union rights, and the dismissal of a trade union leader in the public service education sector, at its March 2017 meeting [see 381st Report, approved by the Governing Body at its 329th Session, paras 36–55]. On that occasion, the Committee requested the Government to: (i) keep it informed on the functioning in practice of the Employment Relations Advisory Board (ERAB) and the Arbitration Court, including the progress achieved by these entities; (ii) indicate whether all collective agreements abrogated by the Essential National Industries (Employment) Decree, 2011 (ENID) were replaced by newly negotiated collective agreements and, should this not be the case, to take the necessary measures to ensure that, at least in the public sector, collective agreements abrogated by the ENID could be used as a basis for renegotiations; (iii) ensure that the the Public Order (Amendment) Decree No. 1 of 2012 (POAD) is not used to impede the exercise of freedom of assembly in the context of trade union rights; (iv) reinstate Rajeshwar Singh (the Fiji Trades Union Congress Assistant National Secretary) on the Air Terminal Services (ATS) Board in his position representing workers' interests without delay, should this not yet be the case; and (v) ensure that all pending criminal charges for unlawful assembly against Mr Daniel Urai and Mr Nitendra Goundar are immediately dropped. The Committee also expressed its expectation that after several years, the case of Mr Tevita Koroi, President of the Fiji Teachers Association (FTA), whose employment was terminated as a result of a disciplinary process in which he was found to be in breach of the Civil Service Act, 1999, would be deliberated by the ERAB without further delay and that the Government would guarantee in the future the right to exercise legitimate trade union activities in the sugar sector and in other "essential national industries". Finally, the Committee expressed trust that the Government would continue to show commitment to implementing the Joint Implementation Report (JIR) and the 2016 amendment to the Employment Relations Promulgation (ERP) and that workers in sectors considered as "essential national industries" would be able to benefit from the restored check-off facilities in the near future.

19. The Government provides its observations in a communication dated 11 September 2017. With regard to the functioning of the ERAB and the Arbitration Court, the Government indicates that the ERAB, as the main advisory body on employment relations, met in June 2017 to discuss the review of the National Minimum Wage and the Wages Regulations and that the review of the labour laws, as outlined in the JIR, is an ongoing exercise that will continue to be discussed within the mechanism. The Arbitration Court, established as a specialist employment relations court and composed of a tripartite membership to ensure that the principles of social dialogue and tripartism are promoted, handles all employment matters that deal with essential services and industries.

20. Concerning the check-off facilities, the Government states that they have been restored in all public sectors, including in the essential services and industries. As to the collective agreements terminated by the ENID, the Government reiterates that they cannot be restored as of right since new collective agreements have been negotiated and are currently in place. It adds that it is upon the employers and workers to decide whether or not they agree to

reinstate previous collective agreements or whether those agreements should form the basis for renegotiations.

21. Regarding the alleged restrictions on freedom of assembly and the POAD, the Government indicates that public order in Fiji is maintained under the Public Order Act, 1978 (POA), section 8 of which stipulates that any person who wishes to organize or convene a meeting or procession in a public place shall first make an application for a permit in that behalf to the appropriate authority. For meetings in public places, a permit is required to ensure the carrying out of administrative functions such as the closure of roads and the provision of law enforcement officers to maintain order; for all other instances a permit is not required. The Government adds that with the promulgation of the Constitution, the Bill of Rights ensures to all Fijians the right to freedom of assembly, association and movement.

22. With regard to the criminal charges pending against Mr Urai and Mr Goundar for the offence of unlawful assembly contrary to the POA, the Government explains that any criminal law breaches are dealt with by the Office of the Director of Public Prosecutions, which is an independent and constitutionally mandated office, and indicates that the proceedings against Mr Urai and Mr Goundar relating to unlawful assembly were discontinued on 6 February 2017. The Government also reiterates that the unlawful strike charges and charges under section 65 of the Crimes Decree have been withdrawn by the State.

23. Concerning the case of Mr Koroi, the Government reiterates information provided previously concerning the circumstances in which his employment was terminated.

24. The Fiji Trades Union Congress (FTUC) provides additional information in a communication dated 26 September 2017 alleging that the Government has not acted in good faith in implementing the JIR, that little or no progress has been made since its signature and that constant requests of the Committee have not yielded many results. Although the Government repealed the ENID, the situation has deteriorated as it is now using alternative methods of individual contracts, intimidation, harassment of workers and misinformation to weaken and discredit trade unions. Furthermore, the Committee's recommendation to seek technical assistance from the Office to determine the issue of essential services has not been acted upon more than one year and eight months after the signature of the JIR and the complainant is unaware of any technical assistance provided on the promotion of better labour relations in Fiji. The complainant adds that the Government has recently unilaterally imposed a new minimum wage of US$2.68 per hour without any consultation with the FTUC and without approval by the ERAB, that it has reneged on its agreement with the FTUC to review the Labour Law to ensure its compliance with core ILO Conventions, including on the right to strike and definition of essential services, and that despite repeated reminders, it has not convened the ERAB to seriously consider the proposals already agreed on between the Fiji Commerce and Employers Federation (FCEF) and the FTUC.

25. With regard to the functioning of the ERAB and the Arbitration Court, the complainant alleges that: (i) the Government decided who should represent workers and employers in the ERAB, instead of opting for the most representative workers' and employers' organizations; (ii) there has been little discussion with Government representatives attending the ERAB, as they have no mandate to make any decisions or to agree with workers' or employers' representatives; (iii) there are no monthly meetings of the ERAB and despite numerous reminders, the mechanism has not met since February 2017; (iv) the ERAB is no longer a tripartite body but only bipartite, with workers' and employers' representatives active; (v) the Arbitration Court is seriously under resourced, has a backlog of cases, is unable to sit regularly and is not effective and although the intent was to create a new court to deal with disputes of interest without delay, this is not the case as reinstated cases continue to await a hearing; and (vi) the Arbitration Court does not easily award compensation. To further support its allegations, the complainant provides a report from the Confederation of Public

Sector Unions (CPSU) which indicates that the Arbitration Court has become a vehicle where disputes can be reported but the adjudication has no time limit; around 186 cases, some older than ten years, must first be dealt with before the Court can address the recent cases concerning pay rise and negotiations on collective agreements and it is possible that these cases will languish in the system for years before being dealt with. Indeed, unless a full-time court is established to deal particularly with the backlog emanating from the JIR, the rest of the current disputes, which have an impact on the livelihood of union members, could remain pending for years (for instance, in 2016, the Fiji Public Service Association (FPSA) filed at least seven cases concerning disputes of interest which require attention without delay since, in view of the lack of intention of the concerned Government entities to negotiate collective agreements, the union members remain unprotected).

26. Concerning collective agreements abrogated by the ENID, the complainant alleges that there have been no new collective agreements negotiated in any government-owned enterprises or the civil service, except for the timber industry, as all other companies and municipalities refused to sign any collective agreements so far, and considers that there is no reason why the old agreements cannot be reinstated. The complainant thus denounces a total absence of collective bargaining in the public sector and provides the following concrete examples:

– In September 2017, the Government announced that it would proceed to put all civil servants on individual fixed-term contracts and that there would be a salary adjustment but only for those who signed the new contracts. This was done without any discussions or negotiations with the unions thus disregarding the Government's commitment to respect workers' right to bargain collectively and caused great anxiety and concern among the workers. In these circumstances, the public sector unions (FPSA, Fiji Teachers Union (FTU), Fiji Teachers Association and Fiji Nursing Association) filed for a secret ballot for industrial action under section 175 of the Employment Relations Act, objecting to the unilateral imposition of individual fixed-term contracts. While there is no provision in the law for the Registrar of trade unions to do so, the Registrar rejected the notice for secret ballot stating that no negotiations had taken place. On the day of the balloting, the unions were not allowed to enter the workplace for ballots during breaks and the Government issued a memorandum to all civil servants not to participate in the ballot, indicating that such participation would be deemed as insubordination and workers would be disciplined. The unions filed a motion in the Employment Relations Tribunal for an order to allow secret ballots to be held. Furthermore, when the National Union of Workers filed a notice of intention to conduct a secret ballot for strike action on behalf of its members at a painting company to object the employer's failure to negotiate and conclude an agreement on the union's log of claims which sought to amend the collective agreement, the Registrar directed the Fiji Elections Office to conduct secret ballots for industrial action, even though the ballot did not provide for election of office bearers, and the union thus refused such interference by the Elections Office.

– The Water Authority of Fiji issued a memorandum to all staff stating that on expiry of their individual contracts, staff would have to reapply to the same jobs with no guarantee of continued employment, while at the same time delaying negotiations on a collective agreement.

– At ATS (workers represent 49 per cent of the shareholders and the Government holds 51 per cent), Government Board members terminated the directors from the Board and denied workers representation at Board level as required by the company's rules. The management embarked on violating the collective agreements and a series of suspensions and terminations of workers ensued. Although a list of issues has been provided to the management and the Government, no action is being taken and no collective bargaining is taking place at the company. The workers also gave notice of

secret ballots for industrial action but the company filed a motion in court to declare the company as essential services.

27. The report from the CPSU provided by the complainant also denounces a consistent denial of collective bargaining in the public sector for the past ten years and indicates that despite many efforts by public sector unions to enter into collective bargaining, the Government's denial to engage at any level is more prominent than ever. It further contains the following additional information: (i) even though they are stakeholders, the unions are kept in the dark and can only rely on media statements or occasionally Government statements made in Parliament; (ii) there were only three meetings in the past three years between the Minister for Civil Service and the public sector unions and even these occurred when the subject matter was a "fait accompli"; (iii) the public sector reform seems to be one of the reasons to deny the right to collective bargaining in the public service and, as a result, the role of public sector unions is now confined to making representation on disciplinary cases through the Public Service Disciplinary Tribunal and to the ERP on disputes of rights, as disputes of interest and the functions of employment relations courts have been transferred to the Arbitration Court; (iv) despite constant rhetoric of goodwill, the trade union movement continues to come under constant assault and many of the existing legislations and practices are changed to suit the Government and its entities; (v) the Minister of Employment and the line Minister of the National Fire Authority continue to undermine independent trade unions; and (vi) there is no collective bargaining for wage fixing in the public sector. The report adds that there have been a number of instances of breaches relating to collective bargaining and other trade union rights:

– The job evaluation exercise being carried out in the public sector is conducted without participation of public sector unions and represents a unilateral imposition on workers in the civil service.

– The Land Transport Authority continues to delay negotiations on a collective agreement and has recently carried out 15 summary dismissals, in most cases without giving reason, in breach of the ERP (the Authority is citing an Employment Court judgment related to another employer which states that reasons were not required for summary dismissals and since the ruling was not appealed, it is used to dismiss workers).

– The National Fire Authority sponsored an in-house union against the established FPSA and although the Registrar was warned not to register it, he succumbed to pressure, registered the union and refused to divulge the basis on which it was registered. As the union was formed by the employer under its domination to oust the existing independent union, the matter is now with the Employment Court.

– The management of the Fiji Revenue and Customs Authority removed 19 FPSA members from rostered duty, depriving them of 30 per cent of loading on their salaries, and has refused to negotiate a collective agreement for more than two years.

– Airports Fiji Limited has refused to negotiate a collective agreement and the CPSU log of claims and the dispute is currently pending with the Arbitration Court, as no other recourse is available under the current labour legislation.

– A log of claims by the CPSU has not been acknowledged by the Ministry of Civil Service and the Permanent Secretary of the Ministry refuses to recognize it. The dispute is with the Arbitration Court.

– The Ministry of Local Government, Housing and Environment refused to deal with the unions; for instance, an agreement was reached between the FPSA and two local town

councils but it needs to be approved by the Ministry who has not acknowledged the union's letters. The matter is pending with the Arbitration Court.

– The FTU and the FTA are facing immense challenges in collective bargaining with the Ministry of Education.

28. With regard to the restrictions to freedom of assembly and the POAD, the complainant indicates that a coalition of non-governmental organizations have already had their application to march refused because it would affect traffic flow, which in the complainant's view is not a proper justification. The complainant also made an application to march and have a rally in a park in the capital on 21 October 2017 to protest against the unilateral imposition of individual fixed-term contracts, Minimum Wage Labour Law Review and the right to strike and was waiting for a response from the authorities.

29. The complainant further alleges, regarding the Political Parties Decree, that section 14 classifies trade union officials as public officers, while it does not do the same for Government ministries who are paid from the public budget. The complainant asserts that trade unions are membership-based organizations with their own rules that must be free to associate politically or support a party that respects workers' rights. Trade unionists are not public officials and have individual rights to political affiliation, memberships and to take part in elections. According to the complainant, the restriction in the Political Parties Decree thus goes against the individual rights of trade unionists and trade unions who democratically decide to be politically active and violates freedom of association.

30. Finally, with regard to Mr Tevita Koroi, the complainant indicates that no discussions have been held in any meetings of the ERAB in this respect. With respect to the alleged acts of assault, harassment and intimidation of trade union leaders and members for their exercise of the right to freedom of association (allegations that the Committee stopped examining at its last meeting due to absence of additional information requested from the complainant), the complainant considers that all information that is available in this regard has been provided but there has been no new development since then, that the Government and the police have not acted upon the report of assault filed by Mr Felix Anthony to the police and that the Government Hospital refused to provide a medical report.

31. *The Committee takes due note of the information provided by the Government and the FTUC. The Committee welcomes the Government's indication that the check-off facilities have been restored in all public sectors, including essential services and industries, and that the criminal charges against Mr Urai and Mr Goundar for the offence of unlawful assembly were discontinued in February 2017.*

32. *With regard to the ERAB and the Arbitration Court, the Committee notes the Government's indication that the ERAB met in June 2017 to discuss instruments relevant to minimum wage, that in line with the JIR, the review of labour laws is an ongoing exercise that continues to be discussed within the mechanism and that the Arbitration Court, a tripartite employment relations court, handles all employment matters that deal with essential services and industries. While taking due note of the information provided, the Committee observes that the Government does not elaborate on the functioning in practice and progress achieved by these mechanisms, such as concrete results of discussions or matters agreed on within the tripartite ERAB or the number of cases received and resolved by the Arbitration Court. In this regard, the Committee observes that, according to the complainant, the ERAB has not met since February 2017 and its tripartite structure is put into question as Government representatives attending the ERAB have no mandate to take any decisions. The Committee further notes that the complainant denounces the inefficiency and under-resourcing of the Arbitration Court, alleging in particular that although disputes of interest may be referred to the Court, it may take years before such grievances are dealt with due to the important*

backlog developed by the Arbitration Court. In view of the serious concerns raised by the complainant and considering the important role envisaged for the ERAB and the Arbitration Court, the Committee requests the Government to take the necessary measures to ensure that both mechanisms have at their disposal all necessary means to allow them to function properly and efficiently and to provide detailed information on their functioning in practice, including information on matters discussed within the ERAB and agreements reached by its tripartite components, as well as on the number of grievances received and dealt with by the Arbitration Court. It further expects that the ERAB will meet in the near future so that the technical assistance previously suggested by the Committee with respect to certain issues to be discussed will soon be able to be provided. Further noting the complainant's allegations that the Government has not acted in good faith in implementing the JIR, that little or no progress has been made since its signature and that the Government unilaterally imposes various decisions to weaken and discredit trade unions, the Committee requests the Government to provide its observations on these allegations and expects it to take the necessary measures to address these concerns and to show good faith and commitment to implementing the JIR in the future.

33. *The Committee observes that, with regard to the issue of collective agreements abrogated by the ENID, the information provided by the Government and the complainant is contradictory. While the Government reiterates that new collective agreements were negotiated and are in place and that it is upon workers and employers to decide whether to reinstate previous collective agreements or use them as a basis for renegotiations, the complainant denounces a total absence of collective bargaining and alleges that, except for the timber industry, no new collective agreements were negotiated to replace the repealed ones, as all other companies and municipalities refuse to sign any agreements. The Committee notes the concrete examples provided, where the complainant alleges that collective bargaining was denied or delayed by the State enterprise or that the Government unilaterally imposed its decisions without any consultations with the trade unions. Bearing in mind the negative impact of the abrogation by the ENID of collective agreements in force and in view of the contradictory information provided by the Government and the complainant on the actual state of collective bargaining in the public sector, the Committee recalls that both employers and trade unions should bargain in good faith and make every effort to come to an agreement, and satisfactory labour relations depend primarily on the attitudes of the parties towards each other and on their mutual confidence [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1329]. The Committee, therefore, requests the Government to provide further observations on the above allegations and to take the necessary measures to facilitate negotiations and help promote collective bargaining in the public sector, especially where workers' organizations encounter barriers or challenges in this regard, so as to create an enabling environment for new collective agreements to be concluded and replace those previously abrogated by the ENID.*

34. *The Committee further observes from the information provided, that parallel to the alleged absence of collective bargaining, the complainant also denounces other violations of trade union rights, including the establishment of an employer-dominated union, intimidation and threats in the context of strike ballots, interference in the conduct of secret ballots, suspensions and termination of workers and termination of workers' representatives from their representative role. While it does not have sufficient information to provide full conclusions in this regard, the Committee recalls that the dismissal of workers on grounds of membership of an organization or trade union activities violates the principles of freedom of association. The removal by the Government of trade union leaders from office is a serious infringement of the free exercise of trade union rights. Employers' and workers' organizations must be allowed to conduct their activities in a climate that is free from pressure, intimidation, harassment, threats or efforts to discredit them or their leaders, which includes the adulteration of documents. Article 2 of Convention No. 98 establishes the*

*total independence of workers' organizations from employers in exercising their activities [see **Compilation**, op. cit., paras 1104, 654, 719 and 1188]. The Committee also emphasizes that workers' organizations should have the right to organize their administration and activities and to formulate their programmes without any interference by the public authorities. In view of the above, the Committee requests the Government to provide its observations on the above allegations and trusts that any trade union member or leader whose suspension or dismissal proves to be motivated by anti-union reasons will be reinstated without delay. The Committee further expects the Government to guarantee in the future the right to exercise legitimate trade union activities in the public sector, including strike ballots, without any form of intimidation or interference.*

35. *With regard to the restrictions on freedom of assembly and the POAD, the Committee notes that the Government reproduces the text of section 8 of the POA and reiterates information it has previously provided without, however, indicating whether any concrete measures were taken or are foreseen to ensure that this section is not used to restrict freedom of assembly in the context of trade union rights. In this regard, the Committee notes the additional information provided by the complainant that a coalition of non-governmental organizations has recently seen its request for assembly refused on grounds that it would limit the traffic flow and that the complainant also submitted an application to march and organize a rally in October 2017. The Committee wishes to emphasize once again the importance it attaches to freedom of assembly in the context of trade union rights and requests the Government to provide its observations on the above allegations and to take the necessary measures to ensure that the POAD is not used to impede the exercise of these rights and to keep it informed of any concrete action taken or envisaged in this regard.*

36. *The Committee further notes that, with regard to the case of Mr Tevita Koroi, the Government simply reiterates information provided previously, in particular that Mr Koroi was terminated as a result of a disciplinary process in which he was found to be in breach of the Civil Service Act, 1999 and observes the complainant's indication that the case of Mr Koroi has still not been heard by the ERAB. The Committee notes with regret that despite previous indications that the case would be reviewed by the ERAB, the Government does not submit any new information in this regard. The Committee, therefore, reiterates once again its expectation that, after several years, the case of Mr Koroi will be deliberated by the ERAB without further delay, and that, in the framework of this exercise, the conclusions that the Committee made in this regard when examining the case at its meeting in November 2010 [see 358th Report, paras 550–553] will be duly taken into account, with a view to rehabilitating Mr Koroi. Further regretting that the Government does not provide any information on the reinstatement of Mr Rajeshwar Singh (FTUC Assistant National Secretary) on the ATS Board, and noting from the additional information provided by the complainant that the new directors representing the workers have now also been removed by the Government, the Committee requests the Government to provide detailed information on these allegations and to reinstate Mr Singh in his position representing workers' interests without delay, as well as any other workers' representatives removed for anti-union reasons.*

37. *Concerning the alleged acts of assaults, harassment and intimidation of trade union leaders and members for their exercise of the right to freedom of association made previously in this case, the Committee recalls that these allegations concerned Mr Anthony (National Secretary of the FTUC and General Secretary of the Fiji Sugar and General Workers' Union (FSGWU)), Mr Attar Singh (General Secretary of the Fiji Islands Council of Trade Unions), Mr Mohammed Khalil (President of the FSGWU – Ba Branch General), Mr Taniela Tabu (Secretary of the Viti National Union of Taukei Workers) and Mr Anand Singh (lawyer). The Committee further recalls that when examining this case in March 2017, it stated that it would no longer pursue the examination of these allegations following the failure of the complainants to provide information on the developments previously reported by the Government. However, noting the complainant's explanation that all available information*

has already been provided, that there has been no new development since then and that the Government and the police have not acted upon the report of assault filed by Mr Anthony to the police, the Committee understands that the above allegations may not be entirely resolved and, therefore, invites both the complainants and the Government to indicate whether an independent investigation has been conducted into the alleged acts of assault, harassment and intimidation against Mr Felix Anthony, Mr Mohammed Khalil, Mr Attar Singh, Mr Taniela Tabu and Mr Anand Singh and to transmit detailed information with regard to the outcome of such inquiry, the action taken as a result and any other relevant updated information in this regard.

38. *Finally, the Committee recalls that the allegations that section 14 of the Political Parties Decree violates trade union rights were previously examined by the Committee at its June 2016 meeting [see 378th Report, para. 265], at which these legislative aspects were referred to the Committee of Experts on the Application of Conventions and Recommendations.*

Case No. 2962 (India)

39. The Committee last examined this case, in which the complainant alleged refusal by the management of a garment enterprise to negotiate with the Vastra Silai Udhyog Kamgar Union, police interference in an industrial action, anti-union dismissals and the lack of grievance mechanisms in the state of Uttar Pradesh, at its October 2016 meeting [see 380th Report, approved by the Governing Body at its 328th Session, paras 27–35]. On that occasion, the Committee recalled the incompatibility that could exist between the functions of Development Commissioner and Labour Commissioner when performed by the same person and requested the Government once again to take all necessary measures without delay to review the matter so as to ensure that the functions of Labour Commissioner are not performed by the Development Commissioner in the Noida Special Economic Zone, especially as regards conciliation and mediation efforts, and to ensure that an independent person having the confidence of the parties or an impartial body carries out these functions. The Committee also requested the Government to take the necessary measures to ensure that the complaints of anti-union discrimination are examined without further delay in the framework of national procedures which are prompt, impartial and considered as such by the parties concerned and, if it was confirmed that the alleged dismissals and lay-offs were linked to legitimate trade union activities, to take measures to ensure that the workers concerned are appropriately compensated, including through reinstatement, if still possible. Finally, the Committee requested the Government to endeavour to bring the parties together without delay with a view to considering all elements raised, and finding a solution satisfactory to all parties concerned.

40. In its communication dated 28 February 2017, the Government indicates that: (i) the Development Commissioner is a public servant and very senior Government officer who has been delegated the power of the Labour Commissioner by the State Government of Uttar Pradesh, in line with the Central Government Special Economic Zones (SEZ) Rules, 2006, with a view to facilitating expedition and objective implementation of labour laws in special economic zones; (ii) the basic objective of this is to provide ease and comfort to both the entrepreneurs and the units and this system is working well in the Noida Special Economic Zone (NSEZ); (iii) as per the amendment of section 2A of the Industrial Disputes Act, workers are allowed to directly approach the Labour Court or Tribunal for adjudication of disputes arising out of discharge, dismissal, retrenchment or termination from service and the amended Act also provides for the establishment of a Grievance Redressal Machinery (GRM) within industrial establishments of 20 or more workers with one stage appeal at the head of the establishment for resolution of disputes; (iv) since the matter of lay off of the workers is under consideration of the High Court of Allahabad, it is not possible at this stage to bring the parties together; and (v) the police is not allowed to attend conciliation

proceedings but in a democratic society, anyone is free to call the police for their protection and safety, which is a constitutional right in India; however, in the present case, it was ensured that no police intervention occurred.

41. *The Committee regrets that the information provided by the Government simply reiterates its previous statements without responding to the pending requests in the Committee's latest recommendations. Bearing in mind the lack of progress and the time that has elapsed since the presentation of the complaint in May 2012, the Committee trusts that the Government will be able to report progress on the matters addressed below.*

42. *With regard to the role of the Development Commissioner, who has been vested with powers of the Labour Commissioner in SEZs, the Committee notes that the Government affirms the good functioning of this system. The Committee recalls, however, its conclusions on a number of occasions regarding the incompatibility that may exist between the functions of Development Commissioner and Labour Commissioner when performed by the same person. Furthermore, the Committee recalls the complainant's allegations that this mechanism does not have the confidence of all parties concerned, especially when allegations of anti-union discrimination are directed against the NSEZ administration itself, as in this case. The Committee therefore requests the Government once again to review the matter with the relevant social partners so as to ensure that the functions of Labour Commissioner are not performed by the Development Commissioner in the NSEZ, especially as regards conciliation and mediation efforts, and to ensure that an independent person having the confidence of the parties or an impartial body carries out these functions. The Committee requests the Government to keep it informed of any developments in this regard.*

43. *Concerning the allegations of anti-union discrimination and layoffs, while noting the Government's explanation on the recourses that are available to workers, the Committee observes with deep concern that more than six years after the alleged layoffs and retrenchments in this case, the complaints of anti-union discrimination are still pending before the High Court of Allahabad and that for this reason, according to the Government, it is not possible to bring the parties together. As concerns allegations that legal proceedings are overly lengthy, the Committee has recalled the importance it attaches to such proceedings being concluded expeditiously, as justice delayed is justice denied. Delay in the conclusion of proceedings giving access to remedies diminishes in itself the effectiveness of those remedies, since the situation complained of has often been changed irreversibly, to a point where it becomes impossible to order adequate redress or come back to the status quo ante [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, paras 169 and 1144]. The Committee further considers that the fact that the judicial proceedings are still pending in this regard should not prevent the Government from reaching out to both parties and endeavouring to bring them together, especially in view of the lengthy proceedings, and trusts that the Government will take all steps in its power in this regard. In light of the above, the Committee requests the Government to take the necessary measures to ensure that the pending court cases relating to the complaints of anti-union discrimination are rapidly concluded in the framework of national procedures which are prompt, impartial and considered as such by the parties concerned and, if it is confirmed that the dismissals and layoffs were linked to legitimate trade union activities, to take measures to ensure that the workers concerned are appropriately compensated, including through reinstatement, if still possible.*

Case No. 3051 (Japan)

44. The Committee last examined this case at its November 2015 meeting [see 376th Report, paras 586–704] when it requested the Government to keep it informed of the outcome of the legal actions still pending concerning Mr Kawagushi, as well as the cases for compensation filed by Mr Kitakubo and Mr Nakamoto.

45. In its communications dated 9 February and 19 December 2017, the Government informs that, upon appeal, the Osaka High Court found that the dismissals of Mr Kawagushi and others were lawful finding that the dismissals were due to the elimination of all bureaucratic positions at the Social Insurance Agency and it was not given cause to believe that the disciplinary actions towards the plaintiffs were inappropriate, while observing that the union was provided with explanations about measures to avoid the dismissal. The plaintiffs appealed the ruling to the Supreme Court which dismissed the appeal on 21 November 2017, rendering all claims final.

46. *The Committee notes this information and, given that there was no other pending request in this case, considers it closed.*

Case No. 2756 (Mali)

47. The Committee last examined this case, which concerns the repeated refusal of the Government to appoint representatives of the Trade Union Confederation of Workers of Mali (CSTM) to the Economic, Social and Cultural Council (CESC) and to national tripartite consultation bodies in general, at its October 2015 meeting [see 376th Report, paras 76 to 81]. On that occasion, the Committee deeply regretted that the Government had disregarded the Committee's prior recommendations and had continued to exclude the CSTM from the membership of the CESC by Decree No. 2015-0024/P.RM of 29 January 2015. This disregard was, moreover, in violation of the decisions of the highest court of the country on the matter.

48. However, the Committee welcomed the Government's efforts to resolve the issue of trade union representativeness by requesting the Office to send a high-level mission. The mission, which took place in June 2015, had noted that there was unanimous agreement that professional elections were the best means of assessing trade union representativeness and that they should be organized as a matter of urgency. The Committee believed that it was for the Government to make tangible progress on the issue by taking all necessary measures to organize the professional elections. Meanwhile, the Committee requested the Government to adopt an attitude of complete neutrality and to allow the CSTM to participate in the tripartite consultation bodies in which it had expressed interest.

49. In a communication dated 9 May 2016, the Government indicated that Mali's trade union movement now consisted of four trade union confederations: the Union Confederation of Workers of Mali (UNTM), the CSTM, the Malian Labour Confederation (GMT) and the Democratic Confederation of Malian Workers (CDTM). The Government also indicates that it wishes to safeguard the achievements of the UNTM by maintaining the status quo until it can ensure representativeness through the professional elections that it plans to organize in the near future. In a communication dated 20 October 2017, the Government indicates that the roadmap on the professional elections has been examined at an inter-ministerial meeting. The Government explains that, pending the organization of these elections, it has decided to maintain the status quo in the composition of the CESC since it would be difficult to have only the CSTM participate in the social dialogue bodies. The Government believes that the upcoming professional elections on representation will make it possible to resolve the issue of the composition of the tripartite consultation bodies once and for all.

50. *The Committee regrets that the Government has still not decided to follow the recommendations concerning the CSTM's participation in the CESC and that, despite the time that has elapsed since its previous examination of the case, there has been no tangible progress in organizing the professional elections for which the social partners have called unanimously. The Committee does, however, consider encouraging the Government's most recent statements regarding the submission to the Council of Ministers of a roadmap on the elections. The Committee expects the Government to take all necessary measures with a view*

to the organization of professional elections in the near future and trusts that the Government will keep it informed of the objective criteria employed, in consultation with the trade union organizations, in determining their representativeness.

Case No. 2937 (Paraguay)

51. The Committee last examined this case at its March 2015 meeting, when it made the following recommendations [see 374th Report, para. 626]:

(a) The Committee invites the Government to institute an investigation, through the labour inspectorate, into the alleged failure to comply with the collective agreement for the period 2013–14 to which the complainant organizations refer and to keep it informed of the outcome without delay.

(b) With regard to the allegation that the enterprise has opposed the establishment of the bi-national joint conciliation committee even though an agreement signed by Brazil and Paraguay provides for its establishment, the Committee observes that the Government has not replied to this allegation and requests to be kept informed in that regard.

52. In its communication of 9 October 2016, the Government provides information and detailed documentation concerning these recommendations. With regard to the alleged failure to comply with the provisions of the collective agreement for the period 2013–14, the Government indicates, based on the investigations and reports of the Department of Labour and the Department of Labour Inspection and Supervision, that there is no record of any complaint regarding failure to comply with the provisions of the collective agreement for the period 2013–14 to which the complainant organizations refer. The Government also reports that a new collective agreement on working conditions has been approved. With regard to the alleged refusal to establish a joint conciliation committee, the Government provides detailed reports of the bi-national body, in which it is emphasized that there is no failure to comply with the Protocol on Labour and Social Security Relations and that an internal complaints committee comprising representatives of the enterprise and the trade unions has been established within the bi-national body pursuant to a collective agreement signed by the complainants and the entity and is fully functional. The committee has been in existence since 1991 and, with regard to its work, the Government attaches many recent records that are evidence of its operation.

53. *The Committee takes due note of the detailed information provided by the Government and, having received no additional information from any of the complainant organizations since its last examination in 2015, will not pursue its examination of this case.*

Case No. 3101 (Paraguay)

54. The Committee last examined this case at its October 2015 meeting, without having received a reply from the Government, and on that occasion it made the following recommendation [see 376th Report, para. 860(b)]:

(b) Observing that the content of the Resolution and the Decision, which are the subject of this complaint, raise problems of conformity with the principles of freedom of association, by establishing that teachers must have been registered for five years in order to obtain trade union leave, by apparently allowing for excessive discretion when granting such leave, and by suspending the deduction of trade union dues in cases of multiple trade union membership, the Committee requests the Government to initiate a dialogue with the most representative organizations affected, with a view to finding satisfactory solutions for both parties concerning trade union leave and the deduction of union dues. The Committee requests the Government to keep it informed in this respect.

55. In a communication of 24 February 2016, the complainant organization (the National Union of Teachers–National Trade Union (UNE–SN)) presented the following additional allegations:

(i) On 2 September 2015, the Attorney-General of the Republic filed an application, after the applicable time limit had passed, calling for a three-day strike staged by the UNE–SN on 27 and 28 August and on 1 October 2014 to be declared illegal. As more than a year had passed, the action was time-barred but the Labour Court ruled in favour of the application and declared the strike illegal. An appeal was lodged against this ruling, and in a ruling of 15 December 2015 the Labour Appeal Court of the City of Asunción declared the invalidity of the proceedings. The application by the Attorney-General's Office demonstrates the Government's policy of anti-union intimidation and harassment. Furthermore, after the strike, deductions were made from the strikers' wages, even though the UNE–SN had offered at the tripartite round table to make up the days in return for the non-deduction of wages – a possibility that is provided for under section 373 of the Labour Code.

(ii) As a result of the strike, it was agreed that a tripartite round table would be set up with the Ministry of Education and Culture (MEC) to discuss the adoption of a collective agreement on working conditions in the sector. Although working sessions were held in October, November and December 2014 and in January 2015, since March 2015 all work has been suspended without any explanation, which demonstrates the reluctance on the part of the authorities to reach a collective agreement. Furthermore, the UNE–SN alleges that, in 2015, no progress was made in respect of effective communication and joint work between the unions and the MEC. For instance, it points out that the Minister did not agree to hold any meetings with union officials in a year and that she issued decisions on matters affecting the education system and relating to competitive examinations without prior consultation.

(iii) In general, the UNE–SN alleges anti-union harassment through repressive measures, which is demonstrated through accusations and sanctions against officials. In particular, it alleges that, at the end of 2015, many trade union officials from other organizations were dismissed, most of whom had more than 23 years of service, mentioning in particular Ms Blanca Avalos (general secretary of the Organization of Education Workers of Paraguay–National Trade Union (OTEP-SN)); Mr Marcos González (general secretary of the Federation of Educators of Paraguay (FEP)); Mr Atilano Fleitas (FEP vice-president); Mr Carlos Parodi (FEP official); and Mr Javier Benítez (FEP official).

56. In communications of 19 January and 19 August 2016 and 3 March 2017, the Government sent its observations on the Committee's recommendations and on the complainant organization's additional allegations.

57. With regard to the Committee's previous recommendations, the Government states, in relation to suspending the deduction of several sets of union dues from one person, that: (i) this suspension is based on a legal restriction laid down in the Labour Code, section 293(c) of which provides that "each worker can become a member of only one trade union, in either their enterprise, industry, occupation or trade, or institution" which is why it is not feasible for the MEC to continue to deduct union dues in cases where workers are members of multiple unions; (ii) nevertheless, workers are free to join more than one union if they are from different enterprises, institutions or federations; (iii) the MEC has agreed to postpone the suspension measure in order to allow unionized workers to expressly and freely state their wish to belong to a particular trade union organization, and has already granted several extensions to regularize the situation (which shows that the MEC has involved the trade unions concerned); (iv) the MEC set up a clear procedure enabling workers who belong

to multiple trade unions to choose one of them, and in cases where workers do not make their wishes known, the most recent trade union membership prevails, in accordance with the criteria established in the Electoral Code; and (v) the ban on joining more than one trade union is designed to prevent monopolization on the part of members and union fragmentation. Regarding the granting of trade union leave, the Government indicates that: (i) trade union leave is recognized in the Teachers' Statute, section 38 of which provides that in no case may trade union leave be granted to teachers who have been registered for less than five years; and (ii) Resolution No. 92726 of 13 June 2014, which is being challenged by the complainant organization and which governs the granting of trade union leave, was issued in accordance with the national legal framework.

58. The Committee notes, in relation to its previous recommendations, that, with regard to suspending the deduction of several sets of union dues from one person, the Government confirms that this decision is based on the impossibility of joining more than one union, as laid down in section 293(c) of the Labour Code. While the Government states that in practice workers can belong to more than one trade union if these are from different institutions, the Committee recalls that the complaint concerned the non-deduction of trade union dues, through Decision No. 84 of 30 March 2015 of the Legal Advisory Service of the Ministry of Education and Culture, due to the illegality of workers being members of multiple unions. The Committee also notes that the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has made the same observation in the context of the examination of the application by Paraguay of Convention No. 87. The Committee further notes that the restrictions on the granting of trade union leave alleged by the complainant organization, in particular the requirement that teachers must have been registered for five years, are also based on legislative provisions (section 38 of the Teachers' Statute). The Committee wishes to recall in this regard, as it did in its previous examination of the case, that establishing that teachers must have been registered for five years in order to obtain trade union leave raises problems of conformity with the principles of freedom of association. *With regard to the apparent restrictions on multiple membership established in section 293(c) of the Labour Code, which apparently had an impact on the retention of union dues, and the requirements for the granting of trade union leave, in particular the requirement that teachers must have been registered for five years, the Committee again requests the Government to initiate social dialogue with the most representative organizations affected with a view to finding, including by making any amendments to the aforementioned laws that may be necessary, satisfactory solutions in terms of trade union leave and the deduction of trade union dues, in the light of the abovementioned principles of freedom of association. The Committee refers this legislative aspect of the case to the CEACR.*

59. Regarding the new allegations made by the complainant organization, the Government indicates, in relation to the application for the strike to be declared illegal, that: (i) the Office of the Attorney-General of the Republic, together with the MEC, called for the four-day strike held in 2014 to be declared illegal; (ii) in a ruling of 29 September 2015, the Labour Court of First Instance decided to dismiss the objection that the application was time-barred and declared the strike illegal; (iii) in a ruling of 15 December 2015, the Labour Appeal Court declared the invalidity of the proceedings that led to the strike being declared illegal, but in March 2016 an appeal against this ruling was lodged with the Supreme Court of Justice; (iv) there is no intimidation or judicial harassment, but compliance with the country's constitutional and legal provisions, taking into consideration the general interests and the restrictions that by virtue thereof may be imposed on the constitutional right to strike; (v) in this regard, pursuant to section 130 of Act No. 1626/100, essential public services are considered to be "those whose total or partial interruption may endanger the life, health or safety of the whole community or part of it", and "education at all levels" is included in the list of such essential public services; and (vi) the employer has the legal right to withhold pay for days and hours not worked, regardless of the legality or illegality of the strike.

60. The Committee notes that the question of the legality of the strike that was staged for a few days in 2014 (the complainant alleges that it was for three days and the Government considers that it was for four) concerns the consideration of education – at all levels – as an essential public service, in relation to which there is a legal obligation to ensure its normal operation in the event of a strike. In this regard, the Committee recalls that the education sector does not constitute an essential service in the strict sense of the term, although minimum services may be established in the education sector, in full consultation with the social partners, in cases of strike of long duration [see *Compilation,* op. cit., paras 842 and 898]. The Committee requests the Government to inform it of the outcome of the appeal against the ruling by the Labour Appeal Court (which invalidated the proceedings concerning the declaration of illegality of the strike) and requests that, through social dialogue, it take the measures that are necessary to ensure full respect for the abovementioned principles of freedom of association.

61. Regarding the allegations of dismissals, the Government denies that they were anti-union in nature and provides the following information on the reasons for the dismissals: (i) Ms Blanca Avalos (general secretary of the OTEP–SN) was dismissed for unjustified absence, abandonment of office and failure to comply with orders issued by her superiors, and an appeal has been filed against the measure before the ordinary courts; (ii) the FEP officials (Mr Marcos González, Mr Atilano Fleitas, Mr Carlos Parodi and Mr Javier Benítez) were dismissed for having actively participated in a strike held from 29 July to 28 August 2013, industrial action that was declared illegal by the ordinary courts. *Regarding the dismissals for participation in 2013 in a teachers' strike that was declared illegal, the Committee refers to the abovementioned principles on strikes in the education sector and recalls that no one should be penalized for carrying out or attempting to carry out a legitimate strike [see* ***Compilation****, op. cit., para. 953]. The Committee requests the Government to take the necessary measures to ensure compliance with these principles, including the compensation and reinstatement of the officials who were dismissed for participating in a teachers' strike, and to keep it informed in this regard. The Committee also requests the Government to keep it informed of the outcome of any legal proceedings that are pending in relation to the alleged dismissals.*

62. Lastly, in its observations, the Government denies the assertions of the complainant organization alleging a lack of political will to conclude a collective agreement. The Government emphasizes in this respect that the collective agreement is something that is wanted and being promoted by the MEC, and states that since 2014 it has been working with the unions, especially with the UNE–SN, on projects aimed at entering into a collective agreement, and that the adoption of such an agreement will represent a milestone for labour relations in the country. The Government reports that the support of the ILO has been requested for these efforts. The Government also denies the allegations that there has been a lack of progress in effective communication and joint work, and the allegations of anti-union harassment. In this regard, the Government provides detailed information on the implementation of initiatives and activities that demonstrate the joint work that is being carried out by the MEC and the trade unions, including vocational and trade union training programmes organized jointly with the trade unions (and delivered to more than 30,000 teachers per month in 2015 and 2016), as well as the creation of institutional round tables with the different trade union organizations to discuss issues of common interest such as salary adjustment or the teaching and administrative career. To sum up, regarding the allegations of denial of social dialogue and collective bargaining, while noting that the complainant organization alleges that since March 2015 and for the rest of that year there was no progress in collective bargaining or in effective communication or joint work, the Committee notes that the Government emphasizes its commitment to enter into a collective agreement – indicating that the ILO has been asked for support in this respect – and describes in detail various joint initiatives and activities carried out with the trade unions in 2015 and 2016. *The Committee encourages the authorities concerned to continue to promote social*

dialogue with the representative trade unions in the MEC, in particular with the complainant organization, and trusts that, in the very near future, a collective agreement on working conditions will be signed, and that any of the issues raised in this case that may still be pending can be addressed through this agreement. The Committee requests the Government to keep it informed in this regard.

Case No. 2833 (Peru)

63. The Committee last examined this case at its October 2013 meeting. On that occasion, it: (i) requested the Government to keep it informed of the outcome of the appeal brought by CORAH (concerning the ruling of 15 January 2013, in which the court had partially upheld the petition against unfair dismissal and ordered that Mr Bazán Villanuevo be reinstated; (ii) regretted the delay in the optional arbitration procedure and expected an arbitral award to be issued in the very near future; and (iii) requested the Government to keep it informed of the outcome of the judicial proceedings concerning Mr Edgar Perdomo García and Mr Elmer Reyna Macedo, who had been dismissed for serious misconduct [see 370th Report, paras 68–71].

64. In its communication of 29 January 2014, the Government reports that: (i) with regard to the appeal brought by CORAH, on 26 September 2013, the Supreme Court of Ucuyali issued a judgment on the appeal, in which it cancelled the judgment containing the ruling of 15 January 2013, partially granted the petition against unfair dismissal and ordered the labour judge to issue a new ruling after taking the statement of an eyewitness; (ii) with regard to the delay in the arbitration procedure, CORAH and the Single Union of Workers at CORAH (SUTCORAH) held a meeting at the offices of the Ministry of Labour and Employment Promotion, during which the two parties stated that they had decided to select the President of the Arbitral Tribunal voluntarily and jointly; and (iii) with regard to the pending judicial proceedings, on 1 October 2013, the Coronel Portillo provincial labour court issued a ruling in which it granted Mr Edgar Perdomo García's petition for compensation for arbitrary dismissal and ordered that he be paid 25,073.49 Peruvian nuevos soles (approximately equivalent to $7,740). With regard to Mr Elmer Reyna Macedo, the Government reports that a conciliation hearing, at which it was declared that the case was closed and a labour relationship existed, was held on 12 September 2013.

65. *The Committee takes note of this information and in view of the time that has elapsed without any additional information being received from the complainant organization, the court judgments on pending issues that have been handed down and the fact that the parties have had recourse to voluntary arbitration on the remaining issues, the Committee will not pursue its examination of this case.*

* * *

66. 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
2362 (Colombia)	March 2010	November 2012
2434 (Colombia)	March 2009	November 2009
2528 (Philippines)	June 2012	November 2015

Case	Last examination on the merits	Last follow-up examination
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
2715 (Democratic Republic of the Congo)	November 2011	June 2014
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
3016 (Bolivarian Republic of Venezuela)	March 2018	–
3019 (Paraguay)	March 2017	–
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	–
3056 (Peru)	March 2015	–
3078 (Argentina)	March 2018	–
3083 (Argentina)	November 2015	–
3098 (Turkey)	June 2016	November 2017
3100 (India)	March 2016	–
3103 (Colombia)	November 2017	–
3107 (Canada)	March 2016	–
3110 (Paraguay)	June 2016	–

Case	Last examination on the merits	Last follow-up examination
3121 (Cambodia)	November 2017	–
3123 (Paraguay)	June 2016	–
3126 (Malaysia)	November 2017	–
3159 (Philippines)	June 2017	–
3164 (Thailand)	November 2016	–
3167 (El Salvador)	November 2017	–
3169 (Guinea)	June 2016	–
3182 (Romania)	November 2016	–
3202 (Liberia)	March 2018	–
3209 (Senegal)	March 2018	–
3220 (Argentina)	March 2018	–
3227 (Republic of Korea)	March 2018	–
3229 (Argentina)	March 2018	–
3238 (Republic of Korea)	November 2017	–
3240 (Tunisia)	March 2018	–
3244 (Nepal)	March 2018	–
3276 (Cabo Verde)	March 2018	–

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

68. In addition, the Committee has received information concerning the follow-up of Cases Nos 2096 (Pakistan), 2153 (Algeria), 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), 2710 (Colombia), 2716 (Philippines), 2719 (Colombia), 2745 (Philippines), 2746 (Costa Rica), 2751 (Panama), 2752 (Montenegro), 2753 (Djibouti), 2758 (Russian Federation), 2763 (Bolivarian Republic of Venezuela), 2768 (Guatemala), 2789 (Turkey), 2793 (Colombia), 2807 (Islamic Republic of Iran), 2816 (Peru), 2840 (Guatemala), 2844 (Japan), 2852 (Colombia), 2854 (Peru), 2870 (Argentina), 2872 (Guatemala), 2883 (Peru), 2896 (El Salvador), 2900 (Peru), 2924 (Colombia), 2934 (Peru), 2944 (Algeria), 2946 (Colombia), 2948 (Guatemala), 2949 (Swaziland), 2952 (Lebanon), 2954 (Colombia), 2966 (Peru), 2976 (Turkey), 2979 (Argentina), 2980 and 2985 (El Salvador), 2987 (Argentina), 2991 (India), 2995 (Colombia), 2998 (Peru), 3006 (Bolivarian Republic of Venezuela), 3010 (Paraguay), 3017 (Chile), 3020 (Colombia), 3021 (Turkey), 3022 (Thailand), 3024 (Morocco), 3026 (Peru), 3030 (Mali), 3033 (Peru), 3035 (Guatemala), 3043 (Peru), 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), 3095 (Tunisia), 3096 (Peru), 3097 (Colombia), 3102 (Chile), 3104 (Algeria), 3106 (Panama), 3114 (Colombia), 3124 (Indonesia), 3128 (Zimbabwe), 3131 (Colombia), 3140 (Montenegro), 3142 (Cameroon), 3146 (Paraguay), 3162 (Costa Rica), 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.

CASE NO. 3269

INTERIM REPORT

Complaint against the Government of Afghanistan presented by the National Union of Afghanistan Workers and Employees (NUAWE) supported by the International Trade Union Confederation (ITUC)

Allegations: The complainant organization denounces violations of trade union rights by the Government, in particular the issuance of a unilateral decision on confiscation of trade union premises and property without a court order

69. The complaint is contained in a communication from the National Union of Afghanistan Workers and Employees (NUAWE) dated 6 March 2017. In a communication dated 26 April 2018, the International Trade Union Confederation (ITUC) associates itself with the case.

70. Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case on several occasions. After its March 2018 meeting, the Government was invited to provide its reply in relation to the case and was informed that, in accordance with the procedural rules, given the time that has elapsed, the Committee could present a report on the substance of the case, even if the requested observations or information have not been received in due time. To date, the Government has not sent any information.

71. Afghanistan 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

72. In its communication dated 6 March 2017, the complainant denounces violations of trade union rights by the Government, in particular the issuance of a unilateral decision on confiscation of trade union premises and property without a court order.

73. The complainant alleges that, on 31 August 2016, the Government issued a decree mandating the Ministry of Interior, the Ministry of Finance and the Afghanistan Independent Land Authority (ARAZI) to seize all trade union property of the NUAWE, the Afghanistan Farmers' Cooperative Union and the Youth Union and to transfer and register it under state ownership. The complainant explains that the NUAWE is a legally registered entity with a statute and 17 legally acquired premises (five in the capital Kabul and 12 in the provinces) that were certified by a notary, officially registered and paid for with union membership fees. The majority of the buildings (13 out of 17) are used as facilities for trade union activities, three are leased out for regular income in order to finance trade union statutory activities, staff salaries and other legal obligations and one building has been unlawfully usurped by the Ministry of Defence without payment of lease. The complainant also indicates that none of the premises were donated or assigned to the NUAWE by the Government without payment; instead, all were legally purchased and settled by the union's own financial resources.

74. The complainant further alleges that the Government's unilateral decision ordering confiscation of trade union property was only preceded by the appointment of an ad hoc advisory body, dominated by members of the Cabinet and representatives of other government agencies with an additional presence of two non-governmental organizations. One of the recommendations issued by the ad hoc advisory body with regard to the complainant indicated that the union in its current legal status was established after the entry into force of the 2003 Law on Social Organization, that all its properties had been bought before 2003 and that the relevant authorities of the Government were authorized to take any decision on the properties of the union. It also stated that a joint committee should be assigned to determine the movable and immovable properties, provide a list of all such properties and submit it to the President of Afghanistan for a final decision.

75. According to the complainant, the Government thus justifies the seizure of the union's premises by the fact that its property had been acquired prior to the entity's registration as a social organization under the 2003 Law on Social Organization, which governs the status of trade unions in Afghanistan. However, the complainant explains that the entity had been established and had operated as a non-governmental organization prior to the entry into force of the 2003 Law when it had legally purchased its property. Furthermore, in the complainant's view, the Government's decision to arbitrarily confiscate trade union property without a court order and without consultation with the concerned trade unions is a serious violation of both the Constitution of Afghanistan, which stipulates in its article 40 that no one's property shall be confiscated without the order of the law and decision of a competent court, and of the principles of freedom of association. The complainant emphasizes that financial independence and protection of trade union assets and property are inalienable essentials for the right of trade unions to organize their statutory obligations and administration without intervention, manipulation and interference by the public authorities. However, by taking measures to strip the trade union of its assets, the Government is depriving it of the use and enjoyment of its property rights and of the ability to effectively execute its legitimate operational activities which, in turn, will reduce the union's ordinary activities due to the lack of financial resources.

76. Finally, the complainant requests the Committee to urge the Government to immediately withdraw its decision to seize union property, which should only be allowed with a court order, and to allow for appeal against any such court order, as well as against the pertinent Government decree.

77. In a communication dated 26 April 2018, the ITUC requests to be associated with the complaint of NUAWE and alleges that since the filing of the original complaint, the Government has intensified its efforts at confiscating and taking over the legitimately acquired properties of the NUAWE thus rendering the union's activities inoperative. In particular, the ITUC denounces recent attempts at violent takeover and occupation of the NUAWE offices by the police and the armed forces, the freezing of the union's bank accounts without a judicial authorization, failure to renew its license, as well as failure to engage with the union and the hindering of freedom of expression and press.

B. The Committee's conclusions

78. *The Committee regrets that since the presentation of the complaint in March 2017, the Government has not yet provided its observations, even though it has been requested several times to do so. The Committee requests the Government to be more cooperative in the future.*

79. *Hence, in accordance with the applicable procedural rules, given the time that has elapsed, the Committee is obliged to present a report on the substance of the case without being able to take account of the information which it had hoped to receive from the Government.*

80. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments, on their side, will recognize the importance of presenting, for objective examination, detailed replies concerning allegations made against them [see First Report of the Committee, published in 1952, para. 31].*

81. *The Committee notes the complainant's allegations that, in August 2016, the Government issued a decree ordering the seizure of the complainant's premises and their transfer under state ownership and that this measure was not accompanied by a court order or any consultations with the trade union. The Committee also notes that, according to the complainant, the Government justifies the confiscation of property by the fact that it was acquired prior to the NUAWE's registration as a social organization under the 2003 Law on Social Organization, while the complainant maintains that the entity had been established and had operated in the form of a non-governmental organization well before the entry into force of the 2003 Law. From the documents provided, the Committee also understands that the August 2016 decree seems to consider the complainant's properties and buildings as properties of the State, which should be returned to it, whereas the complainant argues that all properties were legally purchased and settled by the union's own financial resources and none of them were donated by the Government without payment.*

82. *While noting that the exact origin of the premises, as well as the impact of having acquired the property before the entry into force of the 2003 Law remain disputed, the Committee observes from the information available that all properties currently in the NUAWE's possession appear to be directly or indirectly used for legitimate trade union purposes (the majority are used as facilities for trade union activities, while some are leased out so as to allow for financing of trade union activities, staff salaries and other legal obligations). Noting in this regard the serious concerns expressed by the complainant that by confiscating its property, the Government is depriving the trade union of its ability to effectively execute trade union activities, the Committee regrets that the Government does not provide any observations on these grave allegations. In these circumstances, the Committee must recall that it is stated in the resolution on trade union rights and their relation to civil liberties, adopted by the International Labour Conference at its 54th Session (1970), that the right to adequate protection of trade union property is one of those civil liberties which are essential for the normal exercise of trade union rights. 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* ***Compilation of decisions of the Freedom of Association Committee****, sixth edition, 2018, paras 275, 288 and 287]. In light of the above, the Committee urges the Government to provide its observations on the complainant's allegations without delay so that it may examine this question in full knowledge of the facts and, in particular, to indicate the exact reasons for the alleged transfer of the complainant's property under state ownership. In the meantime, in view of the significant risk that such measures can have on trade union activities, the Committee requests the Government to suspend the application of the August 2016 decree ordering confiscation of the complainant's property pending any judicial review and to ensure that any property already seized without a valid court order is returned to the complainant.*

83. *The Committee further understands from the text of the 2016 decree that, in addition to ordering the transfer of the complainant's property to the Government, it also mandates the Ministry of Justice to review, in light of the applicable laws, the continuation of the activities of the NUAWE and two other trade unions, and proceed accordingly. While it does not have*

sufficient information at its disposal to provide full conclusions in this regard, the Committee emphasizes that workers' organizations have the right to freely organize their administration and activities without interference from the authorities. It further recalls that measures of suspension or dissolution by the administrative authority constitute serious infringements of the principles of freedom of association [see ***Compilation****, op. cit., para. 986]. The Committee, therefore, requests the Government to clarify whether the 2016 decree can indeed lead to administrative intervention in or control over trade union affairs and whether, in particular, administrative suspension or dissolution of a trade union could be a possible consequence of the review undertaken and, if so, invites the Government to amend the 2016 decree to ensure that this is not possible.*

84. *Finally, the Committee takes note of the additional information submitted by the ITUC and requests the Government to provide detailed observations on the allegations contained in the ITUC communication: intensified efforts of the Government to confiscate and take over the legitimately acquired properties of the NUAWE, including recent attempts at violent takeover and occupation of the NUAWE offices by the police and the armed forces, the freezing of the union's bank accounts without a judicial authorization, failure to renew its license, as well as failure to engage with the union and the hindering of freedom of expression and press.*

The Committee's recommendations

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

(a) The Committee urges the Government to provide its observations on the complainant's allegations without delay so that it may examine this question in full knowledge of the facts and, in particular, to indicate the exact reasons for the alleged transfer of the complainant's property under state ownership. In the meantime, in view of the significant risk that such measures can have on trade union activities, the Committee requests the Government to suspend the application of the August 2016 decree ordering confiscation of the complainant's property pending any judicial review and to ensure that any property already seized without a valid court order is returned to the complainant.

(b) The Committee requests the Government to clarify whether the 2016 decree can indeed lead to administrative intervention in or control over trade union affairs and whether, in particular, administrative suspension or dissolution of a trade union could be a possible consequence of the review undertaken and, if so, invites the Government to amend the 2016 decree to ensure that this is not possible.

(c) The Committee requests the Government to provide detailed observations on the allegations contained in the ITUC communication: intensified efforts of the Government to confiscate and take over the legitimately acquired properties of the NUAWE, including recent attempts at violent takeover and occupation of the NUAWE offices by the police and the armed forces, the freezing of the union's bank accounts without a judicial authorization, failure to renew its license, as well as failure to engage with the union and the hindering of freedom of expression and press.

CASE NO. 3210

INTERIM REPORT

Complaint against the Government of Algeria presented by the Autonomous National Union of Electricity and Gas Workers (SNATEGS) supported by
– Public Services International (PSI)
– the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)
– IndustriALL Global Union (IndustriALL)
– the International Trade Union Confederation (ITUC) and
– the General and Autonomous Confederation of Workers in Algeria (CGATA)

Allegations: The complainant alleges a systematic crackdown on its officers and members, and particularly its President, by an enterprise in the energy sector since the trade union's establishment and the public authorities' refusal to put an end to these violations of trade union rights

86. The complaint is contained in communications dated 26 April, 22 June and 26 October 2016 and 3 January, 5 February, 9 March, 27 April, 18 May and 6 August 2017 from the Autonomous National Union of Electricity and Gas Workers (SNATEGS). The General and Autonomous Confederation of Workers in Algeria (CGATA) supported the complaint in a communication of 17 May 2017; Public Services International (PSI), the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and IndustriALL Global Union (IndustriALL) in communications dated 18 and 19 December 2017; and the International Trade Union Confederation (ITUC) in a communication dated 6 February 2018. The PSA, the IUF, IndustriALL and the ITUC mention a jointly signed communication of 20 December 2017, which contains additional information on the present case.

87. The Government sent its observations in communications dated 27 October 2016, and 31 July and 16 October 2017.

88. Algeria 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

89. In its communications of 26 April and 22 June 2016, SNATEGS describes itself as a recently-established trade union that has been registered by the Ministry of Labour, Employment and Social Security (Record No. 101 of 30 December 2013) and is represented in the energy sector, including the SONELGAZ Group, Algeria's second largest public corporation with 44 subsidiaries throughout the country (hereinafter "the enterprise"). SNATEGS states that although it has over 23,000 members throughout the country, its union branches have no presidents because the enterprise pressured, harassed and dismissed them. The complainant explains that the enterprise is using all the means at its disposal to reject

SNATEGS as a social partner in order to preserve its relationship with the historical trade union that has been in place since 1962 (the General Union of Algerian Workers). According to SNATEGS, its emergence as the largest registered independent trade union in the public energy sector is encountering resistance from the public authorities and preventing the enterprise from carrying out various illegal practices.

90. For example, the complainant reports that although it has been registered by the authorities, the enterprise refuses to recognize this registration. According to SNATEGS, not only has the enterprise refused to grant it the facilities to which it is legally entitled, it is continuing, with total impunity, to take measures that violate the union's officers' and members' right to organize; the authorities have been informed but have taken no action. SNATEGS states that it brought a complaint before the labour inspectorate pursuant to Act No. 90-14 of 2 June 1990 on modalities for exercising the right to organize, but the complaint was rejected on the grounds that the union was not representative. In that connection, SNATEGS recalls that, according to the Act, a trade union's representativeness should only be taken into account in the context of collective bargaining, not in matters relating to its right to carry out trade union activities. The labour inspectorate's failure to take action makes it complicit in the enterprise's actions. SNATEGS states that although it also referred the issue of the violation of its trade union rights to the Ministry of Labour, Employment and Social Security and the Prime Minister, no action was taken. The complainant provides copies of the communications sent to these government authorities.

91. SNATEGS also reports the wrongful dismissal of the following officers: its President, Mr Abdallah Boukhalfa, for calling a strike, albeit in accordance with the provisions of Act No. 02/90 on the prevention and settlement of collective labour disputes and the exercise of the right to strike and of Algeria's Constitution; its General Secretary, Mr Boualem Bendiaf, for activities contrary to the interests of the enterprise; its National Secretary for Internal Affairs and International Relations, Mr Raouf Mellal, and the trade union representative for the *wilaya* (province) of Guelma, Mr Mourad Semoudi, for joining a trade union that was "not authorized" by the employer and refusing to join the enterprise's existing trade union; the trade union representative for the *wilaya* of Oued Souf, Mr Khemis Chikha Belkacem, for refusing to authorize a wage deduction of 200 Algerian dinars (DZD) to pay the enterprise trade union's dues; and the trade union representative for the *wilaya* of Tipaza, Mr Faouzi Maouche, after joining the union. The enterprise is also engaged in the judicial harassment of Mr Abdallah Boukhalfa and Mr Mellal, having accused them of defamation and violation of the right to work, as a result of which the court fined them DZD20,000. Lastly, SNATEGS reports that 983 of its members were brought before disciplinary committees and told that they must resign from the union or face labour sanctions.

92. In its communications of 26 October 2016 and 3 January and 5 February 2017, SNATEGS reports that the enterprise is continuing to harass and retaliate against the union's officers with impunity. It states that a member of its Women's Committee, Ms Sarah Benmaiche, has been harassed and subsequently dismissed and that the enterprise and the authorities have refused to implement a court decision in her favour, which confirmed the harassment and ordered her reinstatement. The complainant also reports that the members of its National Office have been pressured and that some of them, whom it identifies by name, have been threatened with dismissal and ultimately resigned from the union or agreed to join the enterprise's other union.

93. Lastly, SNATEGS reports the judicial harassment of Mr Mellal, who had become the union's President; he was prosecuted for unlawful possession of documents after the enterprise brought a complaint against him in July 2016. During his interrogation, the judicial police refused to tell him which documents he was accused of possessing unlawfully. On 15 December 2016, despite the lack of evidence, he was informed that the Guelma court had convicted him in absentia and sentenced him to six months' imprisonment without

parole and a fine of DZD50,000. According to SNATEGS, the real reason for the enterprise's retaliation against Mr Mellal was the fact that, as part of his trade union duties, he had reported that the enterprise was engaging in overpricing, as a result of which it had been obliged to take corrective measures after SNATEGS shared this information with the price regulation authority.

94. In a communication received on 17 May 2017, the CGATA states that the enterprise's retaliation campaign culminated in the suspension of 93 representatives and the prosecution of 663 trade unionists in May 2017. It also reports that in May 2017, the police intervened to break a strike called by SNATEGS, for which there was widespread support. This retaliation campaign is being carried out by the enterprise at all levels and is symptomatic of its refusal to engage in dialogue with SNATEGS.

95. In its communication of 27 April 2017, SNATEGS provides detailed information on its acts of protest, including a three-day "dignity" strike (21–23 March 2017) in which marches and sit-ins were held in the cities of Tizi Ouzou, Bejaia and Algiers. SNATEGS reports that on each of these occasions, the police prevented the demonstrators from reaching the meeting points in the city centre, arrested the union's officers and interrogated them for several hours, insulting and harassing them. Among other things, SNATEGS states with regret that during a sit-in held in front of the Ministry of Labour in Algiers, not only did the authorities refuse to meet with a trade union delegation that was prepared to submit its grievances, they also had the police clear the area. In a communication dated 5 June 2017, the complainant reports that the Ministry of Labour, Employment and Social Security has notified it that its registration has been cancelled. According to SNATEGS, this constitutes retaliation by the public authorities against an organization which, despite the enterprise's harassment measures, has successfully carried out nationwide protests such as the general strike of 21–23 March 2017.

96. In communications dated 6 August 2017, SNATEGS provides details concerning the statement made by the Government's representative in the Conference Committee on the Application of Standards at the 106th Session of the International Labour Conference (June 2017) during the examination of Algeria's implementation of Convention No. 87. SNATEGS reports, first, that the Government's representative maintained that the trade union's President was still Mr Abdallah Boukhalfa although Mr Mellal had subsequently been elected, as confirmed by an order issued by the El-Harrouch court (Judgment No. 0006/17 of 2 January 2017, a copy of which is attached to the complaint). SNATEGS considers that the Government representative's denial of this situation constitutes serious government interference with its operations. SNATEGS notes that the Government merely stated that Mr Mellal was no longer employed by the enterprise and thus could not claim to represent its workers, without explaining that he had been wrongfully dismissed for his trade union involvement in 2013. SNATEGS also reports that while the Government states that Mr Mellal has a law degree, it fails to mention that he was hired by the enterprise as a legal adviser but has not held this position since his dismissal. SNATEGS explains that section 49 of its articles of association provides that union members who have been arbitrarily dismissed do not lose their membership status.

97. SNATEGS further alleges that the enterprise is carrying out an unprecedented campaign of retaliation against its members. For example, the organization reports that criminal complaints for obstruction of work have been brought against 12 trade union representatives, interim orders have been issued in respect of 900 striking workers and 250 trade union representatives have received notification of compulsory leave. Once again reporting that its representatives are being continually pressured to resign under threat of dismissal, SNATEGS provides a detailed list of 46 trade union representatives who have been wrongfully dismissed. It states that the systematic crackdown has affected over 1,500 of its members and requests the Committee to urge the Government to respect domestic law and

the international Conventions on freedom of association and protection of the right to organize, demand that the public authorities investigate the enterprise's harassment measures and order that the wrongfully dismissed trade unionists be reinstated.

98. In a communication dated 20 December 2017, the PSI, the IUF, IndustriALL and the ITUC report that since the establishment of SNATEGS, the enterprise has been systematically cracking down on its officers and members; they recall the history of widespread disciplinary measures and arrests and the conviction of its President. The international trade union federations express concern at the intensified retaliation against SNATEGS by the enterprise and the Government since the June 2017 session of the International Labour Conference. They request the Government to ensure that the trade union rights of SNATEGS and its members are respected, that the enterprise halts its crackdown immediately and that the trade unionists who were wrongfully dismissed merely for participating in union activities are reinstated.

B. The Government's reply

99. In communications dated 27 October 2016 and 16 October 2017, the Government confirms that SNATEGS has been registered as an organization since December 2013 as required by law. At the outset, it explains that according to Mr Abdallah Boukhalfa, President of SNATEGS, Mr Mellal, who signed the complaint, has not been a member of SNATEGS since his membership in the National Council was frozen in December 2015. Moreover, Mr Mellal is no longer employed by the electricity distribution company for the eastern part of the country (SDE), located in Guelma and a subsidiary of the SONELGAZ group (hereinafter "the group"); he is currently working as an attorney in Guelma. Therefore, Mr Mellal is not empowered to bring a complaint before the Committee on Freedom of Association on behalf of SNATEGS.

100. The Government explains that the dispute in the enterprise arose from the fact that SNATEGS' members, who were not on the staff of the enterprises in question and did not have trade union branches there, launched a membership campaign in the workplace during working hours in violation of the enterprise's internal regulations. The enterprise also accuses SNATEGS of campaigning and collecting funds for a trade union that had no branches in the group's enterprises and was separate from it under the Commercial Code. Thus, there are different interpretations of the provisions on trade union representation in the holding company, which comprises management, 44 subsidiaries and five independent enterprises.

101. The trade unionists' position relies on the fact that they established a registered trade union under the group's name and could therefore open branches in its enterprises since the founding members worked in three different subsidiaries. However, according to the enterprise's legal department, the group's enterprises are legally independent from one another under the Commercial Code and each of them is, by law, an employing organization separate from the other legal entities; thus, a trade union established in one of the group's enterprises cannot be recognized in another of them. Based on this interpretation, the enterprise considers that a trade union representing workers in all of the group's entities must be a branch, in the form of a union or a federation, of one of the unions that already have a presence in each of those entities. The Government also states that SNATEGS could bring any dispute regarding application of the provisions of Act No. 90-14 before the competent courts and the court would be required to issue an enforceable judgment within 60 days, notwithstanding any objection or appeal.

102. With regard to the dismissals mentioned in the complaint, the Government maintains that the reasons had nothing to do with the trade union activities of the representatives concerned, as seen from the rationale set out in the court judgments regarding them. Mr Abdallah

Boukhalfa, Mr Mellal and Mr Rouabhia are accused of disciplinary offences, namely disturbances in and disruption of workplaces and an attempted assault on the Acting Director of the enterprise's Guelma branch, committed in the presence of witnesses. The complaint brought by the branch resulted in the men's conviction for violation of the right to work; they were fined DZD2,000 and sentenced to pay court costs and damages of DZD20,000 in. As for Mr Chikha Belkacem, Mr Benzenache and Mr Maouche, the disciplinary committee's rulings state that they were terminated for violating internal regulations and undermining the work environment.

103. The workers in question referred the matter to the labour inspectorate for mediation, but the attempt culminated in a report stating that mediation had not been achieved; Mr Abdallah Boukhalfa then brought an appeal for reinstatement after wrongful dismissal before the El-Harrouch court. On 15 December 2014, the court issued a judgment cancelling the dismissal and sentenced the enterprise to pay DZD2 million for wrongful dismissal, DZD50,000 in damages and DZD400 in costs. The enterprise appealed this judgment before the Supreme Court, which has yet to rule on the case.

104. In its communication of 31 July 2017, the Government mentions the statement made by its representative during the Conference Committee on the Application of Standards' examination of Algeria's implementation of Convention No. 87 at the 106th Session of the International Labour Conference (June 2017). With respect to the alleged dissolution of SNATEGS in May 2017, the Government's representative indicated that the trade union had not been dissolved and was in operation in accordance with the law. He also emphasized that Mr Abdallah Boukhalfa was the President of SNATEGS and that Mr Mellal, who was working as an attorney, could not claim to represent the workers of an enterprise by which he was not employed. On this point, the Government states that the President of SNATEGS has brought a complaint of usurpation of function against Mr Mellal and that it will inform the Office of the judgment in the case.

C. The Committee's conclusions

105. *The Committee notes that the present case concerns allegations that an enterprise in the energy sector has refused to allow an officially registered trade union to operate within it, that the enterprise is cracking down on the union's officers and members, and that the public authorities, having been notified by the union, have refused to put an end to these violations of trade union rights or to enforce the court judgments in the union's favour.*

106. *The Committee takes note of the allegations made by SNATEGS, a trade union in the electricity and gas sector with 23,000 members, that although it has been officially registered since 2013, the relevant enterprise has not only refused to grant it the facilities required for its activities but has carried out a genuine crackdown on its members in order to retain the historical trade union. The Committee notes that, according to the complainant, the enterprise cites the fact that it is not representative as grounds for refusing to grant it the facilities to which it is legally entitled.*

107. *On this point, the Committee takes note of the Government's statement that the issue is how to interpret the provisions of Act No. 90-14 of 2 June 1990 (on modalities for exercising the right to organize) on trade union representation in an enterprise, which, in this case, is a group that comprises management, 44 subsidiaries and five independent enterprises. According to the enterprise's legal department, the group's enterprises are legally independent from one another under the Commercial Code and each of them is, by law, an employing organization separate from the other legal entities; thus, a trade union established in one of the group's enterprises cannot be recognized in another of them. Based on this interpretation, the enterprise considers that a trade union representing workers in all of the group's entities must be a branch, in the form of a union or a federation, of one of*

the unions that already have a presence in each of those entities. The Government indicates that SNATEGS' position relies on the fact that the trade union is registered under the group's name and can therefore open branches in its enterprises. The Committee also takes note of SNATEGS' statement that the legal provisions on a trade union's representativeness should only be taken into account in the context of collective bargaining, not in matters relating to trade union activities.

108. *In that regard, the Committee draws the Government's attention to the fact that on many occasions it has recalled the position of the Committee of Experts on the Application of Conventions and Recommendations that, where the law of a country draws a distinction between the most representative trade union and other trade unions, such a system should not have the effect of preventing minority unions from functioning and at least having the right to make representations on behalf of their members and to represent them in cases of individual grievances. Furthermore, the granting of exclusive rights to the most representative organization should not mean that the existence of other unions, to which certain involved workers might wish to belong, is prohibited. Minority organizations should be permitted to carry out their activities and at least to have the right to speak on behalf of their members and to represent them [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, paras 1387–1388]. The Committee also observes that sections 40 et seq. of Act No. 90-14 govern the modalities of trade union representation in the enterprise. Section 40, in particular, states that "in every public or private enterprise; in their various workplaces, where the enterprise has more than one; and in every public establishment, institution or administration, any representative trade union within the meaning of sections 34 and 35 of this Act may establish a trade union branch in accordance with its articles of association in order to represent its members' material and moral interests". The Committee further observes that sections 34–36 of the Act establish the conditions under which a trade union is considered representative and that sections 46 et seq. of the Act establish the facilities to be granted to trade union representatives. While the Committee does not have sufficient information to determine whether SNATEGS is representative in the enterprise, it expects the Government to ensure respect for the aforementioned decisions applying the principles of freedom of association concerning the rights of minority trade unions and to take all necessary measures to ensure that the provisions of the Act are implemented in respect of SNATEGS if it is established that it meets the criteria for representativeness.*

109. *The Committee notes that according to the Government, the dispute in the enterprise arose from the fact that SNATEGS' members, who were not on the staff of the enterprises in question and did not have trade union branches there, launched a membership campaign in the workplace during working hours in violation of the enterprise's internal regulations. While noting that the Government also states that the founders of SNATEGS were working in three different subsidiaries, the Committee recalls that workers' representatives should be granted access to all workplaces in the undertaking where such access is necessary to enable them to carry out their representation function. Trade union representatives who are not employed in the undertaking but whose trade union has members employed therein should be granted access to the undertaking. The granting of such facilities should not impair the efficient operation of the undertaking concerned. Lastly, the Committee has already had to suggest on several occasions that, if necessary, workers' organizations and employers could reach agreements so that access to workplaces, during and outside working hours, can be granted to workers' organizations without impairing the functioning of the establishment or service [see* ***Compilation****, op. cit., paras 1591, 1593 and 1599].*

110. *In numerous communications sent between April 2016 and August 2017, SNATEGS has reported the harassment and wrongful dismissal of many of its members, and particularly of its President, its General Secretary, the members of its National Board and its representatives in various wilayas. In April 2016 it reported, specifically, the wrongful*

dismissal of its President, Mr Abdallah Boukhalfa, for calling a strike, albeit in accordance with the provisions of Act No. 02/90 on the prevention and settlement of collective labour disputes and the exercise of the right to strike and of Algeria's Constitution; its General Secretary, Mr Boualem Bendiaf, for activities contrary to the interests of the enterprise; its National Secretary for Internal Affairs and International Relations, Mr Raouf Mellal, and the trade union representative for the wilaya of Guelma, Mr Mourad Semoudi, for joining a trade union that was "not authorized" by the employer and refusing to join the enterprise's existing trade union; the trade union representative for the wilaya of Oued Souf, Mr Khemis Chikha Belkacem, for refusing to authorize a wage deduction of DZD200 to pay the enterprise trade union's dues; and the trade union representative for the wilaya of Tipaza, Mr Faouzi Maouche, after joining the union. In its communication of 26 October 2016, SNATEGS states that a member of its Women's Committee, Ms Sarah Benmaiche, has been harassed and subsequently dismissed; in its communication of 3 January 2017, it reports that not only the enterprise, but also the police have threatened young members of its National Board, as a result of which two of them have resigned from the union; in its communication of 9 March 2017, it expresses concern at the situation of the union's representative for the wilaya of Tizi Ouzou, Mr Taleb Boukhalfa; and in a communication dated 6 August 2017, it sends a list of 46 of its representatives or members of its National Board, national committees, national federations and trade union branches in the wilayas who have been wrongfully dismissed by the enterprise.

111. *The Committee notes that the Government, in its reply, mentions only some of the cases of alleged harassment and dismissal. In general terms, it states that the reasons for the dismissals had nothing to do with trade union activities, including in the case of the union's President, Mr Abdallah Boukhalfa, and two members of its National Board, Mr Mellal and Mr Rouabhia; they were accused of disciplinary offences, namely disturbances in and disruption of workplaces and an attempted assault on the Acting Director of the enterprise's Guelma branch, committed in the presence of witnesses. The complaint brought by the branch resulted in the men's conviction for violation of the right to work; they were fined DZD2,000 and sentenced to pay court costs and damages of DZD20,000. The Government states that, according to the rulings of the enterprise's disciplinary committee, the union's wilaya representatives, Mr Chikha Belkacem, Mr Benzenache and Mr Maouche, were dismissed for violating internal regulations and undermining the work environment. The Government indicates that the workers in question referred the matter to the labour inspectorate for mediation, but the attempt culminated in a report stating that mediation had not been achieved; Mr Abdallah Boukhalfa then brought an appeal for reinstatement after wrongful dismissal before the El-Harrouch court. On 15 December 2014, the court issued a judgment cancelling the dismissal and sentenced the enterprise to pay DZD2 million for wrongful dismissal, DZD50,000 in damages and DZD400 in costs. The enterprise appealed this judgment before the Supreme Court, which has yet to rule on the case.*

112. *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. However, the Committee also recalls that the principle that a worker or trade union official should not suffer prejudice by reason of his or her trade union activities does not necessarily imply that the fact that a person holds a trade union office confers immunity against dismissal irrespective of the circumstances [see* ***Compilation****, op. cit., paras 1117 and 1119]. Noting with concern the especially large*

number of union representatives who, according to the complainant, have been wrongfully dismissed, and recalling that the Government has a list of the names of all the representatives who have been dismissed, the Committee urges the Government to make inquiries in order to establish the grounds for these dismissals and, if they prove to have resulted from legitimate trade union activities, to take the necessary steps to secure the workers' reinstatement without loss of pay and ensure the application of the corresponding legal sanctions against the enterprise. If reinstatement is not possible for objective and compelling reasons, the workers concerned should be paid adequate compensation so as to constitute a sufficiently dissuasive sanction against anti-union dismissals. The Committee requests the Government to keep it informed of the results of these inquiries without delay.

113. *The Committee notes that according to SNATEGS, the court ruled in favour of a trade union representative, Ms Sarah Benmaiche, in 2015, confirming that she had been harassed and ordering her reinstatement. However, the enterprise allegedly refused to implement the court's judgment unless the public authorities, including the Ministry of Labour (which had been notified by SNATEGS) obliged it to do so. The Committee urges the Government to indicate without delay whether there has been any follow-up on this matter and, in particular, whether Ms Benmaiche has been reinstated pursuant to the court judgment and whether she is still carrying out trade union activities.*

114. *The Committee also takes note of the allegations concerning acts of protest, including a three-day "dignity" strike (21–23 March 2017) in which marches and sit-ins were held in the cities of Tizi Ouzou, Bejaia and Algiers. SNATEGS reports that on each of these occasions, the police prevented the demonstrators from reaching the meeting points in the city centre, arrested the union's officers and interrogated them for several hours, insulting and harassing them. Lastly, SNATEGS states with regret that during a sit-in held in front of the Ministry of Labour in Algiers, not only did the authorities refuse to meet with a trade union delegation that was prepared to submit its grievances, they also had the police clear the area. The Committee notes that in his 2017 statement in the Conference Committee on the Application of Standards, the Government representative maintained that the strike had been called in violation of the provisions of Act No. 89-28 on public meetings and demonstrations; that its purpose had been to disrupt and disturb the peace and that the demonstrators had therefore been subject to the penalties envisaged in the Act; and that the police had intervened in accordance with the law and with international standards on the exercise of the right to peaceful assembly. On this point, the Committee considers it useful to recall that while workers should enjoy the right to peaceful demonstration to defend their occupational interests, trade union organizations should conduct themselves responsibly and respect the peaceful manner in which the right of assembly should be exercised. Furthermore, the authorities should resort to the use of force only in situations where law and order is seriously threatened. The intervention of the forces of order should be in due proportion to the danger to law and order that the authorities are attempting to control and governments should take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations which might result in a disturbance of the peace [see* ***Compilation****, op. cit., paras 208, 211 and 217]. The Committee would also like to recall that the arrest, even if only briefly, of trade union leaders and trade unionists, and of the leaders of employers' organizations, for exercising legitimate activities in relation with their right of association constitutes a violation of the principles of freedom of association and to draw the Government's attention to the fact that it is not possible for a stable industrial relations system to function harmoniously in the country as long as trade unionists are subject to arrests and detentions [see* ***Compilation****, op. cit., paras 121 and 127]. The Committee expects the Government to ensure respect for the above.*

115. *With regard to the alleged judicial harassment of Mr Mellal, formerly the union's National Secretary for Internal Affairs and International Relations and later its President and*

signatory of the complaint that the Committee has before it, the Committee takes note of the statement that he was prosecuted for unlawful possession of documents after the enterprise brought a complaint against him in July 2016. According to SNATEGS, the enterprise was retaliating against Mr Mellal because, as part of his trade union duties, he had reported that the enterprise was engaging in overpricing, as a result of which it had been obliged to take corrective measures after this information was shared with the price regulation authority. The union reports that at the time of his arrest, Mr Mellal requested the judicial police officers who were interrogating him to produce the documents that he was accused of possessing unlawfully, but they refused to do so and that on 15 December 2016, despite the lack of evidence, he was informed that the Guelma court had convicted him in absentia and sentenced him to six months' imprisonment without parole and a fine of DZD50,000. His appeal of this judgment was denied in May 2017.

116. *The Committee takes note of the Government's reiterated statement that Mr Mellal is working as an attorney and cannot claim to represent the workers of an enterprise by which he is not employed. The Government also states that the President of SNATEGS, Mr Abdallah Boukhalfa, has brought a complaint for usurpation of function against Mr Mellal and that it will inform the Office of the outcome of this complaint. In that connection, the Committee notes that SNATEGS accuses the Government of interfering in its activities by claiming that Mr Abdallah Boukhalfa is still President of the union although Mr Mellal has subsequently been elected, as confirmed by an order issued by the El-Harrouch court (Judgment No. 0006/17 of 2 January 2017, a copy of which is attached to the complaint). SNATEGS also points out that the Government merely states that Mr Mellal is no longer employed by the enterprise and thus cannot claim to represent its workers, without explaining that he was wrongfully dismissed for his trade union involvement in 2013. Lastly, SNATEGS explains that section 49 of its articles of association provides that union members who have been arbitrarily dismissed do not lose their membership status. The Committee requests the Government to keep it informed of the outcome of Mr Abdallah Boukhalfa's complaint against Mr Mellal for usurpation of function and, in the interim, urges it to adopt a neutral attitude in the case, including by refraining from any statement that might be viewed as a form of interference in the operations of SNATEGS.*

117. *The Committee observes that, according to the CGATA, the enterprise's crackdown on SNATEGS at all levels is symptomatic of its refusal to engage in dialogue with the trade union. The CGATA also reports that in May 2017, the police intervened to break a strike called by SNATEGS, for which there was widespread support. Furthermore, the Committee notes that in their communication of 20 December 2017, the international trade union federations that support the complaint report that since the establishment of SNATEGS, the enterprise has been systematically cracking down on its officers and members; they recall the history of widespread disciplinary measures and arrests and the conviction of its President and express concern at the intensified retaliation against SNATEGS by the enterprise and the Government since the June 2017 session of the International Labour Conference. They request the Government to ensure that the trade union rights of SNATEGS and its members are respected, that the enterprise halts its crackdown immediately and that the trade unionists who were wrongfully dismissed merely for participating in union activities are reinstated.*

118. *In general terms, the Committee notes with deep concern the large number of officers and members of SNATEGS who are allegedly affected by discrimination on the part of the enterprise since the union's establishment; during the crackdown, some 1,500 workers are said to have been subjected to harassment, intimidation, assault, compulsory leave and dismissal. The Committee is particularly concerned by the allegation that these discriminatory measures have intensified since the June 2017 session of the International Labour Conference. The Committee observes that the Government does not challenge the*

numbers claimed by SNATEGS. It therefore urges the Government to take all necessary measures to ensure peaceful labour relations in the enterprise and to address the serious acts of anti-union discrimination reported. To that end, it strongly urges the Government to ensure that all of the allegations of discrimination that are currently before it are investigated promptly and to keep it informed in that regard. The Committee also expects the Government to ensure that the relevant court judgments are duly implemented. Such measures should help to create an environment that will allow SNATEGS to carry out its activities without interference or intimidation.

119. *The Committee observes that in June 2017, the Committee on the Application of Standards requested the Government to agree to a direct contacts mission in order to assess the progress on pending matters that are relevant to some of the issues raised in the complaint. Noting that the direct contacts mission has not yet taken place, the Committee expects the Government to accept the mission so that, in this case, the measures taken in order to ensure that SNATEGS and its members enjoy an environment free from intimidation and violence and the progress achieved in that regard can be assessed.*

The Committee's recommendations

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

(a) The Committee expects the Government to ensure respect for the aforementioned decisions applying the principles of freedom of association concerning the right of minority trade unions to carry out their activities and represent their members. It further expects the Government to take all necessary measures to ensure that the provisions of the Act are implemented in respect of SNATEGS if it is established that it meets the criteria for representativeness.

(b) The Committee urges the Government to keep it informed of the Supreme Court's judgment in the appeal of the 15 December 2014 judgment of the El-Harrouch court in the case involving Mr Abdallah Boukhalfa and the enterprise.

(c) The Committee urges the Government to keep it informed of the outcome of the complaint allegedly brought by Mr Abdallah Boukhalfa against Mr Mellal for usurpation of function and, in the interim, urges it to adopt a neutral attitude in the case, including by refraining from any statement that might be viewed as a form of interference in the operations of SNATEGS.

(d) The Committee urges the Government to indicate without delay whether Ms Benmaiche has been reinstated in accordance with the court judgment issued and whether she is still carrying out trade union activities.

(e) Noting with concern the especially large number of union representatives who, according to the complainant, have been wrongfully dismissed, and recalling that the Government has a list of the names of all the representatives who have been dismissed, the Committee urges the Government to make inquiries in order to establish the grounds for these dismissals and, if they prove to have resulted from legitimate trade union activities, to take the necessary steps to secure the workers' reinstatement without loss of pay and ensure the application of the corresponding legal sanctions against the

enterprise. If reinstatement is not possible for objective and compelling reasons, the workers concerned should be paid adequate compensation so as to constitute a sufficiently dissuasive sanction against anti-union dismissals. The Committee requests the Government to keep it informed of the results of these inquiries without delay.

(f) The Committee strongly urges the Government to take all necessary measures to ensure peaceful labour relations in the enterprise and to address the serious acts of anti-union discrimination reported. To that end, it urges the Government to ensure that all of the allegations of discrimination that the Committee has before it are investigated promptly and to keep it informed in that regard. The Committee also expects the Government to ensure that the relevant court judgments are duly implemented. Such measures should help to create an environment that will allow SNATEGS to carry out its activities without interference or intimidation.

(g) Noting that the direct contacts mission requested by the Committee on the Application of Standards in June 2017 has not yet taken place, the Committee expects the Government to accept the mission so that, in this case, the measures taken in order to ensure that SNATEGS and its members enjoy an environment free from intimidation and violence and the progress achieved in that regard can be assessed.

CASE NO. 3219

INTERIM REPORT

Complaint against the Government of Brazil presented by

- **the Union of Hotel, Bar, Cafeteria and Allied Workers of São Paulo and the Surrounding Region (SINTHORESP)**
- **the National Confederation of Tourism and Hospitality Workers (CONTRATUH) and**
- **the New Workers' Federation (NCST)**

Allegations: The complainants report that SINTHORESP has been unfairly deprived of the right to represent fast-food workers in the state of São Paulo and has been fined for bringing court proceedings requesting the payment of trade union contributions

121. The complaint is contained in a joint communication dated 1 December 2015 from the Union of Hotel, Bar, Cafeteria and Allied Workers of São Paulo and the Surrounding Region (SINTHORESP), the National Confederation of Tourism and Hospitality Workers (CONTRATUH) and the New Workers' Federation (NCST) and additional communications of 16 September and 7 December 2016 and 17 March 2017 from SINTHORESP.

122. The Government sent its observations in a communication of 5 May 2017.

123. Brazil has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but it has ratified the Right to Organise and Collective

Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

124. In their communication of December 2015, the complainants allege that a court judgment imposing a high fine on SINTHORESP for bringing legal proceedings is hindering the trade union's access to justice and constitutes a violation of freedom of association. The complainants allege, specifically, that: (i) on 24 September 2015, the 75th Labour Court of São Paulo fined SINTHORESP 100,000 Brazilian reais (BRL) (approximately US$31,000) for bringing separate court proceedings requesting that several restaurants in the McDonald's franchise (hereinafter the "fast-food chain") pay it the trade union dues that it was owed; (ii) the amount of the fine is exorbitant when compared with the sum that the union requested in the proceedings (BRL4,324); (iii) the purpose of the fine was to place the union's activities under the State's control through arbitrary action that violates Article 3(2) of Convention No. 87, which prohibits the public authorities from interfering in trade union activities; (iv) the union was entitled to request, through separate judicial proceedings, that each of the fast-food chain's restaurants pay the trade union contribution since each of them is registered as a separate entity; (v) while SINTHORESP is alleged to have committed judicial harassment and was fined for doing so, the proceedings that it brought are, in reality, an example of its trade union activism aimed at defending workers in the restaurant industry as a whole and those of the fast-food chain in particular, including by attempting to eliminate zero-hours contracts in that chain; and (vi) the fine imposed on SINTHORESP therefore constitutes a clear violation of the obligation of the public authorities in general, and the judiciary in particular, to protect freedom of association.

125. In its other communications, the complainant states that the fine imposed by the judiciary is part of a broader pattern of hostility towards SINTHORESP on the part of the enterprise and the State and, in that connection, that: (i) court decisions have deprived it of the right to represent fast-food restaurant workers in the state of São Paulo; only the Union of Fast-Food Workers of the City of São Paulo (SINDIFAST) may do so; (ii) this is only true in the state of São Paulo; SINTHORESP is still recognized as the union that represents restaurant workers – including fast-food workers – in the rest of the country; (iii) the denial of SINTHORESP's right to represent fast-food workers in the state of São Paulo is an example of the protection that the public authorities grant to the aforementioned fast-food chain owing to the magnitude of the economic interests at stake since 40 per cent of the chain's Brazilian restaurants are located in that state; (iv) the fast-food workers who were the stakeholders most directly concerned were not consulted as to which trade union should represent them; and (v) the Government has made no attempt to facilitate consultations between the various trade unions with a view to a fair resolution of this dispute concerning representation.

126. The complainants add that: (i) as a consequence of the establishment of the "yellow" union, SINDIFAST, and the subsequent replacement of SINTHORESP as the union entitled to represent fast-food workers in the state of São Paulo, SINDIFAST brought court proceedings in two venues – the labour court and the ordinary court – requesting retroactive payment by SINTHORESP of the fast-food restaurants' union dues; (ii) pending the issuance of the relevant court judgments, SINTHORESP's bank accounts have been frozen, preventing it from paying the wages of its 800 employees and providing services to its members and the workers that it represents; (iii) SINDIFAST is calling for the payment of millions of Brazilian reais and a court decision in its favour would threaten the very existence of SINTHORESP, preventing it from defending the over 200,000 restaurant workers who use its services on a daily basis; and (iv) all of the foregoing is proof that the Government and the employers are attempting to weaken one of the world's largest trade unions for the industry through trade union fragmentation.

B. The Government's reply

127. In a communication of 5 May 2017, the Government forwards the information provided by Brazil's Supreme Labour Court. With respect to the aspect of the complaint that concerns the fine imposed on SINTHORESP for judicial harassment, the Court states that: (i) the alleged events do not constitute a violation of any national or international standard on freedom of association; (ii) SINTHORESP brought countless legal proceedings requesting that retail establishments be required to pay the compulsory trade union dues to it rather than to other trade unions; (iii) in all of these cases, the court found that the enterprises in question did not fall within the scope of SINTHORESP's activities and that the compulsory dues were being paid to the appropriate trade unions; (iv) pursuant to Brazilian law, because SINTHORESP continued to bring new legal proceedings even though the courts had already ruled on the cases in question, the courts cautioned that the complainant was using the judicial system in bad faith; (v) the fine of BRL100,000 (approximately US$31,000) that the courts imposed on SINTHORESP reflects both the seriousness of the union's conduct and the economic value of the subject of the proceedings brought before the court (over BRL4 million; (vi) the size of the fine does not threaten the union's existence or reduce its ability to act since its economic resources are sufficient to comply with the court judgment; (vii) under Brazil's legal system, the complainant had available to it more than ten avenues for challenging the judgment in the courts; (viii) the complainant was given every opportunity to mount a defence and the judgment issued respected all the rules of due process and was in no way flawed; (ix) the courts did not interfere with SINTHORESP's activities since, by bringing judicial proceedings, the union itself requested them to intervene; and (x) the fact that the complainant was fined for flagrant misuse of judicial remedies is proof that the laws are applicable to all subjects of law.

C. The Committee's conclusions

128. *The Committee observes that the present case concerns the situation in the fast food industry of a trade union in the restaurant sector, SINTHORESP, which, under the legal mechanism of* enquadramento sindical *(trade union coverage), has lost the right to represent fast-food workers in the state of São Paulo. In that connection, the Committee observes that according to the trade union: (i) the public authorities' refusal to allow it to represent the aforementioned workers is unwarranted; and (ii) the fine that the courts imposed on the union for "judicial harassment" after it had brought numerous proceedings requesting that fast-food restaurants in the state of São Paulo continue to pay trade union contributions to it constitutes a violation of the union's freedom of association.*

129. *With regard to the allegation that the complainant has been unfairly denied the right to represent fast-food workers in the state of São Paulo, the Committee takes note of the complainant's allegation that: (i) through court decisions, it was replaced by SINDIFAST, a trade union viewed as sympathetic to the employers' interests; (ii) such a replacement took place only in the state of São Paulo and is an example of the protection that the public authorities grant to one fast-food chain in particular owing to the magnitude of the economic interests at stake since 40 per cent of the chain's Brazilian restaurants are located in that state; (iii) the fast-food workers were not consulted as to which trade union should represent them; (iv) the Government has made no attempt to facilitate consultations between the various trade unions with a view to a fair resolution of this dispute concerning representation; (v) on the contrary, SINDIFAST has brought legal proceedings requesting retroactive payment by SINTHORESP of millions of reais in fast-food restaurants' union dues; and (vi) all of the foregoing is proof that the Government and the employers are attempting to weaken one of the world's largest trade unions for the industry through fragmentation.*

130. *The Committee notes with regret that to date, the Government has not sent its observations on this aspect of the complaint related to the legal mechanism of enquadramento sindical, whereby a single union is empowered to represent the workers in a given industry and geographical area. On this point, the Committee recalls that it has long since expressed its views on Brazil's single trade union system, emphasizing that the imposition by law of the trade union monopoly in Brazil is not compatible with the principles of freedom of association and therefore urging the Government to ensure that national law was brought into conformity with such decisions [see, for example, Case No. 2099, 325th Report, para. 193]. The Committee has also recalled in general terms that workers and employers should be able to freely choose which organization will represent them for purposes of collective bargaining and that systems based on a sole bargaining agent (the most representative) and those which include all organizations or the most representative organizations in accordance with clear pre-established criteria for the determination of the organizations entitled to bargain are both compatible with Convention No. 98 [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, paras 1359–1360]. Emphasizing the importance of the above for collective labour relations systems in general and Brazil's system in particular, the Committee requests the Government to send promptly its observations on the complainant's allegation that it was deprived of the right to represent fast-food workers in the state of São Paulo including information on the procedures and decisions that led to such situation. The Committee also requests the complainant to provide more detailed information on the extent of its representativeness in the state of São Paulo in general and in the state's fast-food restaurants in particular as well as updated information on the court proceeding that SINDIFAST would have initiated against SINTHORESP.*

131. *With respect to the fine that the courts have reportedly imposed on SINTHORESP for judicial harassment, the Committee notes that according to the complainant: on 24 September 2015, the 75th Labour Court of São Paulo fined SINTHORESP BRL100,000 (approximately US$31,000) for bringing separate court proceedings requesting that several of a franchise's restaurants pay it the trade union dues that it was owed; (ii) the amount of the fine is exorbitant and was intended to place the union's activities under the State's control; (iii) the large number of judicial proceedings is a consequence of the fact that each of the chain's restaurants is registered as a separate entity; and (iv) the numerous proceedings that SINTHORESP has brought, which the judiciary views as judicial harassment, are in reality an example of its trade union activism, which is necessary in order to improve the working conditions of fast-food workers and defend them from the emergence of unions that are sympathetic to the employers. The Committee also notes that the Government forwards the reply from the President of the Federal Labour Court, who states that: (i) SINTHORESP brought countless legal proceedings requesting that retail establishments be required to pay the compulsory trade union dues to it rather than to other trade unions; (ii) in all of these cases, the court found that the enterprises in question did not fall within the scope of SINTHORESP's activities and that the compulsory dues were being paid to the appropriate trade unions; (iii) because SINTHORESP continued to bring identical legal proceedings, the courts cautioned that the complainant – which, like other subjects of law, must respect the laws – was using the judicial system in bad faith; (iv) the fine of BRL100,000 reflects the seriousness of the union's conduct and the size of the fine does not threaten its existence; and (v) due process and the right to a defence were respected and the union had available to it many avenues for challenging the judgment.*

132. *The Committee recalls that freedom of association implies not only the right of workers and employers to form freely organizations of their own choosing, but also the right for the organizations themselves to pursue lawful activities for the defence of their occupational interests [see* ***Compilation****, op. cit., para. 716]. The Committee emphasizes that, to that end, occupational organizations must have free access to the courts in order to defend their interests and those of their members without fear of adverse consequences that might serve*

as a deterrent to subsequent legal proceedings. While taking due note of the statement by the Supreme Labour Court that trade unions, like other subjects of law, must obey the laws, the Committee observes that in the present case, it does not have sufficient information to determine whether freedom of association has been restricted.

The Committee's recommendation

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

Recalling that it is important for workers to be able to freely choose which organization will represent them, the Committee requests the Government to send promptly its observations on the complainant's allegation that it was deprived of the right to represent fast-food workers in the state of São Paulo, including information on the procedures and decisions that led to such situation. The Committee also requests the complainant to provide more detailed information on the extent of its representativeness in the state of São Paulo in general and in the state's fast-food restaurants in particular as well as updated information on the court proceeding that SINDIFAST would have initiated against SINTHORESP.

CASE NO. 3273

DEFINITIVE REPORT

Complaint against the Government of Brazil presented by the National Federation of Unions of Prison Service Employees (FENASPEN)

Allegation: The complainant organization alleges that several officials of the Union of Prison Security Officers of the State of Minas Gerais (SINDASP–MG) are the subject of unjustified disciplinary proceedings for having made use of trade union leave

134. The complaint is contained in a communication from the National Federation of Unions of Prison Service Employees (FENASPEN) dated 22 March 2017.

135. The Government sent its observations in communications dated 14 March and 23 May 2018.

136. Brazil has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

137. In its communication of March 2017, the complainant organization alleges that three officials of its affiliated organization, the Union of Prison Security Officers of the State of Minas Gerais (SINDASP–MG), Mr Adeilton de Souza Rocha (Union President), Mr Carlos

Alberto Nogueira (Executive Director of the Union) and Ms Anita Fernandes Tocafundo (Executive Director of the Union), are the subject of disciplinary proceedings for having made use of trade union leave. In this regard, the complainant organization specifically alleges that: (i) administrative proceeding No. 002/2014 was initiated after State Deputy Mr Cabo Júlio filed a complaint with the human resources department of the State Secretariat for Social Defence (SEDS), alleging irregularities in the conduct of trade union activities; (ii) this fact demonstrates the political nature of the aforementioned administrative proceedings; (iii) the three union officials who are the subject of the disciplinary proceedings have been in charge of the representation of prison security officers for many years, with Ms Anita Fernandes Tocafundo having been on full-time union leave since 2008 and Mr Adeilton de Souza Rocha and Mr Carlos Alberto Nogueira since 2012; (iv) these full-time union leave arrangements were obviously set up after the relevant authorizations had been granted by the hierarchical superiors and SEDS; (v) the documents proving that the full-time union leave had been expressly authorized were duly presented during the administrative proceedings, as were the corroborating testimonies of two former Secretaries of State for Social Defence, Mr Lafayete Andrada and Mr Romulo de Carvalho Ferraz, and two former Deputy Secretaries of State for Social Defence, Mr Genilson Ribeiro Zeferino and Mr Murilo Andrade de Oliveira; (vi) the directors of the units to which the three union officials had been assigned to work and several directors of the prison administration also confirmed that they were aware that the three union officials had been authorized to take full-time union leave; and (vii) furthermore, over the years in which they were in charge of the union representation of prison officers, the three union officials were, in the exercise of their union functions, permanently in touch with the executive branch of the State of Minas Gerais and also with the human resources department of SEDS, and they never received any comments about possible irregularities in their representation work.

138. The complainant organization further states that, despite all of the above, the committee in charge of the administrative proceedings produced a report stating that the authorities mentioned were not competent to grant authorization for full-time union leave. The complainant organization also states that, in addition to all the substantive arguments set out above, SINDASP–MG presented a series of procedural means of defence that demonstrated the invalidity of the administrative proceedings, but that these were not taken into consideration. These arguments included, in particular: (i) the absence in the complaint of any evidence of damage to the public finances; and (ii) the absence of any liability on the part of the trade union organization in the event that the authorizations granted by the administrative authorities were characterized by irregularities.

139. The complainant organization states that, despite all of the above and despite the impeccable behaviour of the three union officials who always worked for the common good, the director of SEDS decided to impose a 15-day suspension as a sanction. The complainant organization states that it filed an appeal against that decision, which is currently under examination. More generally, the complainant organization asks institutions to avoid practices that are aimed at penalizing the regular exercise of trade union activity in the State of Minas Gerais.

B. The Government's reply

140. In a communication of 14 March 2018, the Government states that, according to the annexes to the complaint, several public servants of the State of Minas Gerais were the subject of administrative disciplinary proceedings for failing to comply with certain formal requirements regarding trade union representation, and that, as a result of these proceedings, two public servants received a sanction of suspension. The Government states that, by virtue of the federal autonomy enshrined in the Constitution of Brazil, the Ministry of Labour of the Union has no competence to interfere in the administrative proceedings under way in the different states of the Federation.

141. The Government adds that: (i) according to the available documentation, the disciplinary proceedings are still before the administrative authorities; (ii) the public servants had the opportunity to exercise their right of defence in accordance with constitutional principles; (iii) according to the documents, the parties have so far not initiated judicial proceedings; (iv) the judicial branch of Brazil takes due account of ILO instruments when examining allegations of anti-union acts in order to provide adequate protection, as stated in Convention No. 98 ratified by Brazil; and (v) in the event that the parties consider themselves aggrieved by the final decision of the administrative proceedings currently under way, they will have the opportunity to take legal action.

142. In its communication dated 23 May 2018, the Government transmits information provided by the State Secretariat for Social Defence in the State of Minas Gerais, which states that: (i) in the framework of the administrative disciplinary process No. 040/2015 concerning public servants Adeilton de Souza Rocha, Carlos Alberto Nogueira and Anita Fernandes Tocafundo, the commission examining the case suggested the imposition of a sanction of suspension of 15 days for not having observed the legal formalities regarding trade union representation; (ii) this decision was based on the breach of article 34 of the Constitution of the State of Minas Gerais which establishes the number of full-time union leave that can be issued based on the number of trade union members; (iii) it was found that the trade union to which the three public servants were affiliated already benefited from the maximum number of trade union leave corresponding to the number of its members, which is why the granting of additional leave would have required the authorization of the Secretary of State Planning and Management (SEPLAG); and (iv) having found that such authorization had not been granted but that the issuance of full-time union leave to the three mentioned persons originated in a decision of the State Secretary for Social Defence at the time of the facts, it was concluded that the granting of full-time trade union leave to Adeilton de Souza Rocha, Carlos Alberto Nogueira and Anita Fernandes Tocafundo was not lawful.

143. The State Secretariat for Social Defence in the State of Minas Gerais further informs that public servants Adeilton de Souza Rocha and Carlos Alberto Nogueira are currently exercising their mandate in the leadership of the trade union and that Anita Fernandes Tocafundo is no longer working after having requested an early retirement.

C. The Committee's conclusions

144. *The Committee notes that the present case concerns the situation of three union officials from the prison administration of the State of Minas Gerais who are the subject of disciplinary proceedings for alleged irregularities in the obtaining of full-time trade union leave. In this respect, the Committee takes note of the complainant organization's allegation that the disciplinary proceedings against the President and the two Executive Directors of SINDASP–MG, Mr Adeilton de Souza Rocha, Ms Anita Fernandes Tocafundo and Mr Carlos Alberto Nogueira, are politically motivated as they were initiated following a complaint filed by a state deputy for Minas Gerais and that the 15-day suspension that was imposed on them is unjustified insofar as: (i) the three union officials that have occupied their positions for many years provided evidence of the authorizations concerning their full-time union leave, and the corresponding testimonies of those who granted them; (ii) over the years in which they represented on a full-time basis prison officers in the State of Minas Gerais, the three union officials were permanently in touch with the executive branch of the State of Minas Gerais and with the human resources department of the penitentiary institution and they never received any comments about possible irregularities in their representation work; (iii) trade union officials should not be held liable for any mistakes made by the administration itself in the process of authorizing trade union leave; and (iv) for the reasons given above, the disciplinary sanctions were the subject of an administrative appeal that is still pending.*

145. *The Committee also notes that the Government states that by virtue of the federal autonomy enshrined in the Constitution of Brazil, the Ministry of Labour of the Union has no competence to interfere in administrative proceedings under way in the different states of the Federation, that the right to defence was respected throughout the process and that trade union leaders subjected to sanctions can take legal action available to them, if they so desire.*

146. *The Committee further notes that the Government submits observations of the State Secretariat for Social Defence in the State of Minas Gerais, which state that: (i) the sanction of suspension of 15 days against the three union leaders proposed by the commission responsible for the examination of the administrative disciplinary process was based on the finding that the corresponding trade union had already obtained the maximum amount of union leave recognized by the Constitution of the State; (ii) the granting of additional leave would have required an authorization of the SEPLAG, while the three public servants only obtained the authorization of the State Secretary for Social Defence at the time; (iii) therefore, the granting of paid union leave to the three union leaders was not lawful; and (iv) public servants Mr Adeilton de Souza Rocha and Mr Carlos Alberto Nogueira are currently exercising their leadership mandate in the trade union and Ms Anita Fernandes Tocafundo is not working as she had requested an early retirement.*

147. *While noting that the Government's reply does not specify who was responsible for obtaining the authorization from the institution competent for granting additional union leave, the Committee observes from the information provided that the trade union to which the three union leaders were affiliated already benefited from the maximum amount of paid union leave provided for in the legal system of the State of Minas Gerais and that although the entity employing the mentioned public servants granted them full-time leave, an authorization was not obtained from the institution competent to attribute additional union leave. In these circumstances, the Committee will not pursue the examination of this case.*

The Committee's recommendation

148. ***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. 3183

INTERIM REPORT

Complaint against the Government of Burundi presented by the Confederation of Free Trade Unions of Burundi (CSB)

Allegations: The complainant organization denounces the anti-union dismissal and suspension of the employment contracts of members of the executive committee of the telecommunications enterprise

149. The Committee examined this case brought by the Confederation of Free Trade Unions of Burundi (CSB) at its meeting in March 2017 and on that occasion presented an interim report to the Governing Body [see 381st Report, approved by the Governing Body at its 329th Session (March 2017), paras 125 to 139].

150. The Committee has been obliged to postpone its examination of the case twice, in the absence of any reply from the Government. At its meeting in March 2018, the Committee expressed regret at the Government's persistent non-cooperation and, addressing the latter, indicated 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. The Government provided summary information on 20 April 2018.

151. In light of the lack of substantial information and given the time that has elapsed since the presentation of the complaint, the Committee asked its representatives to meet with members of the Government delegation at the 107th Session of the International Labour Conference (May–June 2018), in order to obtain detailed information on the measures taken with regard to the present case.

152. Burundi 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

153. In its previous examination of the case in March 2017, the Committee made the following recommendations [see 381st Report, para. 139]:

(a) The Committee deeply regrets that the Government has not replied to the allegations, even though it has been asked to do so several times, including through an urgent appeal, and requests it to reply as soon as possible.

(b) The Committee requests the Government to expedite an independent inquiry into the allegations concerning, in particular, the suspension of Mr Alain Christophe Irakiza, Mr Martin Floris Nahimana, Mr Bernard Mdikabandi and Ms Bégnigne Nahimana. If it is established that acts of anti-union discrimination have been committed, the Committee requests the Government to take the necessary measures of redress, including ensuring the reinstatement of the workers concerned without loss of pay. The Committee requests the Government to keep it informed of the measures taken in this regard and their results. It further requests the Government to provide full information on the situation of Mr Alexis Bizimana and, if necessary, to take the appropriate measures of redress.

(c) The Committee requests the Government to ask the employers' organizations concerned, if they so desire, to provide information so that it can be aware of their version of events and know the views of the enterprise concerned on the pending issues.

B. The Government's reply

154. In its communication dated 20 April 2018, the Government merely recalled the involvement since 2015 of the National Committee for Social Dialogue (CNDS) which considered that the suspension measures concerned were "not appropriate" and that the matter had been brought before the courts. According to the Government, the workers won their case at first instance and on appeal, but the employer subsequently appealed to the Supreme Court, which has not yet handed down its decision.

C. The Committee's conclusions

155. *The Committee deeply regrets the fact that, despite the time that has elapsed since the presentation of the case, the Government has not provided specific information in response to the allegations made by the complainant organization, even though it has been asked to do so several times, including through urgent appeals.*

156. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to ensure respect for this freedom in law and in practice. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments, on their side, will recognize the importance of presenting, for objective examination, detailed replies concerning allegations made against them [see First Report of the Committee, para. 31].*

157. *The Committee recalls that the allegations of the CSB relate to the suspension and dismissal of trade union representatives from SYTCOM in the context of the merger of two telecommunications companies in Burundi, which resulted in a staff reduction process. The individuals concerned by the suspension measure are Messrs Alain Christophe Irakiza, Martin Floris Nahimana, Bernard Mdikabandi and Ms Bégnigne Nahimana. According to the complainant organization, this measure is in addition to the wrongful dismissal of another member of the executive board of SYTCOM, Mr Alexis Bizimana.*

158. *The Committee notes that the Government, in its communication of 20 April 2018, indicates, without further details, that the Labour Court and the Court of Appeal have ruled in favour of the workers concerned and that the case is pending before the Supreme Court. Regretting the lack of detailed information from the Government, the Committee requests the latter to provide copies of the decisions handed down by the courts concerned, as well as a copy of the pending decision from the Supreme Court and invites the complainant to provide any additional information it may have at its disposal. The Committee requests the Government to provide specific information on the situation of Messrs Alain Christophe Irakiza, Martin Floris Nahimana, Bernard Mdikabandi, and of Ms Bégnigne Nahimana, and that of Mr Alexis Bizimana and, as appropriate, to take the necessary remedial measures, including reinstatement.*

The Committee's recommendations

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

(a) The Committee deeply regrets the fact that the Government has not replied specifically to the allegations, even though it has been invited to do so several times, including through an urgent appeal.

(b) The Committee requests the Government to provide copies of the decisions handed down by the courts concerned, as well as a copy of the pending decision from the Supreme Court and invites the complainant to provide any additional information it may have at its disposal. The Committee requests the Government to provide specific information on the situation of Messrs Alain Christophe Irakiza, Martin Floris Nahimana, Bernard Mdikabandi and Ms Bégnigne Nahimana, and that of Mr Alexis Bizimana and, as appropriate, to take the necessary remedial measures, including reinstatement.

(c) The Committee again urges the Government to ask the employers' organizations concerned, if they so desire, to provide information so that it can be aware of their version of events and know the views of the enterprise concerned on the pending issues.

CASE NO. 3237

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 Transport Workers' Federation (ITF)
– Public Services International (PSI)
– the Korean Confederation of Trade Unions (KCTU) and
– the Korean Public Service and Transport Workers' Union (KPTU)

Allegations: Unilateral imposition of changes to public sector pay structures, failure to consult with the social partners during the preparation and application of instruments governing terms and conditions of employment, restrictions on free and voluntary collective bargaining and on the right to strike, arrests and imprisonment of trade union officers and members, disciplinary actions against trade unionists, and provisional seizure of trade union assets

160. The complaint is contained in a joint communication dated 1 November 2016 submitted by the Korean Confederation of Trade Unions (KCTU), the Korean Public Service Transport Workers' Union (KPTU), the International Transport Workers' Federation (ITF) and Public Services International (PSI).

161. The Government sent its observations in a communication dated 5 February 2018.

162. 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 complainants' allegations

163. In their communication dated 1 November 2016, the KCTU, KPTU, ITF and PSI allege violations of trade union rights and, in particular, unilateral imposition of changes to public sector pay structures, failure to consult with the social partners during the preparation and application of instruments governing terms and conditions of employment, restrictions on free and voluntary collective bargaining and on the right to strike, arrests and imprisonment of trade union officers and members, disciplinary actions against trade unionists, and provisional seizure of trade union assets. The complainants refer to the following government initiatives or actions: introduction of the performance-based pay system; response to a strike in the rail sector; and response to the road haulage strike. The complainants consider that their complaint must be examined in the light of the alleged increasing use of arbitrary detention and judicial harassment against trade unionists in the Republic of Korea for organizing and participating in public rallies. It refers in this respect to the case of Cho Sung-deok, the KPTU Vice-President, who is serving a two-year sentence for the alleged offences related to the obstruction of public duty, injury to public officials, destruction of public goods, and obstruction of traffic, as well as to the observations made

by the Special Rapporteur on the rights to freedom of peaceful assembly and of association following his visit to the country in 2016.

Introduction of the performance-based pay system

164. The complainants explain that on 28 January 2016, the Government proposed performance incentives in public service, including a performance-based pay system. Following the announcement, the Government introduced a system of penalties and rewards to put pressure on public institutions, including state-owned enterprises, to implement the new system. The Government, which controls expenditure at all public institutions, had promised incentive bonuses in 2017 for those institutions that would introduce the system in early 2016 (the earlier the implementation, the higher the bonus) and announced that it would freeze wages at all institutions that had not introduced the new pay system by the end of the year. In addition, the failure to implement the system would lead to a lower score in the annual management evaluations for public institutions. According to the complainants, since the announcement was made, trade unions and experts have been raising concerns about the system's discriminatory nature and potential impact on the safe and effective provision of quality services by the public institutions. Because the new pay system directly impacts on wages and working practices, the KPTU affiliates have repeatedly sought to discuss the system during collective bargaining with their respective public sector employers. The complainants point out that section 94 of the Korean Labour Standards Act (KLSA) requires employers to secure agreement from 50 per cent of employees, or from a representative union which represents at least 50 per cent of employees, before changing workplace regulations, including wage systems, work time and working conditions in a way that is disadvantageous to employees.

165. The complainants allege that despite the public sector employers' obligations under the applicable collective agreements and the KLSA, under severe pressure from the Government, state-owned enterprises and other public institutions have sought to introduce the new pay system unilaterally or through coercive measures. In some cases, public institutions have passed resolutions on the introduction of the new system through their boards of directors despite continued opposition by employees. In other cases, union representatives have been forced into consenting to the system through physical and/or psychological pressure tactics.

166. The complainants consider that the unilateral imposition of the performance-based pay system is an attack on the autonomy of the bargaining partners. They further consider that in addition to being a violation of the requirement to conduct good faith bargaining, the lack of consultation on pay structures amounts to a breach of freedom of association in general.

Response to a strike in the rail sector

167. The complainants indicate that in response to the unilateral imposition of the new pay system, on 27 September 2016, the KPTU, together with its 16 affiliated unions representing workers at state-owned enterprises, began an industrial action. The complainants explain that the Supreme Court of the Republic of Korea has in several rulings considered that the demands made in a strike must be related to the improvement of working conditions and be subject of collective bargaining; at the same time, managerial policy subject to managerial decision, such as layoffs or structural adjustment, cannot be subject to collective bargaining and therefore cannot be a legitimate purpose of a strike. The KPTU had therefore made it clear that its affiliates were formally striking in relation to collective bargaining with their respective public sector employers concerning the introduction of a new system and the change in the wage structure (together with other collective bargaining issues), an issue that should not be considered to be managerial policy outside the scope of collective bargaining.

The complainants point out that all KPTU affiliates participating in the strike respected minimum services requirement.

168. The complainants allege that the Korea Railroad Corporation ("Corporation") had unilaterally suspended collective bargaining in relation to the performance-based pay system with the Korean Railway Workers' Union (KRWU) and introduced the new pay system by way of a Board resolution on 30 May 2016, without the consent of the union. The union responded by declaring the breakdown of collective bargaining and sought arbitration. Following the failure to reach an agreement, the KRWU commenced an industrial action on 27 September 2016 implementing all relevant requirements for it to be legal, including by maintaining minimum services.

169. The complainants allege that within 24 hours of the beginning of the strike, the Ministries of Employment and Labour and Transport declared the strike illegal purportedly because the failed negotiations on the new pay system amounted to a "managerial policy" matter falling outside the scope of collective bargaining. The Government claimed that unlike other KPTU affiliates, the KRWU was not seeking to negotiate a collective agreement, but was only concerned with the pay system.

170. The complainants allege in response, that the following measures against the KRWU and its officials and members have been taken by the Government, the Corporation and the police:

- 19 officers (President, General Secretary, Organizing Secretary, Bargaining Secretary, five Regional Division Presidents and ten Chairs of Branch Dispute Committees) were charged with "obstruction of business" under section 314 of the Penal Code;
- 224 members were suspended from work;
- 182 members were summoned by the Corporation audit department on disciplinary grounds;
- the Corporation filed a 14.3 billion South Korean Won (KRW) (US$12.5 million) damages lawsuit against the KRWU and applied for a provisional seizure of KRWU assets worth KRW15.5 billion ($13.5 million);
- the Corporation used over 5,400 replacement workers including administrative workers, employees of its subsidiaries and subcontractors, temporary workers and interns. Over 450 train drivers and conductors have been brought in from the army special forces which led to an increase of incidents and accidents. Between 1 January and 23 October 2016, 19 per cent (43) out of a total of 232 accidents occurred between 27 September and 23 October 2016; and
- the Corporation sent return-to-work orders, suspension notices and SMS messages to striking workers threatening them with dismissal.

171. The complainants consider that official declarations made by the Government regarding the illegality of strikes created a climate of insecurity and fear which affected the free exercise of trade union rights and hampered the due process of law which constitutes a fundamental element of freedom of association. The complainants point out in this respect that the domestic courts have ruled on several occasions against the misuse of charges of "obstruction of business" to penalize strike actions. The complainants stress that combined with the fines prescribed for under the "obstruction of business" provision, the lawsuit against the KRWU not only poses a severe financial threat to the very existence of the union, it also has an intimidating effect and inhibits legitimate trade union activities.

Response to the road haulage strike

172. By way of background the complainants explain that most truck drivers in the Republic of Korea work under a form of disguised employment. They purchase their own trucks, but are in fact in a highly dependent contractual relationship with transport companies and clients (cargo owners) who contract with the transport companies. They are designated as "specially employed" and as such are not recognized as workers with rights to association, collective bargaining or collective action that are guaranteed by the Constitution.

173. The complainants allege that on 10 October 2016, the KPTU-Cargo Truckers' Solidarity Division (TruckSol) began a national strike in relation to the Government's Plan for Development of Trucking Transport Industry, which involves market deregulation measures. In addition to demanding a halt to this policy, TruckSol has specifically demanded the introduction of standard rates, abolition of the ji-ib system and full trade union rights. The strike ended on 19 October 2016 following an announcement by the Government of compromise measures.

174. The complainants indicate that the Government carried out consultations with the industry stakeholders before announcing its plan on 30 August 2016. TruckSol participated in these consultations and expressed objections to the plan as well as its opinion that the Government should keep its past promises dating back from 2008 regarding the introduction of standard rates and other improvements. On 23 August 2016, before the formal announcement of the plan was made, the Government held an Experts Forum to discuss the plan. TruckSol clearly stated its objections and intention to oppose the plan at that time.

175. In October 2016, before the strike began, the Government announced the following measures in response to the upcoming strike:

- exemption from tolls payments for truck drivers not participating in the "collective refusal of transport";
- relaxation of overloading enforcement;
- suspension of fuel subsidies for drivers who participated in "collective refusal of transport", suspension or cancellation of drivers licences for workers who participated in illegal actions such as "blocking traffic" or "interfering with transport"; and
- criminal and civil charges against unionists for "the results of illegal collective action".

176. The complainants consider that these measures are excessive even in terms of the Korean law. They point out in this regard that the suspension of fuel subsidies to owner drivers for not engaging in transport activities was found by the Supreme Court to be inconsistent with section 43.2 of Trucking Transport Business Act in August 2016. The suspension or cancellation of drivers' licences for simply interfering with traffic or transport activities is also inconsistent with section 92.1 of the Road Traffic Act, which stipulates grounds for licence suspension or cancellation. On 18 October 2016, the KPTU pressed charges against the Minister concerning the illegality of these actions on the grounds above. Nevertheless, as of 21 October 2016, the Ministry of Land Infrastructure and Transport had announced measures to suspend fuel subsidies against 18 TruckSol members. As of the date of the complaint, 13 TruckSol members had received notices that their fuel subsidies would be suspended.

177. Following the Minister's announcement concerning the relaxation of overloading enforcement on 3 October 2016, the Mayor of Busan had also announced that he would suspend roadside enforcement during the strike. The Government had also secured and used

800 vehicles, including 100 military container transport vehicles as substitute transport at the port of Busan, the Uiwang Inland Container Depot (ICD) and other main hubs. Since the beginning of the strike, thousands of police officers were stationed at the ICD, Busan New Port and North Port. On 11 October 2016, a police helicopter flew over the protesting drivers blaring warnings that they had left the legal protest area. On several occasions police forcibly prevented striking drivers from handing out leaflets to other drivers or used the pretext that drivers had crossed a police line, or were outside of the legal protest area, to forcibly supress the protests. On some occasions, the police blared warnings at the drivers when they sat down to rest for a few minutes during a march in a previously notified (permitted) protest area.

178. The situation led to clashes in which workers and some police officers were injured. In all, 15 workers were injured of whom three had to be hospitalized due, according to the complainants, to clashes encouraged by the disproportionate use of police force. The police also arrested drivers for suspected crimes such as blocking traffic, obstruction of public business, and violations of the Act on Protest and Assembly. By the end of the strike, 89 drivers (union members and officers) had been arrested. Of these, 87 were released within days of arrest. The police applied for detention warrants for eight individuals arrested during the strike. All of these warrants, except for the one involving TruckSol President Park Wonho, were rejected by a judge for lack of sufficient grounds. The arrest warrant for President Park was accepted on 21 October 2016 and he is being detained at the Busan Detention Centre.

179. The complainants believe that the disproportionate response by the Government to the TruckSol strike stems partly from its failure to implement the Committee's recommendations in Case No. 2602 [see 363rd Report, March 2012, para. 467] regarding measures to guarantee fundamental labour rights for owner truck drivers who continue to be denied full legal rights to association, collective bargaining and industrial action.

B. The Government's reply

180. In its communication dated 5 February 2018 the Government replies to the allegations raised in this case and emphasises the new administration's efforts to promote the fundamental rights of workers.

181. Regarding the performance-based pay system in the public sector, the Government explains that to enhance productivity and efficiency of public institutions, on 28 January 2016 it issued a recommendation for a performance-based wage system in public institutions. To promote the introduction of the system, incentives and penalties were put in place. Following the recommendation, 120 public institutions and quasi-government organizations introduced the new system as of June 2016. However, some institutions did so without an agreement with employees, which caused conflicts, including legal disputes. Strikes broke out in several public institutions in September 2016.

182. The new Government, which took office in May 2017, devised the following measures to expeditiously resolve conflicts occurred in the process of expanding the new system: (1) it removed the deadline for the introduction of the performance-based pay system, allowing each institution to freely decide how and when to implement the system; (2) abolished penalties, such as freezing total labour costs budget in case of a failure to adopt the new pay system within the time frame set in the guideline; and (3) deleted from the assessment index of the public institutions the introduction of the performance pay system. Public institutions which were experiencing conflicts were enabled to revise the rules related to the new pay system and return to the original remuneration system by a decision of the board of directors. Those that have adopted the performance-based pay system by a collective agreement could freely decide whether to keep or change the system.

183. Regarding the KRWU strike, the Government explains that the Corporation decided to introduce the new system through a decision made by the board of directors in May 2016. In strong opposition to this, the KRWU went on strike on 27 September 2016, calling for a withdrawal of the revised remuneration provisions. The union filed a lawsuit seeking to invalidate the revised remuneration provisions in November 2016. However, following the announcement of the above Government's measures in June 2017, the KRWU and the Corporation reached an agreement to settle their dispute over the pay system in an amicable manner on 5 November 2017. As a result, the management withdrew the revised remuneration provisions, while the KRWU dropped the lawsuit on 26 November 2017. Accordingly, the issue related to the performance-based pay system raised by the complainants has been addressed.

184. The Government points out that as regards strikes, the Supreme Court concluded that such actions should aim at concluding a collective agreement on working conditions and that any legal dispute regarding interpretation and application of the rights of workers prescribed by laws, collective agreements and employment rules cannot be the subject of strikes. In conformity with this interpretation, in the Government's view, the dispute in question was related to the interpretation and application of workers' rights that have already been established and thus cannot be a justifiable subject of strike actions. The case as to whether or not the strike was legitimate is currently pending before the court. The incumbent Government agrees with the argument of the complainants that the Government should not restrict unions' rights to strike based on its prejudgment that the strike is illegal. The Government indicates that it will take a cautious approach in making judgments on strikes and put more efforts into providing support to prevent and resolve conflicts.

185. As to the complainants' argument about the "obstruction of business" charges and claims for damages filed against the strike participants, the Government indicates that the Trade Union and Labour Relations Adjustment Act (TULRAA) protects all legitimate industrial actions. Thus, even if employers suffer damages, the union is not civilly and criminally liable as long as the industrial action is legitimate. This is not the case if an industrial action is illegitimate. The Government points out, however, that even in cases of illegitimate strikes merely involving refusals to work, without any acts of violence or destruction, the participants cannot be charged with the "obstruction of business". This has been the position of the Supreme Court since its 17 March 2011 ruling. Following the Supreme Court's position, the prosecution withdrew indictments against 95 unionists who were being tried for obstruction of business during KRWU strikes in 2013 and 2014. Furthermore, the Corporation, which accused 41 union officers of "obstruction of business" involved in the strikes of October 2016, dropped all accusations in October 2017 after taking judicial authority's opinions into account. Thus, the union officers who led the strikes will not be punished for "obstruction of business". The Labour Relations Commission accepted the applications from workers who were removed from their positions (270 people) and faced disciplinary action (376 people) for participating in the 2016 strike. On the basis of the Commission's decision, these workers were reinstated without loss of benefits and the disciplinary actions were remedied. The management of the Corporation is now waiting for the court's decision on the legitimacy of the strike.

186. Regarding the claims for damages, the Government indicates that the KRWU 2016 strike, which lasted 74 days, caused a loss of KRW109.2 billion ($102 million), but only part of it (KRW40.3 billion, or $37.5 million) was claimed by the Corporation against the President of the KRWU. As indicated, this case is pending in court. Regarding the alleged seizure of the KRWU assets (KRW15.5 billion, or $14.4 million), the Government indicates that this was a result of the 2009 and 2013 strikes, which were found to be illegitimate by a court ruling. This has nothing to do with the 2016 strike, which is the subject matter of this complaint.

187. Considering the issue being raised about the potential threat put on workers' return livelihoods by civil and criminal liabilities for industrial actions interpreted as illegitimate, the Government plans to hold discussions and go through in-depth reviews on how to better protect legitimate industrial actions. If required, it will review the system with a view to improving it. Moreover, the Government plans to impose criminal punishment on employers who treat employees unfairly (e.g. dismissals) and provide administrative remedies for the employees facing unfair treatments. Anyone found to have violated the laws regarding the disciplinary measures against the KRWU unionists will be strictly punished when the pending court case is finalized.

188. With regard to the return-to-duty orders issued during the strike, it has been found that the Corporation saw the strike as unjustifiable in terms of its purpose and issued a written order to the strike participants asking them to return to work immediately and not to cause any inconvenience to the general public. The Government adds that the KRWU accused the management of unfair labour practices, reporting it to the employment and labour office on 3 November 2016, but the prosecution decided not to indict the management because the union's accusation lacked sufficient evidence.

189. Regarding the use of replacement workers during the strike, the Government indicates that the TULRAA prohibits the use of replacement workers for duties suspended due to strikes but permits the use of replacement workers, subject to the limit of 50 per cent of the workforce, for businesses which, if suspended or shut down, are likely to seriously endanger the daily lives of people or seriously undermine the national economy and involve duties that are hard to replace (essential public services). The Government is of the view that it is justifiable to permit the use of replacement workers to the limit of 50 per cent, for the rail transport industry. The Government further indicates that according to the statistics provided by the Corporation, from 1 January to 31 December 2016, the total number of accidents was 304. Among them, a total of 74 accidents (24.3 per cent) took place during the 74 days of the strike period (27 September–9 December), and this is about 12 accidents less than the average over the same period in the past three years. It has been found that fewer railway accidents and service interruptions occurred during the 2016 strike. According to the Corporation, most replacement workers hired during strikes have railway work experience or related qualifications and received thorough prior education.

190. Regarding the case involving TruckSol, the Government explains that the TULRAA applies only to employees. Those in special employment arrangements, including owner drivers of heavy goods vehicles (those whose trucks are registered under the name of a transport company, but owned by drivers), have the characteristics of self-employed and employees at the same time, making it difficult to consider them all to be employees. The court decides on their exact status on a case-by-case basis. While the number of those in a special employment arrangement continues to grow, they face poor working conditions with little legal protection for basic labour rights. To address this, the Government has set "guaranteeing basic labour rights for those in special employment arrangement" as one of its policy priorities and plans to establish and implement specific protective measures after broad discussions with the tripartite partners and experts.

191. Following consultations with the experts and industry stakeholders, on 30 August 2016, the Government announced a Plan for the Development of the Trucking Transport Industry aiming at dealing with the changing environment, including convergence between different industries, and improving the overall cargo market system by promoting a high value-added logistics industry. TruckSol's collective refusal to provide transport services on 10–19 October 2016 was a protest against the Plan.

192. After TruckSol withdrew the collective refusal of transport services, a revised Trucking Transport Business Bill was proposed at the National Assembly in November 2016 where it

is currently pending. The revised Bill includes the introduction of standard rates, which is also the Government's priority policy. The standard rate system will be expanded step by step, starting with three limited items (containers, cement and synthetic resin) and will be introduced along with the Road Safety Transport Cost System. Under the system, the minimum freight rate necessary to prevent truck owners from overworking, speeding, or overloading, in order to secure road safety, will be added to the road safety transport cost, which will then be deliberated on and decided by the Road Safety Freight Rate Committee (to be composed of representatives of truck owners, transport companies, cargo owners and public interest as well as government officials and experts in relevant fields). Anyone who fails to comply would be subject to penal provisions. This is minimum level government intervention in the market that is necessary to address market failures, where extreme competition significantly widens the gap between appropriate freight rates reported by the businesses and the actual market price. For instance, for one-way freight shipping in a 40ft container from Busan to Uiwang as of 2016, the appropriate price declared by the transport company was KRW750,000 ($699), but the actual transaction price went down 42 per cent to merely KRW440,000 ($410) due to extreme competition among cargo truckers. The revised bill is also designed to prevent overloading, overworking and speeding by guaranteeing truckers an appropriate freight rate and will be implemented in a gradual and limited manner to minimize any shock to the market. For every 1 per cent rise in the freight rate, the chance of accidents declines by 0.72 per cent.

193. The Government indicates that during the collective refusal of transport services by TruckSol in 2016, vehicles in operation or returning to operation of non-members of TruckSol were damaged or set on fire. The Government indicates in this respect that the police conducted an investigation and owners of the damaged vehicles were compensated. For truck drivers who received fuel subsidies but participated in a collective refusal of transport rally, the fuel subsidies are deemed to have been used for other purposes than freight shipping in accordance with subparagraph 3 of article 44-2(1) of the Trucking Transport Business Act. Thus, such fuel subsidies would be suspended in this case under the law. The Government secured a list of vehicles suspected of engaging in the collective refusal of transport (18 vehicles) during the protest and reported them to the relevant authorities (municipalities). Thirteen drivers found to have been engaged in collective refusal of transport rally were given prior notification of the fuel subsidy suspension and allowed to present their views. Taking the drivers' opinions into account, the relevant authorities (municipalities) decided not to suspend fuel subsidies against these suspects on the basis that fuel subsidy payment details, the possibility of fuel subsidies being used to drive to the protest site and for the purpose of the protest, and the fact that those vehicles were merely at the protest site were insufficient as grounds for taking an administrative action.

194. On 10 October 2016, TruckSol went on a collective refusal of transport services calling for the withdrawal of the Plan for Development of Trucking Transport Industry at Busan New Port and North Port, and Gyeonggi Uiwang Inland Container Depot. The TruckSol members' actions became violent, as they threw stones or water bottles at vehicles in operation, trying to occupy the roads, attacking police officers, and trying to set themselves on fire. Twelve police officers were injured; police cars were damaged. On 11 October 2016, some 1,200 TruckSol members tried to occupy the roads used by a number of logistics freight haulers and ordinary vehicles and crossed the police line. After issuing several warnings, the police blocked TruckSol members and arrested 22 of them who crossed the police line. On the same day, more than 2,300 TruckSol members made another attempt to occupy the road at the Busan New Port three-way intersection, crossing the police line. After warning them several times, the police arrested 12 more members, following due process. On 13 October 2016 some TruckSol members used slingshots to attack cargo freight haulers on the job, leaving one of the drivers with a deep wound in his forehead. The offenders who hurt the driver using slingshots later surrendered to authorities. The police allowed the rallies

to take place as planned, while dealing with obviously illegal acts (such as damaging cars, attempting to occupy the roads, and assaulting police officers) in accordance with the law.

195. The refusal to provide transport services by TruckSol, which is not a recognized union under the TULRAA, is considered to be a collective action, rather than a strike. Even if this action is to be considered a strike, the Government points out that the principles of freedom of association do not protect against abuses consisting of criminal acts. Thus, the Government considers that the measures taken by the police against illegal and violent actions during the collective refusal of transport services did not constitute an infringement of principles of freedom of association. During the collective action, the police arrested 89 participants for assaulting police officers, damaging the freights of non-members who did not join the rally, blocking traffic, and thus violating the Assembly and Demonstration Act. Among the 89 arrested, 80 were released, and arrest warrants were requested for the nine people who led the violent actions. Out of nine people, arrest warrants were issued for two, including Park Wonho, and for the remaining seven, arrest warrant requests were rejected because they had been staying at a fixed residence or were deemed unlikely to destroy evidence.

196. The Government concludes by stating that it disagrees with the complainants' allegation that it had failed to protect the rights of workers and unions. Regarding the introduction of the performance pay system in the public sector, the Government considers that it has improved the system and that this reflected the stakeholders' views. It further indicates its plans to adopt provisions under the TULRAA on criminal punishment for employers who treat employees engaging in legitimate industrial actions unfairly and setting out administrative remedies for those who were unfairly treated. Moreover, the Government is considering various measures to better protect the rights of workers and unions. As to the issue of civil and criminal liabilities for illegal industrial action threatening the workers' livelihoods, the Government will consider improving the system if necessary, after a broad discussion and examination, to ensure that any legitimate industrial action is protected. Finally, the current Government has put "guaranteeing basic labour rights for those in special employment arrangement" on its national policy agenda and plans to develop and implement specific protective measures after fact-finding surveys and discussions involving the tripartite partners and experts. However, regardless of whether or not the collective refusal of transport by TruckSol is considered to be a strike, the Government has a responsibility to follow due process for any violence and violation of laws that takes place during strikes or collective actions.

C. The Committee's conclusions

197. *The Committee observes that the complainants in this case – the KCTU, KPTU, ITF and PSI – allege the lack of consultations with the social partners on the change in the pay structures in the public sector, which resulted in the unilateral imposition of a performance-based pay system and restriction of free and collective bargaining in the public sector. The Committee notes that in response to the unilateral imposition of the new system, the KPTU and 16 affiliated unions representing workers of state-owned enterprise initiated an industrial action. The complainants refer, in particular, to a strike in the rail sector and allege, in this respect, numerous violations of the right to strike by the Government and the Corporation. The complainants also allege that due to their special employment arrangements, truck drivers continue to be deprived of freedom of association and collective bargaining. Following the announcement by the Government of its Plan for Development of Trucking Industry, to which TruckSol opposed, the latter declared a strike. The complainants allege that in response, the Government implemented excessive measures against those participating in the strike. The complainants request the Committee to consider this complaint in the light of the alleged increased use of arbitrary detention and judicial harassment against trade unionists in the Republic of Korea for organizing and participating in public rallies. They refer generally in this respect to the case of Cho Sung-deok, the KPTU*

Vice-President, who is serving a two-year sentence for the alleged offences related to obstruction of public duty, injury to public officials, destruction of public goods and obstruction of traffic, but do not raise any specific details relating to his case.

198. *The Committee notes the detailed observations of the Government on the specific allegations raised by the complainants in this case. With regard to the alleged lack of consultations on pay structures, the Committee notes that the Government only generally indicates that the reform took into account the stakeholders' views. The Committee recalls that on numerous occasions it has emphasized the importance it attaches to the promotion of dialogue and consultations on matters of mutual interest between the public authorities and the most representative occupational organizations of the sector involved [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1523]. The Committee has further expressed the importance, for the preservation of a country's social harmony, of regular consultations with employers' and workers' representatives on matters affecting their interests and rights. The complaint before it is a case in point where, indeed according to the Government, the apparent lack of full and frank consultation on the policy affecting conditions of employment had led to a situation where the new system was implemented in several public institutions and enterprises without an agreement from the public employees' unions and had regretfully resulted in an industrial action. Noting that the Government has taken a number of steps to address these issues, the Committee encourages the Government to ensure that meaningful consultations are held in the future on all matters affecting the interests of the social partners.*

199. *The Committee notes the complainants' allegation that all attempts to discuss the new system with the respective public sector employers through collective bargaining have failed. Instead, according to the complainants, under the pressure of the Government, state-owned enterprises and public institutions, have introduced the new pay system unilaterally or through coercive measures. The Committee notes that the complainants allege that the Government later declared that such unilateral decisions amounted to a "managerial policy" matter falling outside the scope of collective bargaining. The complainants consider, however, that as the new pay system directly impacts on wages and working practices, it falls within the scope of collective bargaining. In this respect, they point out that section 94 of the KLSA also requires employers to secure an agreement from 50 per cent of employees, or from a representative union if it represents at least 50 per cent of employees, before changing workplace regulations, including wage systems, work time and working conditions in a way that is disadvantageous to employees.*

200. *The Committee notes that the Government acknowledges that some of the public institutions introduced the new pay system without an agreement between unions and the management, which caused conflicts. To address this situation, in June 2017, the Government introduced the following measures: (1) it removed the deadline for the introduction of the performance-based pay system; (2) it abolished the penalties (such as freezing total labour costs budget) in the case of a failure to adopt the new system within the indicated time frame; and (3) it removed the criteria of the implementation of the new system from the assessment of public institutions index. The Government indicates that public institutions which were experiencing conflicts can now revise the rules related to the performance-based pay and return to the original remuneration system by a decision of the board of directors. Those institutions that have adopted the new system as a result of collective bargaining could freely decide whether to keep or change the system.*

201. *The Committee welcomes the above measures. The Committee also wishes to recall that tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining are a particularly appropriate method of resolving the difficulties raised in the allegations. The Committee invites the Government to take the necessary measures so that reviews of the pay system may take place through collective bargaining.*

202. *Regarding the allegation in relation to the strike in the rail sector, the Committee notes at the outset that the Government acknowledges that the strike was declared by the KRWU to oppose the unilateral introduction of the new pay system by the Corporation's board of directors. The Committee welcomes the Government's indication that following the announcement of the abovementioned measures in June 2017, the KRWU and the Corporation reached an agreement to settle their dispute over the performance-based pay system in an amicable manner on 5 November 2017. As a result, the management withdrew the revised remuneration provisions on performance-based pay, while the KRWU dropped the lawsuit on 26 November 2017.*

203. *Regarding the aim of the strike, the Committee notes the Government's indication that the Supreme Court concluded that such actions should aim at concluding a collective agreement on working conditions and that any legal dispute regarding interpretation and application of the rights of workers prescribed by laws, collective agreements and employment rules cannot be the subject of a strike. In conformity with this interpretation, in the Government's view, the dispute in question was related to the interpretation and application of workers' rights that have already been established and thus cannot be a justifiable subject of a strike. The case as to whether or not the strike was legitimate is currently pending before the court. At the same time, the incumbent Government agrees with the argument of the complainants that the Government should not restrict unions' rights to strike based on its prejudgment that the strike is illegal. The Government indicates that it will take a cautious approach in making judgments on strikes and put more effort into providing support to prevent and resolve labour–management conflicts. The Committee welcomes the approach declared by the Government and recalls that matters which might be subject to collective bargaining include the type of agreement to be offered to employees or the type of industrial instrument to be negotiated in the future, as well as wages, benefits and allowances, working time, annual leave, selection criteria in case of redundancy, the coverage of the collective agreement, the granting of trade union facilities, including access to the workplace beyond what is provided for in legislation, etc.; these matters should not be excluded from the scope of collective bargaining by law, or as in this case, by financial disincentives and considerable penalties applicable in case of non- implementation of the Code and Guidelines. It further recalls that it is for the parties concerned to decide on the subjects for negotiation [see* ***Compilation****, op. cit., paras 1291 and 1289].*

204. *As to the application of "obstruction of business" charges and claims for damages filed against the strike participants, the Committee notes the Government's indication that the TULRAA protects all legitimate industrial actions. Thus, even if employers suffer damages, the union is not civilly and criminally liable as long as the industrial action is legitimate. The Committee notes that the Government points out that even in cases of illegitimate strikes involving merely refusals to work without any acts of violence or destruction, the participants cannot be charged with "obstruction of business"; this has been the position of the Supreme Court since its 17 March 2011 ruling. The Committee notes with interest the Government's indication that in October 2017, the Corporation dropped charges of "obstruction of business" against 41 union officers involved in the strike of October 2016, after taking the judicial authority's opinion into account. Thus, the union officers who led the strikes will not be punished.*

205. *The Committee further welcomes the Government's indication that the Labour Relations Commission accepted the applications from workers who were removed from their positions (270 people) and faced disciplinary action (376 people) for participating in the 2016 strike. On the basis of the Commission's decision, these workers were reinstated without loss of benefits and the disciplinary actions were remedied. The management of the Corporation is now waiting for the court's decision on the legitimacy of the strike. On the other hand, regarding the claims for damages, the Government indicates that the 2016 strike, which lasted 74 days, caused a loss of KRW109.2 billion ($102 million), but only part of it*

(KRW40.3 billion, or $37.5 million) was claimed by the Corporation against the president of the KRWU. This case is pending in court. The seizure of the KRWU assets worth about KRW15.5 billion (approx. $14.4 million) mentioned by the complainant was a result of the 2009 and 2013 strikes, which were found to be illegitimate by a court ruling and is not related to the 2016 strike, which is the subject matter covered in this complaint.

206. *The Committee notes that in the present case, the complainants and the Government confirm that the domestic courts have ruled on several occasions against the misuse of the charge of obstruction of business to penalize strike actions. The Committee observes that the courts favour a restrictive approach to the application of obstruction of business to strike actions. The Committee welcomes the Government's stated intention to review the system governing strike actions in consultation with the social partners and refers it to the Committee's recommendations in Case No. 1865 in which it considers measures taken in relation to section 314 of the Penal Code.*

207. *Noting that a court case on the legitimacy of the strike is currently pending in court, the Committee requests the Government to keep it informed of its outcome and to provide a copy thereof once it is handed down together with information on the consequences of the decision should the court consider the strike to have been illegal.*

208. *In relation to the allegation of the use of replacement workers and the army during the strike, despite, as indicated by the complainants, the maintenance by the union of minimum services, the Committee notes the Government's indication that the TULRAA prohibits the use of replacement workers for duties suspended due to strikes but permits the use of replacement workers, subject to the limit of 50 per cent of the workforce, for businesses which, if suspended or shut down, are likely to seriously endanger the public's daily lives or seriously undermine the national economy and involve duties that are hard to replace (essential public services). The Government is of the view that it is justifiable to permit the use of replacement workers to the limit of 50 per cent for the rail transport industry. The Committee recalls that when a service that is not essential in the strict sense of the term but is part of a very important sector in the country is brought to a standstill, measures to guarantee a minimum service may be justified. In this respect, a certain minimum service may be requested in the event of strikes whose scope and duration would cause an acute national crisis, but in this case, the trade union organizations should be able to participate, along with employers and the public authorities, in defining the minimum service. In the absence of any agreement by the parties in this regard at the specific enterprise level, an independent body could be set up to impose a minimum service sufficient to address the concerns of the Government about the consequences of the dispute, while preserving respect for the principles of the right to strike and the voluntary nature of collective bargaining [see* ***Compilation****, op. cit., paras 868, 871 and 879]. As regards the complainants' allegation of the use of replacement workers and army transport vehicles as substitute transport during the strike, the Committee refers to the above-cited decisions applying the principles of freedom of association governing minimum services.*

209. *Regarding the allegations in relation to the national strike declared by TruckSol, the Committee notes that one of the demands of the truck drivers was the full recognition of trade union rights. In this respect, the complainants recall that under the current system, truck drivers are not considered to be workers. For its part, the Government indicates that those in special employment arrangements, including owner drivers of heavy goods vehicles, have the characteristics of the self-employed and employees at the same time, making it difficult to consider them all to be employees. The Government adds that while the number of those in special employment arrangement continues to grow, they face poor working conditions with little legal protection for basic labour rights. To address this, the Government has set "guaranteeing basic labour rights for those in special employment arrangement" as one of its policy priorities and plans to establish and implement specific*

protective measures after broad discussions with the tripartite partners and experts. The Committee notes with interest the priority attached by the Government to this matter and requests the Government to keep it informed of the measures taken in this regard. The Committee recalls that it had addressed this issue in the framework of Case No. 2602 involving the Republic of Korea on several occasions and invites the Government to refer to its recommendations in that case [see 359th Report, para. 370].

210. *The Committee notes with regret the complainants' allegation that the disproportionate use of police force to supress protesting drivers and to prevent them from handing out leaflets to other drivers resulted in clashes in which workers and police officers were injured. According to the complainants, by the end of the strike, 89 drivers (union members and officers) had been arrested for suspected crimes such as blocking traffic, obstruction of public business, and violations of the Act on Protest and Assembly. Of these, 87 were released within days of arrest. The police applied for detention warrants for eight individuals arrested during the strike. All but one of these warrants were rejected by a judge for lack of sufficient grounds. The warrant for the arrest of TruckSol President Park Wonho was issued on 21 October 2016 and he is currently being detained at the Busan Detention Centre.*

211. *The Committee notes that according to the Government, the collective action was accompanied by violent actions, with trucks of non-participants being set on fire. The intervention of the police was therefore necessary. The Committee recalls that the principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike. Furthermore, in cases of strike movements, the authorities should resort to the use of force only in grave situations where law and order is seriously threatened [see* ***Compilation****, op. cit., paras 965 and 932]. The Committee stresses that the right to strike is not an absolute right and that the acts of violence referred to by the Government, such as attacking police officers and damaging police cars, if proven, go beyond the limits of its protection. Noting that the Government confirms that the police arrested 89 people in connection with the collective action, that they were later released, with the exception of Park Wonho, against whom an arrest warrant was issued, the Committee requests the Government to provide up-to-date information on the situation of Mr Park Wonho.*

212. *The Committee understands from the complainants' allegation that while the strike ended on 19 October 2016 following an announcement by the Government of compromise measures, as of 21 October 2016, the Ministry of Land Infrastructure and Transport had announced measures to suspend fuel subsidies against 18 TruckSol members and as of 1 November 2016, 13 TruckSol members had received notice that their fuel subsidies would be suspended. The Committee notes the explanation provided by the Government that the fuel subsidies of truck drivers who participated in a rally are deemed to have been used for other purposes than freight shipping, in accordance with subparagraph 3 of article 44-2(1) of the Trucking Transport Business Act. These drivers were notified accordingly. The Committee notes with interest the Government's indication that later on, the relevant authorities (municipalities) decided not to suspend the fuel subsidies.*

The Committee's recommendations

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

(a) The Committee encourages the Government to ensure that meaningful consultations are held in the future on all matters affecting the interests of the social partners.

(b) Noting that a court case on the legitimacy of the strike is currently pending in court, the Committee requests the Government to keep it informed of its outcome and to provide a copy thereof once it is handed down together with information on the consequences of the decision should the court consider the strike to have been illegal.

(c) The Committee draws the Government's attention to the decisions applying the principles of freedom of association governing minimum services during a strike and expects that due regard will be given to them in the future.

(d) The Committee urges the Government to provide up-to-date information on the situation of Mr Park Wonho.

CASE NO. 3271

INTERIM REPORT

Complaint against the Government of Cuba presented by the Independent Trade Union Association of Cuba (ASIC)

Allegations: Harassment and persecution of independent trade unionists, involving aggression, arrests, assaults and dismissals; other acts of anti-union discrimination and interference on the part of the public authorities; official recognition of only one trade union federation controlled by the State; absence of collective bargaining and no legal recognition of the right to strike

214. The complaint is contained in communications from the Independent Trade Union Association of Cuba (ASIC) dated 21 December 2016 and 3 January, 7 February, 30 March and 3 April 2017.

215. The Government sent its observations in a communication dated 29 September 2017.

216. Cuba 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

217. In its communications of 21 December 2016 and 3 January, 7 February, 30 March and 3 April 2017, ASIC reports numerous specific cases of anti-union discrimination and interference on the part of the authorities (including harassment, persecution, arrests and assaults) against independent trade union activists, alleges that the Government recognizes only one single trade union federation, and asserts that there is no collective bargaining or legal recognition of the right to strike in the country.

218. ASIC indicates that it was established on 26 October 2016, to replace the Independent Trade Union Coalition of Cuba (CSIC). It provides copies of its constituent instrument, structure, declaration of principles and union constitution, in which it is stated that ASIC is the result of the amalgamation of the Single Council of Cuban Workers (CUTC), the Cuban Confederation of Independent Workers (CTIC) and the Independent National Workers' Confederation of Cuba (CONIC). In its declaration of principles, ASIC advocates trade union autonomy in the framework of the rule of law, promotes full compliance with ILO international labour standards and proclaims that it will not compromise or associate itself with party-political activities. It also asserts the importance of strengthening ties of fraternity and solidarity with workers in other parts of the world, without embracing their ideology or religion. ASIC's objectives in its constitution include grouping together the country's independent trade unions and reporting violations of international standards. Members' duties as set out in the union constitution include defending workers' claims and benefits. ASIC provides details of its organization chart and elected offices, and emphasizes that it is represented in all provinces of the country.

219. ASIC alleges that the Government recognizes only one single trade union federation in the country – the Cuban Workers' Federation (CTC) – controlled by the State and the Communist Party. It indicates that the Labour Code maintains the monopoly of the CTC through ambiguous wording. It considers that the text of the Code aims at formal compliance with international standards but has nothing to do with the actual world of work in Cuba. In this regard, ASIC highlights the fact that section 13 of the Code establishes that workers have the right to organize voluntarily and to establish trade unions, "in conformity with fundamental unitary principles". It also considers that Act No. 118 concerning foreign investment and the provisions governing the Mariel Special Development Zone (ZEDM) are contrary to the principles of freedom of association. In this context, ASIC alleges that the police and state security authorities, as well as those exercising authority within workplaces, relentlessly repress any autonomous or independent industrial action, whether individual or collective in nature, and do not recognize any form of representation outside the official trade union movement.

220. In that respect, ASIC reports in detail in its complaint on anti-union aggression, interference and discrimination on the part of the authorities against independent trade union activists, as a result of which the latter are obliged to carry out their activities in an extremely hostile and repressive environment. The alleged aggression includes arrests of trade unionists, threats of prosecution, physical assaults, raids on private houses, trials and convictions of union leaders, dismissals, cases of short-term but systematic detention, travel bans, as well as the use of legal proceedings involving the constant threat of imprisonment, the confiscation of trade union property and the dismissal of workers for their union activities, including just for attendance at union training sessions. The specific allegations by ASIC can be summarized as follows:

(a) On 6 November 2015, Mr Kelvin Vega Rizo, the secretary of the Independent Mine Workers Union affiliated to the CTIC, was dismissed from his post at the former "René Ramos Latour" nickel processing plant, where he had worked as a plumber for over 23 years. According to Mr Vega Rizo, officials of the Department of State Security (DSE) ordered the company management to dismiss him following his attendance at a trade union training course at the University of Latin American Workers (UTAL) in Panama.

(b) On 9 December 2015, plain-clothes officers from the secret political police arrested Mr Osvaldo Arcis Hernández, an independent trade unionist belonging to the Escambray Independent Trade Union, in the municipality of Trinidad and took him into custody. Nine days later he was tried in summary judicial proceedings and sentenced to two years' imprisonment further to the charge of being a danger to society. He was

denied any choice of defence counsel and the authorities provided him with a court-appointed lawyer instead. Before his arrest, he had been physically assaulted and received written threats of imprisonment if he did not give up his independent trade union activities. He was granted conditional release on Friday, 19 August 2016 and was warned that he faced further imprisonment if he continued his independent trade union activities.

(c) On 6 January 2016, the joint authorities of the Ministry of the Interior and the DSE raided the residence of independent trade unionist Mr Bárbaro Tejeda Sánchez in Holguín. The police conducted a thorough search of the property and confiscated a laptop, a mobile phone, a flash memory device and a camera, without issuing a certificate of confiscation. The Government has not responded to the complaint lodged by the trade union member.

(d) Repeated acts of repression were committed by DSE agents against Mr Pavel Herrera Hernández, an independent trade unionist, including constant surveillance of his movements and arbitrary detention for short periods (with threats of termination of employment if he did not give up his anti-establishment activities), culminating in dismissal from his post. On 8 April 2016, he was dismissed from his job as a dockworker which he had performed for over eight years, with the management alleging unjustified absences, specifically on 9 and 22 March 2016, even though both of these absences were the result of being arrested by DSE agents as he was leaving home to go to work (on 22 March, the final day of the visit of the President of the United States, he was held in police custody).

(e) During and prior to the visit of the President of the United States, several CTIC activists were arrested, threatened and beaten up: (i) on 12 March 2016, the general secretary of the Catering Workers' Union, Mr Alexis Gómez Rodríguez, was arrested by DSE officials and police officers as he was leaving his house for work and was taken into police custody. He was released after 8.30 p.m., having been warned to stay at home for the duration of the US President's visit; (ii) on 17 March 2016, Mr Iván Hernández Carrillo, the CTIC general secretary, was arrested in Colón by nearly a dozen police officers, who kicked him to the ground, damaged his clothes and shoes, and forcibly took him into police custody. They later issued a warning for an alleged disturbance of public order and released him on payment of a fine. The following day, they arrested him again and warned him that during the visit of the US President his freedom of movement was restricted; and (iii) other trade union activists, including Mr Emilio Gottardi Gottardi and Mr Raúl Zerguera Borrell, were issued official warnings and placed under temporary house arrest.

(f) On 31 July 2016, on his return to Cuba after a work-related trip, Mr Iván Hernández Carrillo (now ASIC general secretary) was arrested with force at the airport, taken into police custody and reportedly accused of the offence of contempt, before being released without charge the following day. Many of his belongings had been inspected, some damaged and others stolen, including a radio, 15 compact discs containing ILO Conventions and other ILO documents, as well as t-shirts and stickers considered by the regime to be "enemy propaganda". In the wake of this situation, a number of international bodies – including the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the International Federation for Human Rights (FIDH) and the Inter-American Commission on Human Rights (IACHR) – publicly called for an end to these abuses.

(g) On 20 September 2016, several trade union activists from CONIC, the CUTC and the CTIC were arrested and others were kept under house arrest by the secret police to prevent them from holding a peaceful assembly aimed at establishing a broad independent trade union coalition. Those arrested included: (i) CUTC general secretary

Mr Alejandro Sánchez Zaldívar, who was arrested in the early hours on the same day as he was leaving his house, taken to a judicial office and questioned by DSE officials before being dropped off far from home; (ii) Ms Ariadna Mena Rubio (of the CTIC), who was held in police custody and released eight hours later, following intensive questioning; (iii) Ms Hilda Aylin López Salazar (CONIC), who was taken to Police Unit No. 3 of Havana and subjected to heavy interrogation; and (iv) trade unionists Ms Aimée de las Mercedes Cabrera Álvarez (CUTC), Mr Reinaldo Cosano Alén (CONIC) and Mr Víctor Manuel Domínguez García (National Trade Union Training Centre – CNCS) were prohibited from leaving their homes, having been informed that they would otherwise face arrest.

(h) On 22 September 2016, CTIC activist Mr Felipe Carrera Hernández was arrested at home by the national police and taken to a police station, where he was questioned for two hours by plain-clothes secret police officers about his work-related and trade union activities. He was released after being subjected to serious threats.

(i) On 7 November 2016, Mr Emilio Gottardi Gottardi, an ASIC member, was arrested by DSE officials and the police as he was leaving home, and was then questioned and threatened because of his trade union training activities, before finally being released around midday.

(j) On 14 December 2016, police officers went to the homes of various ASIC members (Mr Pedro Scull, Ms Aimée Cabrera and Mr Alejandro Sánchez) in Havana to warn them that they would not allow the ASIC meeting planned by the secretariat to go ahead, and that general secretary Mr Iván Hernández Carrillo (who lives in Colón, some 127 kilometres from Havana) would be imprisoned if he travelled to the capital. One of the police officers who went to the home of Mr Alejandro Sánchez warned him that he had direct orders from President Raúl Castro not to allow further activities by the opposition.

(k) On 27 December 2016, two secret police officers stopped independent trade union member Mr Mateo Moreno Ramón in the street and proceeded to intimidate him and inquire into his trade union activities.

(l) On the night of 28 December 2016, ASIC general secretary Mr Iván Hernández Carrillo, on returning to his home in Colón from Havana with Ms Caridad Burunate Gómez, a member of the Damas de Blanco (ladies in white) opposition movement, was subjected to an attempted violent robbery and brutal assault by four secret police officers, who reportedly identified themselves just afterwards. Both activists were subsequently detained, subjected to a thorough body search and inspection of their belongings, and later released without charge. In the afternoon of the same day, trade union activist Mr Felipe Carrera Hernández was arrested and released two hours later.

(m) On 30 December 2016, Mr Emilio Alberto Gottardi Gottardi, an ASIC provincial delegate in Havana, was visited at home by two plain-clothes secret police officers to warn him about his activities and restrict his movements during the New Year festivities.

(n) On 22 January 2017, the immigration authorities, alleging a breach of migration regulations, placed a travel ban on Mr Raúl Domingo Zerguera Borrell, a trade unionist who had been invited to UTAL for a seminar on the current situation and outlook for the organization of workers in the informal economy. The trade unionist was ordered in a threatening tone, allegedly by an officer of the secret police, to leave the area, and was arrested on his return to Havana and held for an hour at a police station in central Havana.

(o) On the morning of 30 January 2017, the home of independent trade unionist Mr Carlos Roberto Reyes Consuegras was raided without warning in a joint operation by the Ministry of the Interior and the DES, which conducted a painstaking search, resulting in the confiscation of two laptops, a camera, a typewriter, a mobile phone and various written complaints to the State, as well as other documents of the organization. Ultimately, the independent trade union member was taken into custody and held for six hours at an office of the Ministry of the Interior in the town of Cruces. Here he was subjected to intense interrogation about his trade union activities and his free legal advisory service relating to labour issues, in which he advises citizens on the drafting of complaints in accordance with their constitutional rights. The authorities opened a judicial file against the trade unionist for alleged abuse of public office, an offence which he was told is punishable with imprisonment of one to three years. He was finally released and warned that his freedom of movement was restricted until the pre-trial hearing.

(p) On 5 February 2017, ASIC general secretary Mr Iván Hernández Carrillo was beaten up and then detained after attempting to take photos as state security personnel arrested his mother, Dama de Blanco member Ms Asunción Carrillo Hernández. They handcuffed him and took him to Colón police station. He was released four hours later with a fine, reportedly having been accused of causing public disorder and issued with a warning.

(q) On 23 February 2017, independent trade unionists Mr Lázaro Ricardo Pérez (a member of the ASIC leadership) and Mr Hiosvani Pupo were prohibited from travelling to Havana, thereby preventing their attendance at ASIC meetings.

(r) On 28 March 2017, state security personnel and police officers raided the home of independent trade union journalist Mr Yoanny Limonta García. Following a thorough search, he was arrested and taken to the municipal police station, where he was questioned and later released after being warned that he faced imprisonment if he continued his activities.

(s) On 29 March 2017, ASIC general secretary Mr Iván Hernández Carrillo was arrested during his trip to Havana and placed in a small police cell with deplorable sanitary conditions, where he was held for ten hours without charge. The police report states that he was arrested for opposition activities. He was finally released but the police kept his identity documents in their possession.

221. Lastly, ASIC alleges that there is an absence of collective bargaining and no legal recognition of the right to strike.

B. The Government's reply

222. In its communication of 29 September 2017, the Government provides its observations on the complaint. The Government states that its reply was formulated in consultation with the CTC and the National Organization of Cuban Employers, as representative organizations of workers and employers respectively, to which a copy of the reply was sent.

223. First, the Government states that the allegations contained in the complaint are false and are part of externally organized and financed campaigns of political manipulation, which seek to discredit the country. The Government denounces as unacceptable the attempt to use the ILO supervisory bodies for political purposes.

224. Second, the Government states that ASIC is not a trade union organization, emphasizing in this respect that: (i) it does not have the objective of promoting or defending workers'

interests; (ii) it does not have the genuine support of any labour collective and is not a grouping of Cuban workers; and (iii) the supposed leaders and activists referred to in the complaint do not represent labour collectives and are not workers themselves as they do not have fixed employment relationships with entities or employers in Cuba, they do not come within the purview of the ILO, and the labour laws are therefore not applicable to them (the Government considers that the ILO has determined that the application of these legal standards is strictly conditional upon the existence of an employment relationship). The Government considers that, by not having an employment relationship or being part of any labour collective, these persons have not been elected by workers to represent them, and it considers this a prerequisite enshrined in Article 3 of Convention No. 135 for their recognition as representatives. The Government alleges that these persons work for the external entities financing them with the objective of subverting the legally established internal order, in line with foreign agendas for regime change. In this respect, the Government indicates that the supposed leaders are funded by the International Group for Corporate Social Responsibility in Cuba, which in turn receives funds from the National Endowment for Democracy in the United States. The Government also provides examples of the activities performed by several of the individuals referred to in the complaint, highlighting trips outside the country to receive funds and instructions, the perpetration of various types of common crimes, the submission of complaints regarding issues unrelated to labour, and the absence of employment relationships or of the application of disciplinary measures for repeated breaches of labour discipline or for declarations of unfitness for work.

225. Third, the Government alleges that it is untrue that Cuban workers are not afforded guarantees relating to the exercise of their labour and trade union rights. In this regard, it indicates that the CTC and its 16 national sectoral unions represent the interests of a total of 3,249,988 members (96.4 per cent of the workers) and that they have all the guarantees necessary to carry out their trade union work, such as not being obliged to register in order to secure recognition. The Government also states that the scope of the exercise of trade union rights is in full conformity with ILO Conventions Nos 87, 98 and 135 and is much broader than in other countries. This is reflected in the recognition of the workers' right to organize voluntarily and to establish trade unions, in conformity with fundamental unitary principles and their own constitutions and rules, in the privileged role occupied by the trade unions in the political life of the country (recalling that the CTC has recognized authority to initiate legislative proposals), and in the legal protection afforded to the trade unions, with heavy penalties for any parties which seek to impede the proper exercise of labour rights. The Government also emphasizes that employment relationships in the context of foreign investment are governed by existing national legislative provisions and that workers in this sector, like all other workers in Cuba, have the right to organize and to bargain collectively, and that they exercise those rights fully. Furthermore, the Government states that Decree Law No. 313 of 2013 concerning the ZEDM establishes that companies and users must respect the country's labour and social security provisions, and trade unions have therefore existed in the ZEDM since its creation (and it recalls that none of the supposed trade union activists or leaders referred to in the complaint have an employment relationship in the zone in question and therefore do not represent its workers).

226. Fourth, the Government states that there are no legal provisions or laws prohibiting the right to strike and that the criminal legislation does not lay down any penalty for the exercise thereof. It indicates that it is the trade unions' prerogative to decide in this respect.

227. Fifth, the Government affirms that: (i) it is untrue that arbitrary or temporary detentions or arrests are carried out in the country (it states that detentions are effected in conformity with criminal procedure and are strictly in line with the extensive guarantees of due process which are recognized in the domestic legal system, in accordance with international standards); (ii) trade union activists or leaders in the country are not subjected to acts of torture or to threats or harassment (as torture has been outlawed in Cuba since the triumph of the

Revolution in 1959); and (iii) the national security forces and institutions perform their duties in strict accordance with the law and it is not their practice to repress, intimidate, harass, torture or mistreat citizens of the country (as impunity is not tolerated, and procedures and resources exist to punish any authorities or officials that exceed their powers).

228. Sixth, the Government indicates that there is no consensus or international obligation regarding whether a unified trade union movement or trade union pluralism should exist and that the ILO supervisory bodies have determined that the trade union unity created voluntarily by the workers cannot be prohibited and should be respected. In this regard, it emphasizes that the recognition in practice of the CTC, which was established in 1939, is fully compatible with the ILO Conventions, in view of its numerical superiority and its history of representation. This includes recognition of the representative role that it can play in collective bargaining, in consultations with the Government and in the appointment of delegates to international bodies.

229. Seventh, the Government denies that collective labour agreements do not exist in the country or that they are not effective. In this respect, it reports that 7,161 collective labour agreements are in force, covering approximately 2,946,983 workers. The Government points out that through these agreements the trade union organization and the employer agree on matters relating to working conditions and also to reciprocal rights and obligations, and that such agreements must be discussed and approved in workers' assemblies in order to be valid.

230. Eighth, the Government denies that it has caused or is causing mass dismissals. It reports that at the end of 2016 a total of 4,591,100 persons were employed (71 per cent in the public sector and 29 per cent in the non-public sector) and that the unemployment rate for that year was 2.4 per cent.

231. Ninth, the Government states that it does not confiscate or destroy material or documents containing ILO Conventions and Recommendations (on the contrary, the Government works to disseminate and raise public awareness of these instruments).

C. The Committee's conclusions

232. *The Committee observes that the complaint is primarily concerned with numerous allegations of harassment and persecution, involving aggression, arrests and assaults, against independent trade unionists, and other acts of anti-union discrimination and interference on the part of the public authorities. In addition, the complainant organization alleges that only one single trade union federation is recognized by the Government, and that there is no collective bargaining or legal recognition of the right to strike.*

233. *The Committee observes that the Government questions whether ASIC is a workers' organization and whether the individuals referred to as trade union activists in the complaint are workers' representatives. In this regard, while noting that the Government denies that the purpose of ASIC is to defend the workers' interests (alleging that its purpose is to subvert the legally established internal order), the Committee observes that, in its founding declaration of principles, ASIC advocates trade union autonomy in the framework of the rule of law, seeks to promote full compliance with ILO international labour standards and proclaims that it will not compromise or associate itself with party-political activities. Moreover, the Committee observes that ASIC declares in its constitution that its key objectives include unifying the independent unions and reporting violations of international labour standards. Its constitution also refers to the duty of ASIC members to defend workers' claims and benefits. Consequently, even though the Committee observes, on the one hand, that the Government questions the actions and representativeness of ASIC (describing it as an organization for political opposition and not for the defence or representation of the workers), the Committee duly notes, on the other hand, the activities that ASIC claims that*

its activist leaders undertake to promote the principles of freedom of association (through examples and specific situations described in the allegations of aggression and discrimination on account of union activities in various places in the country) and, with regard to the ASIC founding and regulatory documents, observes that the aspects of the ASIC declaration of principles and constitution referred to above come within the sphere of action and the definition of a workers' organization.

234. *Furthermore, the Committee notes that ASIC is the result of the amalgamation of several organizations which have been the subject of previous complaints similarly alleging not only lack of recognition but also interference by the Government in their free operation (for example, it should be recalled that, in relation to the CUTC, one of the three founding organizations of ASIC, the Committee asked the Government to ensure that the CUTC can operate freely and that the authorities refrain from interfering in such a way as to restrict the organization's fundamental rights [see 320th Report, Case No. 1961, Cuba (March 2000), para. 625]).*

235. *The Committee further notes that the Government denies that the leaders to which the complainant organization refers can be considered representatives of the workers (on the grounds that since these individuals do not have an employment relationship or are not part of any labour collective, they have not been elected by the workers to represent them). In this regard, the Committee, while observing the differences between the statements of the parties, is bound to recall the following: that both elected representatives and trade union representatives (namely, those appointed or elected by the unions or their members) may be considered representatives of the workers; that freedom of association is a right of all workers, and not just those who are in a specific employment relationship; and that workers and their organizations must have the right to elect their representatives in full freedom, so that the absence or disappearance of an employment relationship should not necessarily affect the status and functions of representatives from workers' organizations, unless the constitutions of the organizations specify differently; otherwise, the abovementioned right would be restricted, leaving such organizations without leadership should their representatives be dismissed. In this regard, the Committee observes that the allegations of harassment and persecution made in the complaint include allegations of anti-union dismissals.*

236. *In the light of the above considerations, the Committee requests the Government to ensure that ASIC is given recognition and that it can freely operate and carry out its trade union activities, in accordance with the principles of freedom of association.*

237. *As regards the allegations of aggression, harassment and persecution, with detentions, assaults and dismissals, against independent trade union activists, and other acts of anti-union discrimination, the Committee notes the Government's general statement that no arbitrary or temporary detentions or arrests are carried out in the country and trade union activists or leaders are not subjected to acts of torture or to threats or harassment, and that the national security forces and institutions perform their duties in strict accordance with the law and it is not their practice to repress, intimidate, harass, torture or mistreat citizens of the country. The Government also affirms that freedom of association is fully respected in the country and trade union activity is protected, including by criminal law. The Committee notes with regret that, apart from these general statements, the Government does not provide specific replies to the numerous detailed and serious allegations made repeatedly by the complainant organization. In this regard, the Committee is bound to recall 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. In addition, the Committee recalls the principle that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind*

*against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1159 and 84]. The Committee requests the Government to ensure, in the light of its decisions applying the principles of freedom of association referred to above, that an investigation is made into all the allegations of aggression and other forms of anti-union discrimination made in the complaint and, should these be proven, to ensure that penalties that act as a deterrent are imposed and appropriate compensatory measures are taken, and to provide the Committee with detailed information on this matter and on the outcome (with copies of decisions or rulings) of any administrative or judicial proceedings instituted in relation to the allegations, including those brought against the trade unionists referred to above and the judicial proceedings reportedly brought against Mr Reyes Consuegras.*

238. *As regards the allegation that there is no collective bargaining in the country, the Committee notes the Government's statement that there are 7,161 collective labour agreements covering approximately 2,946,983 workers in the country. If the complainant organization does not send more detailed information in support of its general assertion that there is no collective bargaining in the country, the Committee will not pursue its examination of this allegation.*

239. *As regards the allegation of lack of legal recognition of the right to strike, the Committee notes the Government's statement that there is no law or legal provision laying down any prohibition on the right to strike and that the criminal legislation does not establish any penalty for exercising this right, since it is a prerogative of the trade unions to take decisions in this regard. The Committee requests the Government to keep it informed regarding the exercise of the right to strike in practice, including as regards any discrimination or disadvantage in employment that may have been applied in practice against workers for peacefully exercising the right to strike.*

240. *As regards the allegation of official recognition of only one single trade union federation controlled by the State, the Committee observes that the Committee of Experts noted with satisfaction that, as follow-up to the supervisory bodies' recommendation on this matter, the previous reference to the CTC was removed from the Labour Code and the new Code contains no specific reference to any trade union organization. The Committee also notes the Government's statement that the recognition in practice of the CTC, which was established in 1939, is based on its history of representation as well as its clear numerical superiority. This being the case, the Committee wishes to underline the importance given to previous conclusions – particularly in the light of the allegations in the case – in which the Committee recalled that the granting of exclusive rights to the most representative organization should not mean that the existence of other unions to which certain involved workers might wish to belong is prohibited. Minority organizations should be permitted to carry out their activities and at least to have the right to speak on behalf of their members and to represent them [see **Compilation**, op. cit., para. 1388].*

241. *Lastly, having noted the conflicting allegations of the parties questioning the independence of workers' organizations in the country, the Committee wishes to recall the importance that it attaches to the resolution concerning the independence of the trade union movement adopted by the International Labour Conference in 1952, which emphasizes that it is essential to preserve the freedom and independence of the trade union movement in all countries so that it can pursue its economic and social objectives regardless of any political changes.*

The Committee's recommendations

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

(a) The Committee requests the Government to ensure that ASIC is given recognition and that it can freely operate and carry out its trade union activities, in accordance with the principles of freedom of association.

(b) The Committee requests the Government to ensure, in the light of the decisions applying the principles of freedom of association mentioned in its conclusions, that an investigation is made into all the allegations of aggression and other forms of anti-union discrimination made in the complaint and, should these be proven, to ensure that penalties that act as a deterrent are imposed and appropriate compensatory measures are taken, and to provide the Committee with detailed information on this matter and on the outcome (with copies of decisions or rulings) of any administrative or judicial proceedings instituted in relation to the allegations, including those brought against the trade unionists referred to above and the judicial proceedings reportedly brought against Mr Reyes Consuegras.

(c) The Committee requests the Government to keep it informed regarding the exercise of the right to strike in practice, including as regards any discrimination or disadvantage in employment that may have been applied in practice against workers for peacefully exercising the right to strike.

CASE NO. 3194

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

Complaint against the Government of El Salvador presented by the Education Workers' Union of El Salvador (STEES)

Allegations: The complainant reports the anti-union dismissal of several trade union officers for establishing a trade union branch at a school of engineering

243. The complaint is contained in communications submitted by the Education Workers' Union of El Salvador (STEES) on 20 January and 24 May 2016.

244. The Government sent its observations in communications of 7 March 2017 and 15 March 2018.

245. El Salvador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Workers' Representatives Convention, 1971 (No. 135) and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

246. In its communications of 20 January and 24 May 2016, the STEES reports the anti-union dismissal of the members of the executive committee of the enterprise trade union branch in the Central American Technological Institute (ITCA) – Corporate Foundation for Educational Development (FEPADE) Specialized School of Engineering (hereinafter "the School"). The complainant alleges specifically that: (i) the first executive committee of the trade union branch was elected on 26 March 2015 and the Ministry of Labour and Social Welfare issued credentials to its members on 9 April 2015; (ii) as a consequence of the establishment of the trade union branch, the institution's authorities dismissed the following members of the executive committee: Ms Ana Margarita Ortiz de Alvarado, finance secretary; Ms Jeannette Guadalupe Martínez Pineda, communications secretary; Ms Yanira Elizabeth Mena Vásquez, trade union relations secretary, on 13 November 2015; and Mr Roberto Rosales Alemán, organization and statistics secretary, on 18 December 2015; and (iii) from that point on, the institution's security service refused to allow the members of the executive committee of the trade union branch to enter its premises, maintaining that their contracts had ended.

247. The STEES adds that the Ministry of Labour, through the Special Unit for the Prevention of Discriminatory and Labour-related Actions, confirmed the dismissal of Mr Roberto Rosales Alemán through a special inspection conducted on 16 January 2016. The complainant provides a copy of the inspection report, which states that the School had violated section 248 of the Labour Code, having acted improperly in dismissing Mr Rosales Alemán because he held the post of organization and statistics secretary of the executive committee. The inspection report ordered the School to remedy this violation within three days. The STEES reports that the School did not follow the labour inspectorate's reinstatement recommendation.

248. In its communication of 24 May 2016, the complainant also provides the text of the court judgments concerning the dismissal of Ms Ana Margarita Ortiz de Alvarado, Ms Jeannette Guadalupe Martínez Pineda and Ms Yanira Elizabeth Mena Vásquez. In these judgments, issued on 5 and 12 April 2016, the labour court states that: (i) while the workers held service contracts, they had been performing ongoing labour-related functions in the institution for many years; (ii) the three workers had been appointed to membership of the executive committee of the trade union branch in April 2015 and therefore enjoyed the trade union immunity established in domestic law; and (iii) the three workers were dismissed in November 2015 without adequate justification by the employer. The complainant states that, based on these facts, the labour court ordered the School to pay the wages owed to each of the three workers from the date of her dismissal to the date on which her trade union immunity expired.

249. Lastly, the complainant states that, despite the aforementioned labour inspectorate decisions and court judgments, the institution is refusing to reinstate the members of the executive committee who were dismissed.

B. The Government's reply

250. In its communication of 7 March 2017, the Government transmits its observations on the complainant's allegations. It indicates, first, that the labour inspectorate carried out a total of 13 inspections of the School in connection with the events reported in the complaint. On this point, the Government mentions specifically that: (i) the inspection conducted on 11 November 2015 established that although the functions performed by the members of the executive committee of the trade union branch were ongoing, the School's employees held service contracts, a fact that was inconsistent with the Labour Code; and (ii) the inspection conducted on 16 January 2016 established that the wrongful dismissal of Mr Roberto

Antonio Rosales, member of the STEES executive committee, on 18 December 2015 had violated section 248 of the Code. With regard to the latter violation, the Government states that a penalty was imposed and the School was fined pursuant to a judgment of 23 August 2016. However, the Government indicates that the enterprise appealed this judgment on 22 November 2016 and that the appeal is still ongoing.

251. In its communication of 15 March 2018, the Government provides additional information on the outcome of the labour inspection activities related to the allegations set out in the complaint. The Government notes in particular that an administrative procedure relating to the wrongful dismissal of seven leaders of the trade union branch (including Ms Ana Margarita Ortiz de Alvarado, Ms Jeannette Guadalupe Martínez Pineda and Ms Yanira Elizabeth Mena Vásquez) and to several anti-union discrimination actions, is in the sanctioning phase of the proceedings – the final resolution of the matter currently pending. As to the pending judicial procedures, the Government indicates that: (i) the Second Court of Santa Tecla ruled in favour of three leaders of the trade union branch, ordering the payment of salaries not received due to the employer's actions and noting that it did not address the reinstatement of the workers in so far as it considered that their employment relationship had not been terminated; (ii) the Second Chamber of Labour Matters revoked certain first instance rulings favourable to the workers; and (iii) such second instance decisions of the Second Chamber have been appealed before the Administrative Chamber of the Supreme Court.

252. The Government also indicates that on 1 July 2016, the STEES again wrote to the Ministry of Labour and Social Welfare, requesting it to intervene in the dismissal of the trade union officers. In light of this request, the Department of Labour summoned the parties to three hearings (on 19 June, 7 September and 1 November 2016, respectively) in order to resolve the dispute concerning the dismissals and the Minister of Labour held an additional meeting in her own office on 9 March 2017 for the same purpose. However, the Government indicates that none of these meetings led to an agreement because the School maintained its position that the dispute could not be resolved administratively because the institution had already referred the cases to the courts and would wait for the labour judge to settle them.

253. The Government indicates, on the other hand, that in a communication of 8 March 2017, the Ministry of Education states that: (i) although the School is an institution of higher education operating under the aegis of the Ministry of Education, it is privately administered and is governed by its own statutes; and (ii) the trade union officers mentioned in the complaint are not public servants, but rather former teachers; thus, the wages that they received for their professional services did not derive from public resources managed by the School.

254. In its 15 March 2018 communication, the Government adds that the Ministry of Labour and Social Welfare undertook the following additional measures: (i) the Ministry of Labour convened for 4 April 2017 a new conciliation meeting to seek the reinstatement of the trade union leaders but the school did not attend; (ii) on 25 April 2017, the Ministry of Labour convoked a press conference to make public the violations to freedom of association which had occurred in the school; (iii) on 22 August 2017, the Minister of Labour and Social Welfare addressed a communication to the President of the Republic, informing that its Ministry had followed up on the case of unfair dismissal of several trade union leaders in the school, and that, in so far as the school receives funds from the State, it should lead by example in guaranteeing freedom of association; and (iv) the Ministry of Labour continues supporting the trade union branch in the actions seeking the restitution of its labour rights.

C. The Committee's conclusions

255. *The Committee observes that in the present case, the complainant reports the anti-union dismissal of several trade union officers a few months after the establishment of a trade*

union branch in a school of engineering. The Committee notes that the complainant mentions, in particular, the dismissal of the trade union officers, Mr Roberto Rosales Alemán, Ms Ana Margarita Ortiz de Alvarado, Ms Jeannette Guadalupe Martínez Pineda and Ms Yanira Elizabeth Mena Vásquez, which took place on 13 November and 18 December 2015. The Committee also notes that, according to the complainant, the School failed to comply with the rulings of the labour inspectorate and the labour courts with regard to these dismissals.

256. *The Committee observes that both the complainant and the Government indicate that the events that prompted this complaint led to several interventions by the labour inspectorate and to several court judgments. The Committee notes that it is clear from the documents provided by the Government and the complainant that: (i) on 11 November 2015, the labour inspectorate found that the fact that the members of the executive committee held service contracts even though they were performing ongoing functions was inconsistent with the Labour Code; (ii) on 16 January 2016, the labour inspectorate found that the School had violated section 248 of the Labour Code by wrongfully dismissing the trade union leader, Mr Roberto Antonio Rosales Alemán, and ordered it to remedy the violation within three days; (iii) on 22 November 2016, the School appealed the ruling in which the labour inspectorate had fined it for violating section 248 of the Labour Code by wrongfully dismissing Mr Alemán, and that appeal is still under way; (iv) an administrative procedure relating to the wrongful dismissal of seven leaders of the trade union branch (among them three trade union leaders mentioned in the complaint) and to several anti-union discrimination actions, is in the sanctioning phase of the proceedings – the final resolution of the matter currently pending (v) the trade union officers, Ms Ana Margarita Ortiz, Ms Jeannette Guadalupe Martínez and Ms Yanira Elizabeth Mena, have brought judicial proceedings demanding reinstatement. On 5 and 12 April 2016, the labour court issued judgments in which it found that the employer had not adequately justified the dismissals and ordered the School to pay the claimants the wages owed to them from the date of their dismissal to the date on which their trade union immunity expired (the School appealed these judgments); and (vi) other first instance judicial rulings favourable to the workers revoked in second instance are pending resolution by the Supreme Court. The Committee also takes note of the following additional measures undertaken by the Ministry of Labour and Social Welfare: (i) on 1 July 2016, in light of the continued dismissal of the various members of the executive committee of the trade union branch, the STEES requested that the Ministry of Labour and Social Welfare intervene in order to resolve the situation; (ii) the Ministry summoned the parties to four conciliation hearings, the last of them in the presence of the Minister of Labour, in the hope of reaching an agreement on the status of the trade union officers; (iii) at these meetings, the School maintained its position that it could not agree to the officers' reinstatement and would await the final rulings of the courts in the cases; and (iv) the Ministry of Labour has drawn the attention of the President of the Republic to the need for the school to respect the principles of freedom of association.*

257. *The Committee observes that it is clear from the foregoing that: (i) the trade union officers' dismissals that are the subject of the present complaint gave rise to interventions and rulings by the labour inspectorate that found violations of the provisions of the Labour Code concerning the protection of trade union officers. These interventions and rulings are not, however, final, whether because the fines have been appealed or because some of the administrative procedures are still under way; (ii) similarly, the lower labour courts have ruled that the dismissal of three of the trade union officers was not consistent with the provisions of the Labour Code concerning the protection of trade union officers, and these labour court judgments are the subject of an appeal that is pending; and (iii) the conciliation hearings and other initiatives undertaken by the Ministry of Labour were unable to resolve the situation.*

258. *The Committee recalls that the dismissal of trade union officers on account of their trade union office or activities, even if they are subsequently reinstated, is contrary to Article 1 of Convention No. 98, and could, in cases where dismissal has been proven, amount to intimidation preventing the exercise of their trade union functions [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1130]. While taking due note of the Government's efforts to reach an agreement on reinstatement of the trade union officers who were dismissed, the Committee notes with concern that, two and a half years after the aforementioned dismissals, the final rulings of both the labour inspectorate and the labour courts are still pending. Therefore, while recalling that no one should be subjected to anti-union discrimination because of legitimate trade union activities and the remedy of reinstatement should be available to those who are victims of anti-union discrimination [see* ***Compilation****, op. cit., para. 1163], the Committee urges that the necessary measures be taken to ensure that the pending judicial proceedings in relation to the present case are concluded without further delay. The Committee requests the Government to keep it informed in this regard without delay.*

The Committee's recommendation

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

> ***The Committee urges that the necessary measures be taken to ensure that the pending judicial proceedings in relation to the present case are concluded without further delay. The Committee requests the Government to keep it informed in this regard without delay.***

CASE NO. 3255

DEFINITIVE REPORT

Complaint against the Government of El Salvador presented by
– the Administrative Employees' Union of the National Civil Police of El Salvador (SEAD PNC); and
– the Federation of Public Sector Workers' Unions (FESITRASEP)

Allegations: Rejection of the application for legal personality made by a new trade union of administrative personnel of the National Civil Police

260. The complaint is contained in a communication of 8 November 2016 from the Administrative Employees' Union of the National Civil Police of El Salvador (SEAD PNC) and the Federation of Public Sector Workers' Unions (FESITRASEP).

261. The Government sent its observations in a communication of 19 April 2018.

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

A. The complainants' allegations

263. The complainant organizations report that on three occasions (in 2010, 2014 and 2015) the SEAD PNC carried out the procedures vis-à-vis the Ministry of Labour to apply for legal personality, receiving a negative response on all three occasions. In the decisions rejecting the application to acquire legal personality, which were forwarded by the complainants, the Ministry indicates that: (i) article 47 of the National Constitution provides that members of the National Civil Police do not have the right of association (the Government emphasizes that this restriction also appears in the Civil Service Act); (ii) this is in accordance with Article 9 of Convention No. 87; and (iii) the exclusion in the Constitution is applicable to both judicial and administrative personnel: the Constitution does not make distinctions among police staff on the basis of competencies or positions held; the police function – the object of which is to ensure public safety – comprises duties assigned to the whole institution of the National Civil Police, without distinguishing between posts or competencies of staff in its service.

264. The complainants disagree with the Government's position. They consider that the reform made to article 47 of the Constitution in 2009 was intended to place restrictions on the handling of confidential police information, and emphasize that the legislation distinguishes between police personnel and administrative personnel. In particular, section 2 of the Police Careers Act provides that this Act only applies to the police personnel of the National Civil Police and that the administrative, technical and service personnel of the National Civil Police will be regulated by other legislation – which at present does not exist. The complainants also indicate that attempts have been made for years to apply the Civil Service Act to administrative personnel, even though section 4 of this Act provides that the members of the armed forces and of the National Civil Police are not part of the administrative career service. The complainants report that the Government nevertheless makes use of these distinctions to exclude administrative personnel from all the benefits and allowances granted to police personnel – but when they wish to form a union to defend their interests they are not allowed to do so, being recognized under those circumstances solely as members of the National Civil Police. This gives rise to a situation of legal uncertainty, vulnerability and inequality in terms of rights and benefits.

B. The Government's reply

265. In its communication of 18 April 2018, the Government makes observations in response to the complainants' allegations. With reference to the arguments put forward in the Ministry of Labour's decisions to reject the application by SEAD PNC to acquire legal personality and to the information provided by the Director-General of the National Civil Police, the Government indicates that: (i) the National Civil Police is a public-law institution, under the authority of the Ministry of Justice and Security, the purpose of which is to "protect and guarantee the free exercise of the rights and freedoms of individuals, to prevent and combat all kinds of crimes and to cooperate in the investigation of crimes; maintain internal peace, tranquillity, order and security in both urban and rural areas, with strict respect for human rights"; (ii) the prohibition contained in article 47(2) of the Constitution – which establishes that members of the National Civil Police shall not have the right of association – does not distinguish between staff on the basis of their competencies or posts held, in other words it does not distinguish between administrative and police staff; (iii) in the same manner, section 31(8) of the Basic Act of the National Civil Police prohibits all members of the police force from "organizing in trade unions or other groups that pursue the same ends, or participating in strikes, suspensions or stoppages of work"; (iv) the nature of policing is that the role is performed not by some staff but by the institution as a whole, being a joint and continuous task and a service that cannot be suspended for any reason; the tasks performed by police and administrative staff are not directly or indirectly separated, since the actions of police staff are directly linked to the work performed by administrative staff; and (v) in

view of the foregoing, the exclusion in question, which affects all National Civil Police staff, is fully in accordance with Convention No. 87.

C. The Committee's conclusions

266. *The Committee observes that the complaint is concerned with allegations that the application by a new trade union of administrative staff in the National Civil Police to acquire legal personality was rejected and that the complainants emphasize that the legislation distinguishes between police personnel and administrative personnel within the police entity.*

267. *In this regard, the Committee recalls that Article 9(1) of Convention No. 87 provides as follows: "The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations."*

268. *The Committee observes that, despite the fact that the legislation distinguishes between administrative and police personnel, in particular with respect to their professional careers, the administrative decisions rejecting the application from SEAD PNC to acquire legal personality, as well as the Government's observations in relation to the complaint, highlight that: (i) the exclusion of the right to organize in the Constitution and in national legislation makes no distinction between categories of staff in the National Civil Police; and (ii) that the police function comprises duties assigned to the whole institution of the National Civil Police, without distinguishing between posts and competencies of staff in its service.*

269. *While recalling that Article 9 of the Convention provides only for exceptions to the general principle, that the interpretation of these possible categories of exclusion (police and armed forces) should be restrictive and that in case of doubt, workers should be classified as civilians, the Committee takes due note of the information provided by the Government and observes that the complainants do not deny that administrative personnel are an integral part of the National Civil Police and they do not allege that the duties and tasks of such personnel are different in nature from those of police personnel; furthermore, they do not present any supporting evidence in this regard. In these circumstances, the Committee will not pursue its examination of the case.*

The Committee's recommendation

270. ***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. 3256

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

Complaint against the Government of El Salvador presented by the Trade Union for the Defence of Workers of the Social Security Institute of El Salvador

Allegations: The complainant organization alleges the refusal to grant union leave and

accreditation to its officers; dismissals of members of its executive committee; and anti-union threats and failure by the authorities to take action against such threats

271. The complaint is contained in a communication from the Trade Union for the Defence of Workers of the Social Security Institute of El Salvador (SIDETISSS) dated 28 November 2016.

272. The Government sent its observations in a communication dated 22 February 2018.

273. El Salvador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Workers' Representatives Convention, 1971 (No. 135), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

274. In its communication of 28 November 2016, the complainant organization reports: (i) dismissals of members of its executive committee; (ii) the refusal by the Social Security Institute of El Salvador (ISSS) (the employer) to grant trade union leave to the union's officers and also the refusal by the Ministry of Labour and Social Security (Ministry of Labour) to grant trade union accreditation to three members of the union's executive committee; and (iii) anti-union threats and failure by the authorities to take action against such threats.

275. As regards the anti-union dismissals of members of the executive committee of the complainant organization, namely Ms Elsa del Socorro Carranza de Murcia, Mr David Ernesto López Urquilla, Mr Francisco Eduardo Cotto Murcia, Mr Rafael Ernesto Martínez Arévalo, Mr José Luis Santos Orellana and Mr Modesto Díaz Jovel, the complainant indicates that the employer took legal action to have their dismissals authorized and their employment relationship terminated. It also indicates that, as at 28 November 2016, four of these six dismissals had been authorized by the courts and the other two were still pending.

276. As regards the employer's refusal to grant union leave to the union's officers, the complainant organization indicates that it requested such leave – whether partial or permanent – on three occasions (24 May 2013, 8 August 2013 and 12 July 2016), that the employer rejected these three requests, and that it did not provide any opportunity to negotiate a timetable or reduce working hours so that the executive committee could carry out its union activities. Moreover, the complainant refers to a letter from the employer dated 24 May 2016, indicating that "it is inappropriate to grant union leave with wages and benefits … since there is no way for these to be permanent or ongoing, considering the essential service provided by the institution for which we all work".

277. As regards the refusal by the Ministry of Labour to grant trade union accreditation to three members of the executive committee, namely Ms Elsa del Socorro Carranza de Murcia, Mr David Ernesto López Urquilla and Mr Francisco Eduardo Cotto Murcia, the complainant organization indicates that the Ministry decided to reject its requests because no payslips or wage certificates had been submitted proving that the three individuals were employed by the ISSS. It also objects to the fact that other trade union officers at autonomous institutions having the same status as its three executive committee members, such as officers of the Union of Judiciary Workers (SITTOJ) and the Union of Food Processing Industry Workers (SITIPA), had been granted union accreditation.

278. Lastly, as regards the anti-union threats on the part of the authorities, the complainant organization denounces the statement made by the Minister of Health that, in the wake of the work stoppage and marches by health sector workers in October 2016, the authorities were going to make deductions from wages, dismiss workers and even dissolve trade unions. The complainant also denounces the silence on the part of the Ministry of Labour and the central Government in response to the various complaints made against anti-union acts committed by the employer, particularly those dated 8 August 2013, 19 November 2014, 13 January 2015, 7 July 2015, 18 September 2015 and 23 September 2015.

B. The Government's reply

279. In its communication of 22 February 2018, the Government indicates, with regard to the dismissals of Ms Elsa del Socorro Carranza de Murcia, Mr David Ernesto López Urquilla, Mr Francisco Eduardo Cotto Murcia, Mr Rafael Ernesto Martínez Arévalo and Mr Modesto Díaz Jovel, that all committed misconduct regarded as grounds for dismissal under the law and that their dismissals were authorized by the competent authorities. It also indicates that to date no legal actions have been admitted and no protective measure of reinstatement has been issued.

280. The Government indicates that in the case of Ms Elsa del Socorro Carranza de Murcia, civil proceedings for the authorization of dismissal were brought in the Second Civil and Commercial Court (Judge No. 2) and on 21 July 2015 the dismissal for unjustified absence from work was authorized. It adds that this decision was upheld on 9 September 2015 by a decision issued by the Civil Chamber (First Division, Central Region) in San Salvador.

281. The Government indicates that, in the case of Mr David Ernesto López Urquilla, on 19 May 2016 the First Civil and Commercial Court authorized his dismissal for unjustified absence from work. It also indicates that, in the case of Mr Francisco Eduardo Cotto Murcia, on 11 February 2014 the Civil Court of Mejicanos authorized his dismissal for unjustified absence from work. It adds that this decision was upheld on 13 March 2014 by a definitive judgment issued by the Third Civil Chamber (First Division, Central Region) in San Salvador.

282. The Government also indicates that, in the case of Mr Rafael Ernesto Martínez Arévalo, on 30 June 2016 the Fifth Civil and Commercial Court authorized his dismissal for unjustified absence from work. It adds that this decision was upheld on 31 August 2016 by a definitive judgment issued by the Third Civil Chamber (First Division, Central Region) in San Salvador. It further indicates that, in the case of Mr Modesto Díaz Jovel, on 26 January 2017 the Fourth Civil and Commercial Court authorized his dismissal for unjustified absence from work for over 60 days and that this decision was upheld on 28 March 2017 by a judgment issued by the Second Civil Chamber (First Division, Central Region).

283. Lastly, the Government indicates that, in the case of Mr José Luis Santos Orellana, civil proceedings for the authorization of dismissal were brought in the Fourth Civil and Commercial Court for unjustified absence from work, and that this court decided to allow the application of 9 June 2017. The authorization of dismissal is currently being processed.

284. As regards the employer's refusal to grant trade union leave, whether partial or permanent, to officers of the complainant organization, the Government indicates that one of the obligations for employers established by section 29 of the Labour Code is to grant leave to workers so that "for the time required, they can perform their essential duties as officers of occupational organizations, provided that this is requested by the organization concerned. The employer will not be obliged to grant any benefits in this respect". The Government also indicates that the Constitutional Chamber of the Supreme Court of Justice, in ruling No. 746-2011 of 26 June 2015, states in paragraph IV(c) that "trade union leave is thus the instrument

whereby the employer authorizes union leaders to be absent from the workplace during working hours in order to accomplish specific activities essential to the proper functioning and development of the labour organization, provided that such leave is reasonable, proportionate and necessary" and states in paragraph V(c)(a) that "the status of trade union officer shall not prevail over that of public servant". The Government also points out that the aforementioned ruling states that it is inappropriate to grant permanent leave to union officers.

285. Furthermore, the Government indicates that a request was made to review the refusal to grant trade union leave to Mr Rafael Ernesto Martínez Arévalo, third disputes secretary of the executive committee of the complainant organization, and that as a result of the relevant investigation the labour inspector was unable to confirm the alleged refusal of union leave, since the leave claimed by the worker had not been requested for union activities. However, it adds that the employer was recommended to comply with the terms of Article 2 of Convention No. 135.

286. As regards the refusal by the Ministry of Labour to grant trade union accreditation to three members of the executive committee of the complainant organization, namely Ms Elsa del Socorro Carranza de Murcia, Mr David Ernesto López Urquilla and Mr Francisco Eduardo Cotto Murcia, the Government indicates that it should be made clear that one of the requirements to be checked before granting accreditation is set out in section 225(5) of the Labour Code, which excludes employees occupying positions of trust and employer representatives. The Government indicates that, at the time of checking the documentation required under the aforementioned section to register the executive committee of the complainant organization, no payslips or certificates from the human resources department had been attached showing the employment relationship and the duties performed for the employer, which is necessary in relation to the exclusion established in section 225(5) of the Labour Code. However, the Government indicates that on 12 December 2016 the complainant presented a new request for accreditation for Ms Elsa del Socorro Carranza de Murcia, Mr David Ernesto López Urquilla and Mr Francisco Eduardo Cotto Murcia. It also indicates that, because of the unavailability of payslips or certificates from the human resources department demonstrating the employment relationship between the three workers and the employer, the complainant attached to its request copies of the *amparo* appeals filed with the Constitutional Chamber to have the termination of their employment relationship declared null and void, thereby replacing the documentation normally required by section 225(5) of the Labour Code. The Government indicates that the accreditation requested for the three executive committee members was granted through a decision issued on 14 December 2016, with validity from 10 December 2016 to 11 June 2017.

287. The Government indicates that, on 26 May 2017, the complainant organization elected a new executive committee due to hold office from 12 June 2017 to 11 June 2018 and that full accreditation was granted on 28 August 2017 to Mr Oscar Ernesto Murcia Carranza, general secretary of the complainant organization. As regards the accreditation granted to other trade union officers who were allegedly in the same situation as the officers of the complainant organization (such as the officers of SITTOJ and SITIPA), the Government emphasizes that the same criterion was applied to these unions and that they attached the required documentation in due time.

288. Lastly, as regards the anti-union threats by the authorities and the silence on the part of the Ministry of Labour and the central Government with respect to the various complaints concerning alleged anti-union acts committed by the employer, the Government indicates that no discriminatory, anti-union policy exists or has ever existed with respect to the complainant organization and that various labour inspections have been carried out by the Labour Inspection Department, as described below:

(a) A request was made to investigate allegations of obstruction of freedom of association and anti-union discrimination against Mr Rafael Ernesto Martínez Arévalo, third disputes secretary of the executive committee of the complainant organization, and further to the interviews held with representatives of the employers and colleagues of the worker, the alleged discrimination was not proven.

(b) Mr Francisco Eduardo Cotto Murcia and Mr José Luis Santos Orellana requested an investigation into allegations of discrimination with regard to their status as union officers and, further to the corresponding investigation at the workplace liable to inspection, the labour inspector noted in a report dated 8 April 2014 that since this involved a collective dispute of a legal nature, he had no competence in the matter, and consequently the file was closed.

(c) Mr Carlos Armando Sánchez requested an investigation into allegations of illegal deductions and discriminatory acts and an infringement of section 30(5) of the Labour Code was established, which forbids employers to discriminate, directly or indirectly, against workers on account of their trade union membership. The Government indicates that the inspector recorded in a re-inspection document that this infringement had been rectified and consequently the file was closed.

(d) Mr Modesto Díaz Jovel requested an investigation into his employment situation, alleging fraud with respect to recruitment since the employer had modified his form of contract, which he saw as being intended to undermine the trade union movement and union freedoms. The Government indicates that after completing the corresponding inspection procedures the labour inspector recorded in a report dated 27 January 2014 that the change in the form of contract was in line with clause 14 of the collective agreement, whereby workers having over 20 years' service are no longer covered by the recruitment regime and Mr Modesto Díaz Jovel had 22 years' service to date; hence no infringement of the labour regulations was established, and consequently the file was closed.

(e) Ms Elsa del Socorro Carranza requested an investigation into her employment situation and, further to the relevant investigation by the labour inspector assigned to the case, the report dated 11 March 2015 concluded that since this involved a labour dispute in which the recruitment regime, under section 2 of the Labour Code, does not come within the competence of the Ministry of Labour, it was necessary to return the file for closure.

(f) Mr David Ernesto López Urquilla requested an investigation into discriminatory acts committed by representatives of the employer, including abuse of power, gender violence and harassment at work, and also with respect to the right to a hearing and defence and the adversarial principle established in clause 18 of the collective agreement. The Government indicates that the labour inspector concluded with regard to this last point that the Labour Inspection Department does not have competence for a collective dispute of a legal nature deriving from the application or interpretation of legal standards but the inspection report established an infringement of section 79(3) of the Occupational Risk Prevention Act, which penalizes non-fulfilment of the obligation to formulate and implement the enterprise's occupational risk management and prevention programme, an infringement which was shown to have been rectified in the re-inspection report, and consequently the file was closed.

(g) Ms Mirna Elizabeth Mejía requested an investigation into her transfer as a union representative, noting that the assigned inspector established that there had been a violation of the collective agreement.

289. The Government also highlights the use of dialogue round tables as a means of settling disputes, through the Labour Department and the Labour Minister's advisory team, and the publication by the Ministry of Labour of a recommendation to the employer in October 2016 to consider the reinstatement of the dismissed union officers.

290. Lastly, the Government indicates that as regards the notes dated 13 January 2015, 7 July 2015 and 23 September 2015, no record was found at the Labour Inspection Department of any files drawn up or procedures conducted on those dates, according to internal databases.

C. The Committee's conclusions

291. *The Committee observes that in the present case the complainant organization reports: (i) dismissals of members of its executive committee; (ii) the refusal by the employer to grant union leave to its officers and also the refusal by the Ministry of Labour and Social Welfare (Ministry of Labour) to grant union accreditation to three members of its executive committee; and (iii) anti-union threats and failure of the authorities to take action against them.*

292. *As regards the dismissals of members of the executive committee of the complainant organization, namely Ms Elsa del Socorro Carranza de Murcia, Mr David Ernesto López Urquilla, Mr Francisco Eduardo Cotto Murcia, Mr Rafael Ernesto Martínez Arévalo and Mr Modesto Díaz Jovel, the Committee notes the judicial decisions authorizing their dismissals for unauthorized absence from work. It notes that the competent courts concluded, in the light of the evidence presented by the parties, that it had not been proven that the absences were for participating in activities required by their status as trade union officers. The Committee also observes that in the case of Mr José Luis Santos Orellana, the Fourth Civil and Commercial Court decided to allow the application for dismissal on 9 June 2017, and the authorization of dismissal is currently being processed. The Committee also observes that the Ministry of Labour issued a recommendation to the employer in October 2016 to consider the reinstatement of the dismissed union officers. The Committee requests the Government to keep it informed of developments, particularly to provide further details regarding the recommendation to reinstate the dismissed trade union officers and its implementation.*

293. *As regards the refusal by the employer to grant trade union leave to officers of the complainant organization, the Committee notes the information provided by the Government concerning the relevant legislation and the ruling of the Constitutional Chamber of the Supreme Court of Justice dated 26 June 2015. It also notes the complainant's statement that it requested the aforementioned union leave on three occasions and that the employer rejected these three requests and was unwilling to negotiate a timetable or a reduction in working hours so that the executive committee could carry out its union activities. The Committee recalls in this respect that Article 6(1) of Convention No. 151 provides that "such facilities shall be afforded to the representatives of recognised public employees' organisations as may be appropriate in order to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work". Article 6(2) provides that "the granting of such facilities shall not impair the efficient operation of the administration or service concerned". The Committee recalled that, while account should be taken of the characteristics of the industrial relations system of the country, and while the granting of such facilities should not impair the efficient operation of the undertaking concerned, Paragraph 10(1) of Recommendation No. 143 provides that workers' representatives in the undertaking should be afforded the necessary time off from work, without loss of pay or social and fringe benefits, for carrying out their representation functions. Paragraph 10(2) also specifies that, while workers' representatives may be required to obtain permission from the management before taking time off, such permission should not be unreasonably withheld. The Committee also recalls that Paragraph 10(3) of*

Recommendation No. 143 indicates that reasonable limits may be set on the amount of time off which is granted to workers' representatives [see ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, paragraphs 1603 and 1604]. The Committee requests the Government to ensure that the members of the executive committee of the complainant organization are able to take trade union leave, in accordance with the above, and invites the Government, with a view to determining arrangements for such leave, to promote dialogue and collective bargaining between the parties concerned. The Committee requests the Government to keep it informed in this respect.*

294. *As regards the refusal by the Ministry of Labour to grant trade union accreditation to three members of the executive committee of the complainant organization, namely Ms Elsa del Socorro Carranza de Murcia, Mr David Ernesto López Urquilla and Mr Francisco Eduardo Cotto Murcia, the Committee observes that the complainant and the Government indicate that the employer rejected the three requests because no payslips or wage certificates had been submitted proving that they were ordinary workers and not representatives of the employer or persons occupying positions of trust. In this respect, the Committee notes that the Government highlights the fact that the same criterion was applied to all trade unions and the same documentation was requested from them. Furthermore, it notes the Government's statement that once the complainant submitted copies of the* amparo *appeals lodged with the Constitutional Chamber to provide the documentation that had been originally requested (payslips or certificates from the human resources department), the requested accreditation was granted. The Committee notes the Government's indication that on 26 May 2017 the complainant elected a new executive committee and that full accreditation was issued on 28 August 2017 to Mr Oscar Ernesto Murcia Carranza, the general secretary of the complainant organization. Under these circumstances, the Committee will not pursue its examination of this allegation.*

295. *As regards the allegations of anti-union threats by the authorities and of silence on the part of the Ministry of Labour and the central Government in relation to various complaints of alleged anti-union acts committed by the employer, the Committee notes that the Government provides detailed information on the various inspections carried out by the Labour Inspection Department. It also notes the Government's indication that it made use of dialogue round tables to address the disputes that had arisen. The Committee encourages the Government to continue promoting social dialogue between the parties to address any pending issues and invites the complainant organization to forward any additional information that it may have on this matter. It also requests the Government to keep it informed of developments.*

The Committee's recommendations

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

(a) As regards the dismissals of members of the executive committee of the complainant organization, the Committee requests the Government to keep it informed of further developments, particularly to provide further details regarding its recommendation to reinstate the dismissed trade union officials and its implementation.

(b) The Committee requests the Government to ensure that the members of the executive committee of the complainant organization are able to take trade union leave, in accordance with the decisions applying the principles of freedom of association mentioned in its conclusions, and invites the Government, with a view to determining arrangements for such leave, to

promote dialogue and collective bargaining between the parties concerned. The Committee requests the Government to keep it informed in this respect.

(c) The Committee encourages the Government to continue promoting social dialogue between the parties to address any pending issues and invites the complainant organization to supply any additional information that it may have on this matter. It also requests the Government to keep it informed of developments.

CASE NO. 2445

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

Complaint against the Government of Guatemala presented by
– the World Confederation of Labour (WCL) (the WCL was the initial complainant in 2005 before becoming part of the International Trade Union Confederation (ITUC) in 2006); and
– the General Confederation of Workers of Guatemala (CGTG)

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

297. The Committee last examined this case at its March 2017 meeting, when it presented an interim report to the Governing Body [see 381st Report, approved by the Governing Body at its 329th Session (March 2017), paras 443–463].

298. The Government sent further observations in communications dated 21 February, 6 March and 20 April 2018.

299. 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

300. At its March 2017 meeting, the Committee made the following recommendations [see 381st Report, para. 463]:

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

(b) The Committee requests the Government to keep it informed of the outcome of the risk assessment for Ms Mérida Coy and her children and of any security measures taken as a result.

(c) The Committee requests the Government to send a copy of the judgment which clearly indicated that the motive of the attempted murder of Mr Marcos Álvarez Tzoc was not related to the trade union activity of the victim. The Committee requests the Government to indicate the reasons for having not yet executed the criminal sanction ordered in respect of this attempted murder and once again expresses its firm hope that this sanction will be enforced without delay. It requests the Government to keep it informed in this respect.

(d) The Committee urges the Government to provide, without delay, information on the action taken, in accordance with the Protocol for the Implementation of Immediate and Preventive Security Measures for trade union members and leaders and labour rights activists, to evaluate the need to ensure protective measures for Mr Álvarez Tzoc.

(e) With respect to the allegations of death threats against members of the Itinerant Vendors' Trade Union by municipal police officers, in the absence of a legal possibility to carry out an ex officio criminal investigation, the Committee requests the Government to carry out an internal investigation within the police force on this matter.

(f) The Committee urges the Government, in the strongest possible terms, to ensure that, in future, any reports of acts of anti-union violence against, threats to or harassment of members of the trade union movement trigger immediate and effective investigations by the competent public authorities and the implementation of adequate protection measures.

(g) The Committee firmly expects that the commitments made by the Government in the Memorandum of Understanding signed on 26 March 2013 between the Government of Guatemala and the Chairperson of the Workers' group of the ILO Governing Body, as well as the efforts made to implement it, will be translated into tangible results with respect to the allegations still pending in this case.

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

B. The Government's reply

301. In a communication of 6 March 2018, the Government sent information from the Public Prosecutor's Office on the status of investigations into the murder on 28 November 2004 of Mr Julio Raquec Ishen, the general secretary of the Trade Union Federation of Informal Workers. As the Committee had been informed on previous occasions, the information provided by the Public Prosecutor's Office once again emphasizes that: (i) it has not been possible to secure the collaboration of Ms Lidia Mérida Coy (eyewitness to the murder and the victim's partner), who refuses to identify the possible perpetrators; and (ii) Ms Lesbia Aracely Rodríguez Solís (another eyewitness to the crime), when interviewed, stated that she had been unable to see the young people with whom Ms Mérida Coy had been arguing with on the day in question. The information from the Public Prosecutor's Office also indicates that: (i) as part of the investigations into the crime, the National Civil Police, the Department for the Prison System and the Ministry of the Interior were asked for information on two individuals suspected of involvement in the crime; (ii) the particulars provided by those institutions revealed that one of the two individuals, whose photo was on prison files, was murdered on 2 February 2015; and (iii) in the light of the above and in view of the fact that the chief suspect in the murder of Mr Raquec was himself murdered, the Public Prosecutor's Office will request the judicial body in charge of the investigation to terminate the criminal prosecution relating to the aforementioned individual.

302. In its communication of 20 April 2018, the Government submitted information, provided by the Ministry of the Interior, on the measures taken to assess the need to provide protection to the victim's partner and other family members. The Government states in this regard that: (i) attempts were made to locate Ms Lidia Mérida Coy on a number of occasions in order to assess the risk to her and her immediate family and to obtain her testimony at various points

in the investigation into the murder of Mr Raquec; (ii) nevertheless, Ms Coy stated on several occasions that she does not intend to cooperate with the authorities; (iii) both Ms Coy's lack of interest and the current impossibility of locating her are clear; and (iv) it is evident from the above that Ms Coy has no intention of being subject to protection measures.

303. In its communication of 20 April 2018, the Government submitted information concerning the attempted murder of union leader Marcos Álvarez Tzoc in January 2003. The Government sent a copy of the judgment of 14 October 2004 sentencing Mr Julio Enrique de Jesús Salazar Pivaral to ten years' non-commutable imprisonment for attempted murder. The Government underscores that it is noted in the judgment concerned that there was no anti-union motive behind the incident. In relation to the measures taken to assess the need to provide protection to Mr Tzoc, the Government states that: (i) since the aforementioned judicial decision, Mr Tzoc never stated that he was in danger or filed any complaint, hence there is no obvious reason why there would be a need to provide him with protection measures; and (ii) protection measures are provided to any person who considers himself/herself to be in danger of life or limb, whereas if there is no such indication it is impossible to determine the presence of any danger.

304. The Government then refers to the request of the Committee, in the absence of a legal possibility to carry out an ex officio criminal investigation in this regard, to carry out an internal police investigation into allegations of death threats against members of the Itinerant Vendors' Trade Union by members of the police, which allegedly took place in Antigua on 21 March 2005. The Government refers to the elements provided by the Ministry of the Interior in which it is indicated that the conduct of such an investigation would require detailed information about the incident, which does not exist in the absence of specific elements contained in the criminal complaint that was filed at the time but dropped by the complainants, who did not reappear. In addition, the Government reiterates that it is legally impossible to carry out a further investigation into facts that already gave rise to a complaint that had to be dismissed in the absence of interest on the part of the complainant.

305. Lastly, in its various communications, the Government also sent information on allegations in relation to which the Committee has not pursued its examination.

C. The Committee's conclusions

306. *The Committee recalls that the present case is concerned with allegations of murders, threats and acts of violence against trade unionists and their family members and also with dismissals and other anti-union acts. The Committee also recalls that it has examined this case on nine occasions since it was first presented in 2005.*

307. *As regards the investigations into the murder of Mr Julio Raquec Ishen, general secretary of the Trade Union Federation of Informal Workers, which occurred on 28 November 2004, the Committee notes that the Government indicates once again that the main witness to the murder, Ms Lidia Mérida Coy, the victim's partner, still refuses to testify and that a second witness to the crime was interviewed but stated that she had been unable to see the young people who had been arguing with Ms Lidia Mérida Coy at the time of the crime. The Committee also notes that the Government adds that: (i) as part of the investigations into the crime, the National Civil Police, the Department for the Prison System and the Ministry of the Interior were asked for information on two individuals suspected of involvement in the crime; (ii) the particulars provided by those institutions revealed that one of the two individuals, whose photo was on prison files, was murdered on 2 February 2015; and (iii) in the light of the above and in view of the fact that the chief suspect in the murder of Mr Raquec was himself murdered, the Public Prosecutor's Office will request the judicial body in charge of the investigation to terminate the criminal prosecution relating to the aforementioned individual.*

308. *While duly noting this information, especially relating to the death of the person described as the chief suspect in the murder of Mr Raquec, the Committee understands that this death does not signify the end of the corresponding investigation inasmuch as the particulars supplied by the Public Prosecutor's Office refer to the involvement of two individuals in the perpetration of these acts and also to the identification of another suspect. Recalling once again that in cases of physical or verbal violence against workers' and employers' leaders and their organizations, the absence of judgments against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 108], the Committee urges the Government to continue taking all necessary steps to ensure that all the perpetrators and instigators of this murder and also the motives for the crime are identified once and for all, and that guilty parties who are still alive are prosecuted and punished by the courts. The Committee requests the Government to keep it informed of any developments in this regard.*

309. *In its previous examination of the case, noting the Government's indication that a risk assessment had been ordered to ensure the safety of Mr Julio Raquec Ishen's partner, Ms Lidia Mérida Coy, and her children, the Committee asked the Government to provide information on the outcome of that assessment and of any security measures taken on the basis thereof. The Committee takes note of the information supplied by the Government in this respect in which it indicates that: (i) attempts have been made to locate Ms Lidia Mérida Coy on a number of occasions, both to assess the risk to her and to her immediate family and to obtain her testimony at different points in the investigation into the murder of Mr Raquec; and (ii) nevertheless, Ms Coy has indicated on various occasions that she did not intend to cooperate with the authorities and clearly does not intend to be subject to protection procedures. In this regard, the Committee notes, on the one hand, that the complainant organizations, when submitting the present complaint in August 2005, alleged that Ms Coy had received threats and, on the other hand, that since that time these organizations have not sent any further communications concerning Ms Coy's situation. On the basis of the above and provided that the complainant organizations do not give further indications that Ms Coy and her family members require protection measures, the Committee will not pursue its examination of this aspect of the case.*

310. *With regard to the attempted murder of Mr Marcos Álvarez Tzoc, recalling that, according to the complainant organization's allegations, the perpetrator of the attempted murder was the victim's employer and that the assault had been preceded by acts of harassment against the trade union organization of which Mr Tzoc was a member of the board of directors, the Committee, in its most recent examination of the case, had asked the Government to send a copy of the judgment clearly indicating that the motive for the crime was not related to the victim's trade union activity and to indicate the reasons why, 14 years after the events, the criminal penalty imposed on the perpetrator of the attempted murder had not yet been executed. The Committee welcomes that, after numerous requests in this regard, the Government has finally been able to provide the text of the judgment of 14 October 2004, which confirms that the perpetrator of the attempted murder was sentenced to ten years' non-commutable imprisonment. The Committee also notes that it appears from the text of the judgment that the immediate motive for the attempted murder was a dispute over a bunch of bananas grown on the perpetrator's property which Mr Tzoc attempted to sell to a third party (a factor also mentioned in the allegations of the complainant organization). The Committee notes that the text of the judgment does not consider the manner in which the trade union functions discharged by the victim as well as the alleged anti-union behaviour of the perpetrator may have influenced the commission of the offence. The Committee finally wishes to emphasize that the delays, accumulated in previous stages, in sending the text of the judgment as well as the absence of the requested information on the reasons why the criminal penalty imposed on the perpetrator of the attempted murder of Mr Tzoc had not*

been executed, had not enabled the Committee to conduct a final examination of the allegation earlier.

311. *With regard to the requested actions to assess the need to provide protection measures to Mr Tzoc, the Committee notes that the Government indicates that since the judicial decision of October 2004, Mr Tzoc never stated that he was in danger and did not file a complaint, hence there is no obvious reason why there would be a need to provide him with protection measures. The Committee further notes that, since the submission of the present complaint in August 2005, the complainant organization has not indicated that Mr Tzoc would need protection. In view of these circumstances, it will not pursue the examination of this aspect of the case.*

312. *With regard to the allegations of death threats against members of the Itinerant Vendors' Trade Union by members of the police, which were allegedly made in Antigua on 21 March 2005, the Committee recalls that, in the absence of a legal possibility to carry out an ex officio criminal investigation in this regard, it had requested that an internal investigation should be carried out within the police force. The Committee notes that the Government indicates that it is materially and legally impossible to carry out an investigation into allegations dating back to 2005 and that already gave rise to a criminal complaint that had to be dismissed because of the lack of specific elements in the complaint and because it was dropped by the complainants. While taking note of these elements, the Committee again underscores the importance of ensuring that, in the future, any report of anti-union violence, threats or harassment against members of the trade union movement should give rise to immediate, effective investigations by the competent public authorities and to appropriate protection measures.*

313. *In general, the Committee again expresses the firm expectation that the commitments made by the Government under the roadmap adopted in October 2013 as part of the follow-up to the complaint made under article 26 of the ILO Constitution, and also the initiatives taken to implement it, including the tripartite agreement adopted by the national constituents in November 2017, will yield tangible results with respect to the allegations still pending in this case.*

The Committee's recommendations

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

(a) With regard to the investigations into the murder of union leader Mr Julio Raquec Ishen, the Committee urges the Government to continue taking all necessary steps to ensure that all the perpetrators and instigators of this murder and also the motives for the crime are identified once and for all, and that guilty parties who are still alive are prosecuted and punished by the courts. The Committee requests the Government to keep it informed of any developments in this regard.

(b) The Committee once again expresses the firm expectation that the commitments made by the Government under the roadmap adopted in October 2013 as part of the follow-up to the complaint made under article 26 of the ILO Constitution, and also the initiatives taken to implement it, including the tripartite agreement adopted by the national constituents in November 2017, will yield tangible results with respect to the allegations still pending in this case.

(c) The Committee draws the Governing Body's attention to the extremely serious and urgent nature of this case.

CASE NO. 3188

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

Complaint against the Government of Guatemala presented by the Union of Social Fund Workers (SINTRAFODES)

Allegations: The complainant reports anti-union dismissals following the establishment of the Union of Social Fund Workers (SINTRAFODES), cancellation of its registration and intimidation of and death threats against the trade union's officers and members

315. The complaint is contained in communications submitted by the Union of Social Fund Workers (SINTRAFODES) on 3 February and 8 and 26 May 2016 and 24 March, 26 September, 23 October and 1 November 2017.

316. The Government sent its reply in communications dated 3 January and 26 April 2017 and 2 February 2018.

317. 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. The complainant's allegations

318. SINTRAFODES first alleges that all 80 of its members were dismissed as a direct result of the primary trade union's establishment in October 2015. In that connection it states, in particular that: (i) on 9 October 2015, having found it difficult to obtain payment of their wages, several dozen employees of the Ministry of Social Development's Social Development Fund (hereinafter the "public entity"), who were still working for this institution in the hope that their temporary contracts would be renewed, formed the trade union, SINTRAFODES; (ii) SINTRAFODES' members immediately took steps to register their union with the Ministry of Labour and Social Security and it was registered on 22 December 2015; (iii) on 23 October 2015, the public entity denied the 80 SINTRAFODES' members access to their workstations, as a result of which they filed a complaint with the labour inspectorate; and (iv) the labour inspectorate told them that they must remain at their posts in order to prevent the employer from reporting them for abandonment of post.

319. The complainant indicates that on 6 November 2015, it brought legal proceedings requesting reinstatement of the 80 unionized workers who had been dismissed for their involvement in the establishment of SINTRAFODES and on 28 January 2016, the Eleventh Labour and Social Security Court ordered the reinstatement of only the 30 workers who had drafted the

founding act of SINTRAFODES, refusing to reinstate the other 50 workers because their names merely appeared on the union's membership list. The complainant states that it requested a review of this judgment and that, on 4 February 2016, the court decided not to grant this request, maintaining its decision to reinstate only the aforementioned 30 founding members. The complainant states, however, that the public entity prevented them from being reinstated and hired other people to replace the workers who had been dismissed.

320. In its May 2016 communications, the complainant adds that: (i) it appealed the decision of 4 February 2016 before the First Chamber of the Labour and Social Security Appeals Court, requesting reinstatement of the remaining 50 members of SINTRAFODES; (ii) for its part, in order to delay implementation of the 30 reinstatements ordered by the lower court, the public entity filed numerous legal actions alleging various procedural errors; and (iii) on 9 May 2016, in response to the various aforementioned appeals, the Eleventh Labour and Social Security Court decided to amend the proceedings as from the beginning of the case, cancelling the reinstatement of the 30 founding members of the trade union and denying the request for reinstatement of the other 50 workers. The complainant expresses concern at this judgment in the belief that it was taken without considering the various legal briefs that it had submitted.

321. In its communication of 26 September 2017, the complainant states that: (i) on 25 September 2017, the Eleventh Labour and Social Security Court issued another judgment on the merits of the case, an enforceable order that 29 founding members of the union be reinstated; (ii) in the presence of officials from the judiciary and a representative of the Human Rights Office of the Archdiocese of Guatemala in observer capacity, the public entity, through its Executive Director, Ms Brenda Mayen, approved and signed the reinstatement document; (iii) two hours after the departure of the officials from the judiciary and the observer, however, the public entity stated that the reinstatement would not take place and that it had once again appealed against it; and (iv) although this appeal was rejected and the enforceable reinstatement judgment remained final, the employer denied the workers access to their workstations, locking the doors of the building and using its security officers to intimidate them.

322. Second, the complainant reports that: (i) in a decision issued on 25 February 2016, as a consequence of the Ministry of Social Development's challenge to the union's registration, the Ministry of Labour and Social Security ordered the cancellation of SINTRAFODES' registration in the public record of trade unions; (ii) SINTRAFODES brought an administrative appeal for reversal of the cancellation order; this appeal is still pending; and (iii) on 13 February 2017, the Ministry of Labour and Social Security sent the public prosecution service a report stating that SINTRAFODES' registration had been cancelled. The complainant alleges that the Ministry's cancellation of SINTRAFODES' registration constitutes a direct violation of Article 4 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which establishes that workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority.

323. Third, the complainant reports intimidation of and death threats against its officers and members. In communications dated 3 February and 8 May 2016, it indicates that on 19 January 2016, it lodged a complaint against the public institution with the public prosecution service, stating that its members were being constantly intimidated and threatened while freely exercising their right to organize and were receiving telephoned threats in an attempt to induce them to abandon the trade union process, to the point that some members of its Executive Committee had to change their telephone numbers in order to halt the harassment. It also maintains that it received no assistance from the criminal prosecution service, which merely heard and shelved the complaint.

324. The complainant also states that: (i) on 20 January 2016, it was invited by telephone to meet with the Director of the Social Development Fund but, upon arrival, its members were intimidated by national civil police officers who were blocking the main door and told the trade unionists in a threatening manner that they could not go in; (ii) the union's General Secretary, Ms Claudia Marina Linares Juárez, was intimidated by four armed strangers who demanded her cell phone and threatened to fire on her if she refused; and (iii) its members believe that they have been under surveillance since 2 February 2016 and have even been followed by unidentified vehicles upon leaving various institutions, such as the Ministry of Labour and the labour courts, leaving them in fear for their lives. In a communication of 23 October 2017, the complainant states that the threats and intimidation are still ongoing and that vehicles without registration plates are still involved in this anti-union persecution.

325. Lastly, the complainant maintains that the public entity has no interest in participating in any round table discussion and that, as a consequence, the mediation process in the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining, which began on 10 March 2017, was unsuccessful.

B. The Government's reply

326. In its various communications, the Government provides information on developments in the judicial proceedings concerning the appeal for reinstatement of the members of SINTRAFODES. In particular, it indicates that: (i) on 28 January 2016, the Eleventh Labour and Social Security Court ordered that the 30 founding members of the union be reinstated; (ii) on 9 May 2016, in response to an appeal brought by the public entity, alleging procedural errors, the Eleventh Court amended the proceedings as from the beginning of the case and ruled that the workers must first meet a number of requirements before it could issue a new judgment on the merits; (iii) on 28 August 2017, SINTRAFODES again appealed for reinstatement of the workers who had been dismissed; (iv) on 26 September 2017, the Eleventh Court again ordered that the union's founding members be reinstated; (v) the public entity once again brought numerous procedural appeals; and (vi) on 24 January 2018, in response to these appeals, the court decided to amend the proceedings again on the grounds of procedural errors and required the lower court judge to issue another judgment on the appeals for reinstatement.

327. The Government also states that the public entity has informed it that it never had an employment relationship with the 80 trade union members because their technical or professional services were provided through a contractual relationship established under budget item 029 and that, for this reason, its contractual relations with them could not have been terminated through the legal institution of dismissal, which by law is contingent on a prior employment relationship. The public entity has also stated that not only were these workers temporary contractors rather than public employees, but they had no current contracts as at 23 October 2015 since 78 of the 80 contracts had an expiration date of 31 July 2015 and the other two had expiration dates of 30 September 2015 and 20 October 2015, respectively.

328. With regard to the registration of SINTRAFODES, the Government indicates that the Ministry of Social Development filed a request for cancellation of the administrative decision of 22 December 2015, which recognized the complainant's legal personality with Guatemala's Ministry of Labour and Social Security. The Government states that the primary argument made by the Ministry of Social Development, under the aegis of which the public entity operates, was that the trade union's members were not employees and did not meet the criteria for public servants because they had professional and technical service contracts under budget item 029. The Government adds that on 25 February 2016, the Ministry of Labour and Social Security ordered that SINTRAFODES' registration in the public record of trade unions be cancelled because: (i) the Ministry of Social Development

had alleged, and provided evidence, that SINTRAFODES' members were working under professional and technical service contracts and therefore could not be considered employees or public servants; (ii) the Ministry of Labour and Social Security was not empowered to recognize the employee status of the union's members; only the labour courts could do so; (iii) the registration did not include a court ruling recognizing the employee status of SINTRAFODES' members; (iv) for the foregoing reasons, the Ministry of Labour had acted in error by granting the complainant's request for registration; and (v) the complainant's members had been informed that they could establish a different type of union, of an occupational or activity-related nature and that they would be helped to initiate a new procedure with a view to their registration.

329. With regard to the complaints that the General Secretary of SINTRAFODES brought before the public prosecution service, the Government states in its communication of 3 February 2017 that the public prosecution service, through the Special Investigation Unit for Crimes against Trade Unionists in the Human Rights Prosecution Service, required that applications for perimeter security measures be submitted for seven members of the complainant's executive committee and advisory council, including its General Secretary. In its communication of 2 February 2018, the Government provides information on the handling of the five criminal complaints brought by the General Secretary of SINTRAFODES, indicating that: (i) two complaints (one for abuse of authority and the other for insubordination regarding the reinstatement of the union's members) were rejected on the grounds that no crime or misdemeanour had been committed; and (ii) the other three complaints (concerning, respectively, abuse of authority, minor injuries and insubordination) are still under investigation because, in each case, the public prosecution service is awaiting information to be provided by the plaintiff.

330. Lastly, the Government indicates that the employer did not attend the mediation sessions organized by the Committee for the Settlement of Disputes before the ILO in the area of freedom of association and collective bargaining because, in its view, the complainant had no standing under domestic law.

C. The Committee's conclusions

331. *The Committee observes that this case concerns the establishment of a trade union in a public entity and that, according to the complainant, this led in turn to: (i) the public entity's dismissal of all of the trade union's members; (ii) an administrative decision cancelling the trade union's registration in the public record of trade unions; and (iii) intimidation of and death threats against the organization's officers and members.*

332. *With regard to the alleged anti-union dismissals, the Committee first takes note of the complainant's allegation that: (i) on 23 October 2015, two weeks after the establishment of SINTRAFODES, the public entity denied entry to the 80 members of the union who were still working for it in the hope that their temporary contracts would be renewed; (ii) in an initial judgment issued on 28 January 2016, the Eleventh Labour and Social Security Court ordered reinstatement of the union's 30 founding members; (iii) the court did not, however, consider the anti-union nature of the dismissal of the other 50 workers who were members of SINTRAFODES and this aspect of the judgment gave rise to additional judicial appeals that are still pending; (iii) in order to hinder reinstatement of the 30 founding members of the union, the public entity filed numerous appeals, alleging a number of procedural errors; (iv) in response to these appeals, the Eleventh Labour and Social Security Court was obliged to issue a second ruling and again ordered reinstatement of the founding members of the union in a judgment issued on 25 September 2017; and (iv) the public entity refused to comply with this order. The Committee also notes that, according to the public entity: (i) because SINTRAFODES' members were working for the public entity under service contracts rather than employment contracts, their contractual relations could not be*

terminated through the legal institution of dismissal; and (ii) as at 23 October 2015, the temporary contracts of all of SINTRAFODES' members had expired. Lastly, the Committee takes note of the Government's statement that: (i) the two lower court judgments of 28 January 2016 and 25 September 2017, ordering reinstatement of the founding members of SINTRAFODES, gave rise to numerous procedural appeals, in response to which the court decided to amend the proceedings in both cases because, in its view, they had been procedurally flawed; and (ii) as a consequence of these events, the lower court judge was required to issue another judgment on the admissibility of the reinstatement appeals.

333. *In the light of the foregoing, the Committee first notes with concern that, two-and-a-half years after the events that prompted this complaint and following numerous procedural appeals, the lower court's judgment in the appeal for reinstatement of the founding members of SINTRAFODES is still pending. On this point, the Committee recalls that cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly, so that the necessary remedies can be really effective. An excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders who were dismissed, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1145]. The Committee therefore firmly hopes that the pending court judgments in the appeal for reinstatement of all members of SINTRAFODES will be issued promptly and requests the Government to keep it informed in that regard. Generally speaking, the Committee notes the repetitive nature of the cases concerning Guatemala that it has examined, in which it has been forced to note the slowness of legal proceedings regarding anti-union discrimination [see Cases Nos 2989 and 2869, 372nd Report, June 2014, paras 316 and 296, respectively; Case No. 2948, 382rd Report, June 2017, paras 375–378; Case No. 3062, 383nd Report, October–November 2017, para. 367]. Therefore, the Committee again urges the Government, in consultation with the social partners, to carry out a thorough review of the procedural rules of the relevant labour regulations in order to ensure that the judiciary provides appropriate and effective protection in cases of anti-union discrimination. The Committee requests the Government to keep it informed in that regard.*

334. *With regard to the merits of the case brought before the courts, recalling that the non-renewal of a contract for anti-union reasons constitutes a prejudicial act within the meaning of Article 1 of Convention No. 98 [see* ***Compilation****, op. cit., para. 1093], the Committee trusts that if the courts establish that the public entity did not renew the contracts of the members of SINTRAFODES because they had joined the trade union, steps will be taken to ensure, as a priority resolution, that they are rehired immediately or, should this prove impossible, that steps are taken to ensure that they receive full and adequate compensation that constitutes a sufficiently dissuasive sanction that further anti-union acts will not occur in the future. The Committee requests the Government to keep it informed in that regard.*

335. *With regard to the cancellation of SINTRAFODES' registration through a Ministry of Labour and Social Security decision of 25 February 2016, the Committee takes note of the complainant's allegation that this decision constitutes an administrative dissolution that violates Article 4 of Convention No. 87, which Guatemala has ratified, and that the administrative appeal of this decision is still pending. The Committee also takes note of the Government's statement that SINTRAFODES' registration was cancelled because: (i) the Ministry of Social Development, which had brought an administrative appeal against the decision to register the union, alleged and provided evidence that SINTRAFODES' members had been hired on professional and technical service contracts under budget item 029 and therefore could not be considered employees or public servants; (ii) only the labour courts are empowered to recognize employee status and the union's registration did not include a court ruling recognizing that SINTRAFODES' members had this status; and (iii) when*

SINTRAFODES' registration was cancelled, the complainant's members were informed that they could establish a different type of union, of an occupational or activity-related nature.

336. *With regard to the cancellation of SINTRAFODES' registration through a ruling of the labour administration rather than a court judgment, the Committee recalls that cancellation of a trade union's registration should only be possible through judicial channels and that any possibility should be eliminated from the legislation of suspension or dissolution by administrative authority, or at the least it should provide that the administrative decision does not take effect until a reasonable time has been allowed for appeal and, in the case of appeal, until the judicial authority has ruled on the appeal made by the trade union organizations concerned [see* ***Compilation****, op. cit., paras 990 and 1007]. Noting that the cancellation of SINTRAFODES' registration occurred four-and-a-half months after the union's establishment and two months after its registration by the Ministry of Labour and Social Security itself, during which time the trade union had taken industrial action and brought legal proceedings in defence of its members' interests, and observing that cancellation of the registration of a workers' or employers' organization not only produces the effects of a dissolution in the future but can also produce retroactive effects, the Committee stresses the importance of ensuring that the aforementioned principles are fully applied in the present case.*

337. *With regard to the reason for cancelling SINTRAFODES' registration, namely the fact that its members were working for the public entity under service contracts (budget item 029) rather than employment contracts and were therefore entitled to establish only an occupational or activity-related organization, the Committee recalls that, generally speaking, all workers must be able to enjoy the right to freedom of association regardless of the type of contract by which the employment relationship has been formalized [see* ***Compilation****, op. cit., para. 327]. The Committee also recalls the repetitive nature of the cases concerning Guatemala that it has examined, in which it has had to observe that workers hired by the public administration under budget item 029 have been prevented from exercising the right to organize [see, for example, Case No. 2339, 340th Report, para. 872; Case No. 2768, 363rd Report, para. 641; Case No. 3042, 376th Report, para. 560]. The Committee draws particular attention to the fact that in one of these cases, it urged the Government to take the necessary steps to ensure recognition of the right to trade union membership of workers who provide services for the State on the basis of civil contracts and requested it to immediately recognize the validity of the provision in a trade union's constitution which envisaged union membership for all workers at the Ministry of Education, regardless of the type of contract through which the employment relationship had been formalized [see Case No. 3042, 376th Report, para. 568]. In the light of the foregoing, the Committee considers that in the present case, all of the public entity's workers, regardless of the type of contract under which they are working, should be able to enjoy the right to belong to a trade union whose purpose is to protect their interests. In that connection, the Committee firmly expects that the principles of freedom of association will be fully taken into account both in resolving SINTRAFODES' appeals against the cancellation of its registration, and in the event that the trade union decides to submit a new request for registration. The Committee requests the Government to keep it informed in that regard and to take the necessary measures to ensure that the registration of a workers' or employers' organization can only be cancelled by a court judgment or, at a minimum, that administrative cancellation decisions can be appealed before the courts and, if appealed, cannot be applied until the court has issued a ruling on them.*

338. *With regard to the alleged intimidation of and death threats against SINTRAFODES' officers and members, the Committee first takes note of the Government's statement that in June 2016, the public prosecution service requested the Ministry of the Interior to put in place perimeter security measures for seven SINTRAFODES' officers, including its General Secretary. However, the Committee notes with concern that the Government has provided*

no information as to whether the security measures requested in 2016 were implemented and that, in communications dated 23 October 2017 and 8 May 2018, the complainant reports that the threats against and intimidation of SINTRAFODES' officers are ongoing. The Committee recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see ***Compilation****, op. cit., para. 84]. In the light of the foregoing, the Committee urges the Government to ensure that all necessary measures have been taken to ensure the safety of the complainant's officers and members and that an investigation is carried out without delay into the most recent allegations of threats and intimidation, including the alleged surveillance of certain leaders of SINTRAFODES by vehicles without registration plates. The Committee requests the Government to keep it informed in this regard.*

339. *Second, the Committee notes that of the five criminal complaints brought by the General Secretary of SINTRAFODES in 2016 and 2017, two were rejected on the grounds that no crime or misdemeanour had been committed and the other three are still under investigation because, in each case, the public prosecution service is awaiting information to be provided by the plaintiff. The Committee trusts that once the information to be provided by the plaintiff has been received, these investigations will be completed without further delay and requests the Government to inform it in that regard.*

The Committee's recommendations

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

(a) The Committee firmly hopes that the pending court judgments in the appeal for reinstatement of all members of SINTRAFODES will be issued promptly. The Committee requests the Government to keep it informed in that regard.

(b) The Committee trusts that if the courts establish that the public entity did not renew the contracts of the members of SINTRAFODES because they had joined the trade union, steps will be taken to ensure, as a priority resolution, that they are rehired immediately or, should this prove impossible, that steps are taken to ensure that they receive full and adequate compensation that constitutes a sufficiently dissuasive sanction that further anti-union acts will not occur in the future. The Committee requests the Government to keep it informed in that regard.

(c) The Committee again urges the Government, in consultation with the social partners, to carry out a thorough review of the procedural rules of the relevant labour regulations in order to ensure that the judiciary provides appropriate and effective protection in cases of anti-union discrimination. The Committee requests the Government to keep it informed in that regard.

(d) The Committee firmly expects that the principles of freedom of association will be taken fully into account both in resolving SINTRAFODES' appeals against the cancellation of its registration, and in the event that the trade union decides to submit a new request for registration. The Committee requests the Government to keep it informed in that regard.

(e) The Committee requests the Government to take the necessary measures to ensure that the registration of a workers' or employers' organization can only be cancelled by a court judgment or, at a minimum, that administrative cancellation decisions can be appealed before the courts and, if appealed, cannot be applied until the court has issued a ruling on them. The Committee requests the Government to keep it informed in that regard.

(f) The Committee urges the Government to ensure that all necessary measures have been taken to ensure the safety of the complainant's officers and members and that all necessary measures are taken to investigate without delay the most recent allegations of threats and intimidation.

(g) The Committee trusts that once the information to be provided by the plaintiff has been received, the pending investigations by the public prosecution service will be completed without further delay. The Committee requests the Government to keep it informed in that regard.

CASE NO. 3249

INTERIM REPORT

Complaint against the Government of Haiti presented by the Confederation of Public and Private Sector Workers (CTSP)

Allegations: The complainant organization alleges that union officials working in the postal sector have been automatically laid off, that they have not been reinstated in their posts and that their union has been dissolved

341. The complaint in this case is contained in a communication from the Confederation of Public and Private Sector Workers (CTSP) dated 31 August 2016.

342. In the absence of a reply from the Government, the Committee has been obliged to postpone consideration of this case on several occasions. At its October–November 2017 meeting, the Committee made an urgent appeal to the Government, drawing its attention 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 could present a report on the substance of the case at its next meeting if the information or observations of the Government had not been sent in time [see 383rd Report, para. 6]. At its March 2018 meeting, the Committee expressed its regret with regard to the continuing lack of cooperation and indicated to the Government that it would present a report on the substance of the case at its next meeting, even if the information or observations requested were not received on time. To date, the Government has not sent its observations.

343. Haiti 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. Allegations of the complainant organization

344. In its communication of 31 August 2016, the complainant organization alleges that on 8 October 2012, eight union officials who are members of the Executive Committee of the Haiti Postal Workers Union (SPH), a union affiliated to the CTSP, were laid off after a meeting with the Directorate-General of the Post Office of Haiti on the grounds that the Post Office did not recognize the legitimacy of the union. The officials concerned are Messrs Daniel Dantes, Fely Desire, Jean Estima Fils, Petit-Maitre Jean-Jacques, Ronald Joseph, Harold Colson Lazarre, Amos Musac and Guito Phadael. The Directorate-General of the Post Office claims that these individuals have not submitted any official document "formalizing" the union in question. The complainant organization considers this decision to be illegal and that lay-offs should not exceed 90 days in accordance with the Decree of 17 May 2005 amending the general civil service regulations, whereas the union officials concerned have still not been reinstated in their posts. According to the organization, this [response] constitutes retaliation against the officials concerned merely for belonging to a union; moreover, it has led to the dissolution of the union, which has been in existence for more than 25 years, and forms part of the general drive to dismantle unions, in violation of the ILO Conventions ratified by Haiti.

345. The complainant organization indicates that the Office of the Ombudsperson, a constitutional State body responsible for the protection of citizens, has formally recommended that the Directorate-General of the Post Office should reinstate the union representatives, although no action has been taken to give effect to this recommendation. All avenues of redress in terms of mediation and negotiation have ended in failure.

B. The Committee's conclusions

346. *The Committee deeply regrets the fact that, despite the time which has elapsed since the submission of the complaint, the Government has not provided the observations and information requested in due time, although it has been invited to communicate these on several occasions, including through an urgent appeal (November 2017). Under these circumstances and in accordance with the applicable procedural rule, the Committee is required to submit a report on the substance of the case, without being able to take account of the observations that it was hoping to receive from the Government.*

347. *The Committee reminds the Government that the entire procedure established by the International Labour Organization for the examination of alleged violations of freedom of association aims to ensure respect for this freedom, both in law and in fact. The Committee remains confident that if the procedure protects governments from unreasonable accusations, governments in their turn should recognize the importance of presenting, for objective examination, detailed replies concerning allegations made against them [see First Report, para. 31]. The Committee calls on the Government to demonstrate greater cooperation in future.*

348. *The Committee observes that the allegations in this case concern the automatic laying off of union officials working in the postal sector, their non-reinstatement in their posts and the dissolution of their union.*

349. *The Committee observes, on the basis of the documents provided by the CTSP in support of the complaint (individual lay-off notices dated 8 October 2012), that the Directorate-General of the Post Office contends that the representatives of the SPH, affiliated to the CTSP, had not presented any official document "formalizing" the union at a meeting of the Executive Office on 13 September 2012 and that, consequently, it did not recognize the legitimacy of the union. In contrast, the Committee notes that, according to the CTSP, the union in question has engaged in union activities for more than 25 years. In this regard, the*

*Committee wishes to recall 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 **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 424]. Lastly, the Committee takes note of the allegations of the CTSP that the union was dissolved after having existed for many years while the conditions of its dissolution have not been stated clearly. In the light of the scant and contradictory information brought to its attention, the Committee calls on the Government and the complainant organization to provide precise information concerning the establishment of the SPH (date of establishment, registration procedure, statutes ...) as well as the conditions of its alleged dissolution.*

350. *With regard to the allegations concerning the automatic laying off and non-reinstatement of the union officials concerned, the Committee notes that, according to the aforementioned individual notices, the Directorate-General criticizes the latter for "having sown discord at the Post Office of Haiti, encouraged employees to rebel against management and […] disrupted the proper functioning of the institution, to the point of mobilizing people to stop work on the basis of false allegations.". In the absence of other indications from the Government, the Committee considers that sanctions such as these could seriously undermine the exercise of trade union rights. It draws the attention of the Government to the provisions of the Workers' Representatives Recommendation, 1971 (No. 143) in which it is expressly established that workers' representatives should enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as workers' representatives or on union membership, or participation in union activities in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements. The Committee also notes the communication of the Office of the Ombudsperson, addressed to the Directorate-General of the Post Office in December 2015, which refers to promises to "regularize" the workers concerned and recommends that the Directorate-General should respect its commitments with regard to those concerned. Lastly, the Committee notes that according to article 140 of the Decree of 17 May 2005 amending the general civil service regulations, staff may be automatically laid off as a disciplinary measure for a period not exceeding three months. Under these circumstances, the Committee calls on the Government to expedite an independent inquiry into the allegations concerning the automatic laying off of the union representatives concerned, namely Messrs Daniel Dantes, Fely Desire, Jean Estima Fils, Petit-Maitre Jean-Jacques, Ronald Joseph, Harold Colson Lazarre, Amos Musac and Guito Phadael, and to provide information on their present situation. If it is found that acts of anti-union discrimination have been committed by the Directorate-General of the Post Office, the Committee calls on the Government to take the necessary measures of redress, including ensuring that the workers concerned are reinstated without loss of pay. The Committee requests the Government to keep it informed of all measures taken in this regard and the results of such measures, and to indicate whether any court rulings have been issued in these cases.*

351. *In light of the issues raised in this complaint, the Committee invites the Government to avail itself of the technical assistance of the Office.*

The Committee's recommendations

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

(a) The Committee deeply regrets that the Government has not replied to the allegations, even though it has been asked to do so on several occasions, including through an urgent appeal, and requests it to reply as soon as possible.

(b) In the light of the scant and contradictory information brought to its attention, the Committee calls on the Government and on the complainant organization to provide precise information concerning the establishment of the SPH (date of establishment, registration procedure, statutes …) and the conditions of its alleged dissolution.

(c) The Committee calls on the Government to expedite an independent inquiry into the allegations concerning the automatic laying off of the union representatives concerned, namely Messrs Daniel Dantes, Fely Desire, Jean Estima Fils, Petit-Maitre Jean-Jacques, Ronald Joseph, Harold Colson Lazarre, Amos Musac and Guito Phadael, and to provide information on their present situation. If it is found that acts of anti-union discrimination have been committed by the Directorate-General of the Post Office, the Committee calls on the Government to take the necessary measures of redress, including ensuring that the workers concerned are reinstated without loss of pay. The Committee requests the Government to keep it informed of all measures taken in this regard and the results of those measures, and to indicate whether any court rulings have been issued in these cases.

(d) In light of the issues raised in this complaint, the Committee invites the Government to avail itself of the technical assistance of the Office.

CASE NO. 3268

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

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

Allegations: The complainant organization alleges non-compliance with various clauses of a collective agreement by a public institution

353. The complaint is contained in a communication dated 21 October 2016 from the Single Confederation of Workers of Honduras (CUTH).

354. The Government sent its observations in communications dated 3 May 2017 and 23 April 2018.

355. 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

356. In a communication dated 21 October 2016, the complainant organization alleges non-compliance by the Honduran Social Security Institute (hereinafter "the Institute") with various clauses of the 14th collective labour agreement currently in force, concluded in April 2011 with the Union of Workers of the Honduran Social Security Institute

(SITRAIHSS) (which is part of the Unitary Federation of Honduran Workers (FUTH), which is in turn affiliated to the complainant organization).

357. The complainant states that the Government decided in 2014 to intervene in the affairs of the Institute in order to safeguard public interests, appointing an oversight committee for this purpose, which has been in charge of the Institute's administration ever since. The complainant alleges that, since 2014, the oversight committee has failed to comply with nine of the clauses of the collective labour agreement and that, despite the fact that the SITRAIHSS wrote on a number of occasions requesting the oversight committee to comply fully with the collective agreement, it had replied that it was unable to accede to such a request. The complainant further states that the SITRAIHSS filed four complaints with the Ministry of Labour and Social Security between 2015 and 2016 regarding non-compliance with the nine clauses of the collective agreement alleged in this complaint.

Clause 73(h)

358. On 11 November 2015, the SITRAIHSS filed a complaint for non-compliance with clause 73(h) of the collective agreement, which provides that the Institute will grant paid union leave to workers for various purposes, including attending conferences, union-related training courses, congresses, seminars and other similar events to do with union activity, for each activity's duration, provided that the number of absent workers is not such that the normal functioning of the institution is adversely affected. The complainant claims that the Institute has failed to grant paid leave to union leaders or to those carrying out trade union activities and that, in a letter sent in September 2015, the oversight committee stated that, while there was no problem in granting union leave, this should be subject to section 95(5) of the Labour Code, which prohibits employers from remunerating union leave. Concerning the complaint filed, the complainant states that, although the Ministry of Labour and Social Security decided in November 2016 to impose a penalty on the Institute for violation of freedom of association, it revoked its decision following counter evidence presented by the oversight committee, thereby rendering null and void the previously imposed penalty.

Clauses 27 and 29

359. On 19 April 2016, the SITRAIHSS filed a complaint for non-compliance with clause 27 (regarding meal breaks included in the working day and the right of workers on certain shifts in hospital medical units to be provided with a snack and breakfast) and clause 29 of the collective agreement (according to which the Institute undertakes to provide water coolers with sufficient supplies of water bottle refills in accessible locations for service units). According to the complainant, there has been a failure to comply with both clauses, since: (i) food is not being provided to workers, meaning that they incur additional costs; and (ii) water coolers are not being provided for staff, which is putting workers' health at risk, given that they have the right to satisfy their thirst in the workplace with the highest quality water (pure water) that poses no risk to health. The complainant states that, in a letter dated 17 February 2016, the Institute informed it that: (i) due to budget constraints, it was decided that food would be provided on a priority basis to patients and not to staff so long as the difficult financial situation continues; and (ii) the Institute did not have the means to cover the amount required to buy water for employees. The complainant states that, following the submission of a complaint on the matter, on 11 August 2016 the Ministry of Labour and Social Security decided to impose a financial penalty on the oversight committee. Despite this, the situation has not been resolved.

Clauses 4 and 45

360. On 11 July 2016, the SITRAIHSS filed a complaint for non-compliance with clause 4 (monthly meetings to be held between the trade union and the Institute's management, and extraordinary meetings if the parties so agree) and clause 45 (public holidays when staff required to work will receive triple normal pay) of the collective agreement. According to the complainant, both clauses were allegedly being violated, given that: (i) the current administration is not concerned about labour disputes within the Institute and is simply not interested in meeting with the SITRAIHSS; and (ii) since 2014, the Institute's oversight committee has been instructing the Human Resources Department to advise that, on the sole initiative of the oversight committee, the institution's activities were being reprogrammed, removing the holidays already established in the collective agreement. The complainant states that the processing of the complaint has become protracted in the Ministry of Labour and Social Security and the outcome is still pending.

Clauses 33, 36, 39 and 49

361. On 30 August 2016, the SITRAIHSS filed a complaint for non-compliance with clause 33 (Christmas and New Year bonus), clause 36 (sum donated by the Institute each April for the 1 May celebrations), clause 39 (sum of money given each year by the Institute for study scholarships to be granted by the trade union to workers' children) and clause 49 (the minimum wage for newly recruited workers is fixed by the Institute in line with the amount stipulated by the State, which can automatically be amended by new legislation) of the collective agreement. The complainant alleges that the above clauses have been violated, given that since 2014 the Institute has only partially complied with its obligations by paying some of the agreed amounts. Moreover, although in a letter dated 2 October 2015 the oversight committee announced that from October 2015 the minimum wage agreed in the collective agreement would be paid, the Institute allegedly failed to comply with its obligation to pay the amount of minimum wage due for the period between January 2014 and September 2015. With regard to the complaint, according to the complainant, the processing of the complaint has become protracted in the Ministry of Labour and Social Security and the outcome is still pending.

B. The Government's reply

362. In a communication dated 3 May 2017, the Government indicates that the Institute is a state budgetary and non-profit institution, responsible for providing social security and health coverage and protection from occupational risks. The Government states that: (i) it had intervened in the affairs of the Institute in 2014 because of failings in the management and administration of the Institute, which had led to a serious crisis situation and to financial collapse; and (ii) the objectives of the oversight committee are to restructure personnel administration and management, enhance service quality and ensure drug supplies. The Government adds that corruption had forced it not only to intervene in the affairs of the Institute, but also to conclude agreements with the Organization of American States in the fight against impunity. As a result, a joint body was established, called the Mission to Support the Fight against Corruption and Impunity in Honduras.

363. The Government adds that the institutional crisis resulted in the oversight committee deciding to bail out the Institute, taking actions specifically aimed at mitigating the following risks: (i) the Institute's closure, incurring social damage by preventing the delivery of pension and social security services; (ii) damage through the loss of a source of employment for all employees and officials in the institution due to the financial collapse; (iii) suspension of employment contracts without pay, and other extreme measures such as staff reductions; and (iv) the cessation of activities in connection with contracts concluded by former

administrations that commit significant resources of the institution to service planning and delivery.

364. The Government states that, given the above circumstances, the oversight committee opted to: (i) reduce current expenditure in order to provide and improve services to members; (ii) restore the image of and confidence in the institution; and (iii) change the system of internal control, with clear processes and mechanisms, thus reforming the institution. The Government emphasizes that the actions taken by the oversight committee were aimed at bailing out the Institute and lifting it out of the serious administrative, technical and financial situation it was in, using as a legal basis the provisions of the General Act on Public Administration, section 100 of which provides that:

> The oversight committee has the same powers as those invested in administrators in the exercise of their legal representation. The very act of intervention is just cause for the oversight committee to temporarily suspend staff, terminate employment contracts or revoke agreements concluded with staff considered to be superfluous.

365. The Government includes detailed information in its communication on the Institute's financial situation before its intervention and describes each of the measures adopted by the oversight committee to fully settle the Institute's main contractual obligations that posed financial and social risks. The Government also underlines that it is not, or has never been, its intention to violate any of the clauses, but rather to fulfil its responsibility of bailing out the Institute in order to consolidate and guarantee not only existing rights and benefits, but also to ensure the capacity to provide social security coverage, and on a sustainable basis.

366. The Government states that the oversight committee prioritized compliance with all of the priority obligations of the Labour Code and the collective agreement in 90 per cent of cases, and emphasizes that there has been no failure to comply with the collective agreement, but rather that circumstances and conditions arose making it impossible to meet some of the non-priority obligations of the collective agreement because of the financial crisis faced by the institution. The Government also emphasizes that it has always complied with the following clauses of the collective agreement to ensure that all workers in the Institute enjoy benefits: clause 32 (voluntary redundancy bonus), clause 40 (assistance with the cost of spectacles), clause 41 (assistance with funeral costs), clause 42 (holiday pay), clause 43 (special leave (prophylactic)), clause 48 (adjustment for seniority (five-year period)), clause 54 (overtime premium), clause 56 (group life insurance), clause 67 (transport for night-shift workers), clause 73 (paid leave), clause 74 (study leave), clause 76 (shift changes), clause 77 (seniority bonus) and clause 85 (reimbursement of medical expenses).

367. With regard to compliance with clause 73(h) of the collective agreement (union leave), the Government states that, on 30 November 2015, the oversight committee presented evidence to counter the General Labour Inspectorate's notification informing the Institute of the imposition of penalties. The Government also emphasizes that, in accordance with the law, the oversight committee authorized unpaid union leave for the persons elected as members of the executive committee and who sought ongoing periods of leave in order to carry out trade union activities. According to the Government, this decision is based on the final subparagraph of section 95(5) of the Labour Code, which states that: "… employers are required to … grant union leave to the worker … .Where a worker holds union management positions, the leave shall last for as long as the worker remains in his/her post. The employer is prohibited from paying wages for this purpose. The leave in question shall be requested by the individual trade union organization".

368. As for the alleged non-compliance with clause 45 of the collective agreement (public holidays), the Government states that the Institute, in order to ensure that union members benefited from prompt care in the health system, decided to allow employees compensatory time off for the days when they are required to undertake activities as part as their duties. It

also states that this measure was taken to ensure the well-being of members and that they receive prompt health care. Furthermore, with respect to clause 49, the Government states that the Institute has been paying the minimum wage agreed in the collective agreement since October 2015 and that the Institute has always ensured that members receive the benefits provided for in the Labour Code such as the 13th-month and 14th-month salary bonuses (clauses 50 and 51 of the collective agreement).

369. Concerning clauses 27 and 29 of the collective agreement (food and water coolers for employees), the Government states that the Institute's budgetary capacity is only sufficient to provide food for patients admitted to the country's different hospital units. The Government points out, however, that all priority and substantive obligations, arising both from the Labour Code and the collective agreement, have been paid punctually every month to all employees. The Government emphasizes that the financial crisis faced by the Institute has resulted in it taking measures to control spending, earmarking available financial resources for priority expenditure. The Government also emphasizes that, from the date its intervention began, it has been paying the monthly deductions due from permanent employees, amounting to 1 per cent, punctually to the trade union organization. With regard to clause 4 (meetings between the trade union and the Institute authorities), the Government points out that the oversight committee has engaged in communication and ongoing dialogue whenever the trade union organization has requested it to do so and, as proof of this, they attach the attendance lists of the meetings between the oversight committee and the SITRAIHSS.

370. In its communication dated 23 April 2018, the Government reports that, on 22 December 2017, the oversight committee signed an agreement with the Medical Association of the Honduran Social Security Institute (AMIHSS) and the Honduran Medical School (CMH) (organizations distinct from the complainant organization), which ended a strike called by the Institute's doctors to seek a salary increase. The Government reports that the oversight committee undertook in this agreement to: (i) grant medical staff a salary adjustment equivalent to 11 per cent, starting in January 2018; and (ii) grant a one-off sum equivalent to a normal salary earned from December 2017 to those who worked throughout December without a break. The doctors, for their part, promised to return to work immediately. The oversight committee also undertook in this agreement to review two clauses of the collective agreement in the second quarter of 2018 relating to contests for the appointment of doctors and voluntary redundancies (clauses that are not subject to the complainant's allegations of non-compliance in the present complaint).

C. The Committee's conclusions

371. *The Committee observes that in the present case the complainant alleges non-compliance since 2014 with various clauses of the collective agreement concluded in 2011 between the SITRAIHSS and the Institute (a public body responsible for providing social security and health coverage and protection from occupational risks). The Committee notes that the complainant and the Government state that, in 2014, the Government decided to intervene in the affairs of the Institute in order to safeguard public interests, appointing for that purpose an oversight committee, which has been in charge of the Institute's administration ever since. According to the Government: (i) the intervention in the affairs of the Institute was necessary because of corruption and managerial and administrative failings, which had led to a serious crisis situation within the Institute and to its financial collapse; and (ii) the main objective of the oversight committee is to restructure personnel administration and management, enhance service quality and ensure drug supplies.*

372. *The Committee notes the complainant's specific allegation that, since 2014, the oversight committee has failed to comply with nine clauses out of a total of 85 in the collective agreement in question. It also notes that, according to the documents attached by the*

complainant, in 2015 and 2016 the SITRAIHSS sent several letters to the oversight committee requesting it to comply fully with the collective agreement and that, in response, the oversight committee had emphasized that the intention had never been to affect employees but that, given the financial situation faced by the institution and the resultant recovery process, the main objective was to maintain sources of employment and to progressively ensure compliance with all obligations to ensure enjoyment of benefits.

373. *The Committee further notes that the complainant and the Government indicate that in 2015 and 2016 the SITRAIHSS filed four complaints with the Ministry of Labour and Social Security, alleging non-compliance with the nine clauses that are the subject of this complaint. Regarding the status of these complaints, the information provided by the complainant shows that: (i) although the Ministry of Labour imposed a penalty on the Institute for non-compliance with clause 73(h) (union leave was reportedly granted but only on an unpaid basis), following counter evidence presented by the oversight committee, the Ministry of Labour revoked its decision (on the basis that section 95(5) of the Labour Code prohibits employers from remunerating union leave), thereby rendering null and void the penalty imposed; and (ii) the Ministry of Labour also imposed a penalty on the Institute with respect to non-compliance with clauses 27 and 29 (food and water coolers for workers), despite which the situation has not been resolved in practice, according to the complainant. On this point, the Committee notes the Government's statement that: (i) the Institute's financial situation prevents it from covering this type of expense; (ii) budgetary capacity is only sufficient to provide food for patients admitted to the country's different hospital units; and (iii) notwithstanding the foregoing, the oversight committee, despite the current financial crisis situation, is complying with the priority obligations of the Labour Code and over 90 per cent of those arising from the collective agreement.*

374. *Moreover, the Committee observes that the Ministry of Labour has yet to express its position on the complaints relating to clause 4 (monthly meetings between the trade union and the Institute), clause 45 (public holidays), clause 33 (Christmas and New Year bonus), clause 36 (sum of money for the 1 May celebrations) and clause 39 (study grants). With regard to clause 49 (minimum wage), the Committee notes that, while the complainant acknowledges that from October 2015 the Institute paid the minimum wage agreed in the collective agreement, it is alleged that the oversight committee failed to comply with its obligation to pay the amount of minimum wage due for the period between January 2014 and September 2015.*

375. *In light of the above, the Committee observes that: (i) in 2014, following serious financial difficulties caused by managerial and administrative failings, the Government appointed an oversight committee, which decided that, in the short term, it could not implement a number of clauses of the collective agreement currently in force within the institution (clauses that, according to the oversight committee, were not of a priority nature); (ii) although the Government stresses that the failure to implement certain clauses of the collective agreement is merely temporary, this situation following the financial crisis in the institution dates back to 2014, and the Government gives no indication in its reply as to when the current situation might end and when it will be in a position to comply fully with the collective agreement; (iii) several of the complaints of non-compliance with the collective agreement presented by the SITRAIHSS in 2015 and 2016 are still pending a decision by the Ministry of Labour; (iv) although the Government mentions a series of meetings held between the oversight committee and the SITRAIHSS since 2014, as well as an agreement signed in December 2017 with doctors' organizations in order to end a strike, the Government does not state that it entered into negotiations with the SITRAIHSS regarding the impact of the Institute's financial situation on the implementation of the collective agreement; and (v) under the Labour Code, the validity of the institution's fourteenth collective agreement, signed in 2011 for a period of three years, will automatically be extended for periods of one year at a time,*

unless the parties, or one of the parties, expresses in writing their explicit wish to end the agreement.

376. *Underlining that agreements should be binding on the parties, the Committee recalls that it has highlighted the importance, in the context of an economic crisis, of maintaining permanent and intensive dialogue with the most representative workers' and employers' organizations, and that adequate mechanisms for dealing with exceptional economic situations can be developed within the framework of the public sector collective bargaining system [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, paras 1334 and 1437]. [See also 364th Report, Case No. 2821 (Canada), para. 378]. In the light of the foregoing considerations, the Committee requests the Government to take the necessary steps to promote dialogue between the Institute and the SITRAIHSS so that the parties can consider appropriate ways to once again fully implement the collective agreement currently in force and address all other issues that they deem appropriate in accordance with the principle of voluntary collective bargaining. The Committee requests the Government to keep it informed in this regard.*

377. *With regard to non-compliance with clause 73(h) of the collective agreement on paid union leave, the Committee notes that, according to the documents attached by the complainant and the Government, the Ministry of Labour based its decision to revoke the penalty previously imposed on section 95(5) of the Labour Code, in so far as it prohibits employers from granting paid union leave. In this connection, the Committee recalls that the issue of the payment of wages by the employer to full-time union officials should be up to the parties to determine and the Government should authorize negotiation on the issue of whether trade union activity by full-time union officials should be treated as unpaid leave [see* ***Compilation****, op. cit., para. 1296]. The Committee therefore requests the Government, in consultation with the representative workers' and employers' organizations, to take the necessary steps to review legislation so that the social partners may negotiate the possible remuneration of union leave. The Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations (CEACR).*

The Committee's recommendations

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

(a) The Committee requests the Government to take the necessary steps to promote dialogue between the Institute and the SITRAIHSS so that the parties can consider appropriate ways to once again fully implement the collective agreement currently in force and address all other issues that they deem appropriate in accordance with the principle of voluntary collective bargaining. The Committee requests the Government to keep it informed in this regard.

(b) The Committee requests the Government, in consultation with the representative workers' and employers' organizations, to take the necessary steps to review legislation so that the social partners may negotiate the possible remuneration of union leave. The Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations (CEACR).

CASES NOS 2177 AND 2183

INTERIM REPORT

Complaints against the Government of Japan presented by

Case No. 2177
the Japanese Trade Union Confederation (JTUC–RENGO) and

Case No. 2183
the National Confederation of Trade Unions (ZENROREN)

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

379. The Committee has already examined the substance of these cases on ten occasions, most recently at its June 2016 meeting, when it presented an interim report to the Governing Body [378th Report, paras 420–466, approved by the Governing Body at its 327th Session (June 2016).

380. The National Confederation of Trade Unions (ZENROREN) (Case No. 2183) and the Japanese Trade Union Confederation (JTUC–RENGO) (Case No. 2177) submitted additional information in communications dated 17 May and 25 August 2017 respectively.

381. The Government sent its observations in communications dated 29 September 2017, 28 February and 23 April 2018.

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

A. Previous examination of the case

383. At its June 2016 meeting the Committee made the following recommendations [see 378th Report, para. 466].

(a) The Committee once again urges the Government to expedite its consultation with the social partners concerned to ensure, without further delay, basic labour rights for public service employees in full respect for the freedom of association principles embodied in Conventions Nos 87 and 98, ratified by Japan, in particular as regards:

(i) granting basic labour rights to public servants;

(ii) fully granting the right to organize and to collective bargaining to firefighters and prison staff;

(iii) ensuring that public employees not engaged in the administration of the State have the right to bargain collectively and to conclude collective agreements, and that those employees whose bargaining rights can be legitimately restricted enjoy adequate compensatory procedures;

(iv) ensuring that those public employees who are not exercising authority in the name of the State can enjoy the right to strike, in conformity with freedom of association principles, and that union members and officials who exercise legitimately this right are not subject to heavy civil or criminal penalties; and

(v) the scope of bargaining matters in the public service.

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

(b) The Committee requests the Government to continue to provide information on the functioning of the NPA recommendation system, as a compensatory measure until the basic labour rights are granted to public servants.

(c) The Committee requests the Government and the complainant organizations to keep it informed of the results of the appeal to the Tokyo High Court made by KOKKORORENconcerning its lawsuit against the salary cut adopted by the Diet on 25 May 2012.

(d) The Committee requests the Government and the complainant organizations to keep it informed of the results of the remaining lawsuits filed by the employees' unions of a number of national university corporations against the university management for the wage-cut measures.

B. Additional information from the complainants

384. In communications dated 31 May and 25 August 2017 respectively, the ZENRORENand the JTUC–RENGO provided the following information with regard to the pending issues:

Status of the public service reform

385. With regard to the situation of the Public Service Reform, ZENRORENindicates that an affiliate trade union, namely the Japan Federation of National Service Employees (KOKKORORENN), requested the Government on many occasions to engage in concrete discussions towards the establishment of an autonomous labour relations system with the concerned unions. However, the Government's reply is invariably either that it wished to study the question with caution or that it wished to share views with unions. Consequently, the situation remains unchanged despite recommendations on this issue from the Committee on Freedom of Association for the tenth time in succession.

386. According to JTUC–RENGO, consultations aimed at a resolution of the issue of ensuring basic labour rights for public service employees have made no progress due to negligence and formalistic handling of the matter by the Government. Additionally, the complainant recalls that at the time of deliberations and enactment of the Bill for Partial Amendment of the Act on Remuneration of Officials in Regular Service (190th Ordinary Session of the Diet in 2016), the Cabinet Committees of both the House of Representatives and the House of Councillors adopted a supplementary resolution urging the Government to "Conduct exchanges of views with the staff organizations and make efforts to form an agreement." Since the inception of the Cabinet Bureau of Personnel Affairs on May 2014, the Government has not engaged in any proactive consultation, including with public service employees' trade unions. The Minister in charge of national public service employees maintains that since a wide range of issues are involved, he would like to engage in prudent considerations while exchanging views.

387. With regard to the restoration of collective bargaining rights to public service employees, the Action Plan for the Realization of Work Style Reform provides for steps, including for public service employees, to improve conditions for non-regular employment and to correct long working hours. However, in relation to the issue of long working hours and overtime work, a simple request was sent out to government ministries and agencies about the regulation of overtime in accordance with the National Personnel Authority (NPA) guidelines. Moreover, JTUC–RENGO notes that in its Report on Personnel Management of Public Service Employees, submitted to the Diet and Cabinet on 8 August 2017, the NPA observed that a review of work styles, including the correction of long working hours, was a vital issue and giving response to this social situation in the public service is a pressing issue. The NPA did not provide for any measures to alleviate the issue of long working hours, or overtime work. Regrettably, the NPA limited itself to declarations such as "we will actively cooperate with and support the efforts of offices and ministries" or "based on labour legislation for the private sector regarding upper limit regulations, we will proceed with considerations on the kind of effective measures to take". In the JTUC–RENGO's view, the issue of long working hours will give rise to a severe systemic disparity in connection with the regulation of overtime between the public sector and the private sector, thus calling further for the restoration of the basic labour rights of public service employees.

388. More generally, JTUC–RENGO notes that the Government is actively engaged in promoting women's participation and advancement in society (Act on Promotion of Women's Participation and Advancement in the Workplace, enacted on 28 August 2015) and work style reforms (The Action Plan for the Realization of Work Style Reform, approved on 28 March 2017). These policies and measures relate to working conditions, and while in the private sector they are dealt with through industrial relations, contradictions and limits arise with regard to public service employees.

389. With regard to the NPA recommendation mechanism, which was originally established as a compensation for the restrictions placed on the basic labour rights of public employees, ZENROREN reiterates that this is not functioning properly. In its view, over the last years, the Government is using the NPA recommendation mechanism as a tool for introducing changes which impact unfavourably on working conditions of state personnel. ZENROREN recalls that in 2015, the NPA made recommendations on the flexibilization of working hours named "flex-time system" for state personnel despite the opposition of KOKKORORENN. Therefore, while in the private sector, major changes in working conditions such as flexibilization of working time would require a collective agreement, in the case of state employees who are denied the right to collective bargaining, the Government could implement prejudicial working time flexibilization without engaging in any collective agreement. This results in widespread long hours of work for state employees. Moreover, in 2016, the NPA advised a change in family allowances for state employees, without any consultation with KOKKORORENN. This change is unilaterally applied to about 66,000 people accounting for 45 per cent of the beneficiaries of the allowance.

390. In addition, the Personnel Bureau of the Prime Minister's Cabinet, established in 2014, has also failed to engage in adequate negotiation or consultation with KOKKORORENN on working conditions of state employees. Presently, the Government is embarking on a new review of retirement allowances and retirement benefits included in pension. It requested the NPA to conduct a survey of the actual situation of retirement benefit in the private sector. However, there has not been any proper consultations with KOKKORORENN in this regard. The union considers that retirement benefits relate to conditions of work and should therefore be part of a collective agreement.

Local public employees

391. With regard to the situation of local public employees, ZENROREN reiterates that these workers in local governments are unable to negotiate on equal footing with the central Government on decisions that impact negatively on their wage or their employment. Instead, they have to comply with extremely unfair consequences of such decisions. Regarding the wage determination of local public employees, ZENROREN recalled that section 24 of the Local Public Service Act provides that it should take into account the living cost and the pay levels of state employees and employees working in other local governments as well as the pay level in the private sector. However, the Government and the Ministry of Internal Affairs, claiming that the wage levels of state employees determined on the basis of the NPA recommendation take into consideration all the relevant factors including the living cost, imposed on the local public employees, the same pay determination system and pay levels applied to state personnel. Consequently, there could be a 20 per cent pay difference among local public employees depending on the locality where they work although they are assigned to similar duties. In addition, the central Government would put a strong pressure on the local governments not to comply with any pay review from Local Personnel Committees (LPCs) which would recommend a pay rise based on the comparison with private sector pay that exceeds the pay rise for state personnel. ZENROREN is of the view that such denial of the LPC recommendation system for local public employees is illustrative of the fact that recommendation systems for public employees are not working at all.

392. Furthermore, ZENROREN argues that there are about 640,000 temporary employees working presently in local governments nationwide, who are assigned to the same duties as the regular employees. In May 2017, the Government introduced to the Diet bills regarding the pay and employment of temporary workers in local governments. These bills are claimed to give temporary workers the right to bonuses and some other allowances, but they are actually aimed at depriving them of their basic labour rights in exchange for these benefits, differentiating between full-time and part-time employees, taking advantage of changes to be implemented in the personnel management system by virtue of the new laws. The bills were drafted on the basis of a report prepared by a small study committee composed of researchers, local government representatives and employees of employers' organizations, nominated by the Ministry of Internal Affairs and Communications. The committee included a representative of JTUC–RENGO but relevant local public employees' unions were merely heard and could not negotiate.

393. JTUC–RENGO refers to the enactment, on 11 May 2017, of the Bill on the Partial Amendment of the Local Public Service Act and Local Autonomy Act (submitted to the 193rd Ordinary Session of the Diet). This Bill clarifies the system for appointment of local employees. While it does not go as far as to constitute an overall restructuring of the various issues regarding temporary and part-time employees, such as precarious employment and disparities in conditions with permanent staff, it does however constitute, in the complainant's view, a beginning towards a resolution of long-standing issues. JTUC–RENGO notes that this legal amendment will allow part-time staff in the special service who have been appointed to perform constant and permanent duties to shift to regular service staff. However, at that time, their basic labour rights would be restricted, as they are for permanent staff. This situation further calls for the urgent restoration of basic labour rights to all public service employees.

Right to organize of firefighters

394. JTUC–RENGO refers to the right to organize of firefighters which it linked to the promotion of women's participation and advancement in society. It notes the low level of women among firefighters (2.4 per cent as of April 2015) compared to other job categories and acknowledges that in July 2015 the Fire and Disaster Management Agency of the Ministry

of Internal Affairs and Communications proposed to raise the level of women staff among firefighters to 5 per cent by 2026 through the active promotion of women's participation and advancement in society as an important pillar of the Government's growth strategy. However, JTUC–RENGO regrets that the Fire and Disaster Management Agency of the Ministry of Internal Affairs and Communications failed to take into account the fact that the granting of the right to organize is indispensable for the realization of this campaign.

395. JTUC–RENGO further denounces an increasing number of incidents of harassment of firefighters at the workplace, which it held as a direct result of the denial of the right to organize. Since 2015, there have been 19 incidents of outrageous verbal abuse, violence, etc. by staff officials, including fire station chiefs that deviate from work orders. It recalls that one incident led to a suicide. In July 2017, the Ministry of Internal Affairs and Communications and the Fire and Disaster Management Agency of the Ministry of Internal Affairs and Communications issued a notification on "Measures against Harassment, etc." to local municipalities and fire defence headquarters proposing the establishment of an internal reporting system, the setting up of consultation desks and the application of equity committees. In JTUC–RENGO's view, these are nothing more than stopgap measures to cover up the issue of granting of the right to organize to fire defence personnel.

Information on lawsuits

396. ZENROREN recalls that KOKKORO REN filed a lawsuit on 25 May 2012 before the Tokyo District Court that the Law on salary cut adopted by the Diet was invalid and in violation of the Constitution. The point of issue was whether a salary cut that was not based on the NPA recommendation constituted a violation of article 28 of the Constitution that guarantees the basic labour rights of workers to organize, bargain and act collectively. In its decision of 30 October 2014, the district court ruled that the salary cut was indeed constitutional. In its latest communication, ZENROREN regretted that in its decision of 5 December 2016 the Tokyo High Court upheld the ruling of the Tokyo District Court. ZENROREN regretted that the High Court ruling failed to respond to the argument of KOKKORO REN that adopting legislation that provides for cuts in salary that are not grounded on the NPA recommendation, which is to operate as a compensatory mechanism for the denial of basic labour rights of state employees, may undermine the constitutional guarantee on these basic rights contained in the Constitution (article 28). Furthermore, the decision narrowed the requirements for deciding the unconstitutionality of a law by declaring that "a law is unconstitutional when it significantly lacks rationality". With such an unfair court decision, ZENROREN considers that it is now possible for the Government or the Diet to operate pay cuts for public employees anytime, without waiting for a NPA recommendation.

397. Furthermore, ZENROREN refers to lawsuits filed by eight workers' unions of national university corporations opposing unilateral reduction of salaries. It informed that the legal actions ended in two state universities and one national institute of technology. ZENROREN is of the view that the courts only accepted the argument of the corporate authorities, hence legitimizing the disadvantageous modification of working conditions. The decisions were incorrect both in respect of the interpretation of the law and the determination of facts and was extremely unfair in dismissing the plaintiffs' claims. The legal actions are ongoing concerning seven state universities.

C. The Government's reply

398. In its communications dated 29 September 2017, 28 February and 23 April 2018, the Government provided the following information.

Status of public service reform

399. While acknowledging that basic labour rights of public service employees are, to some extent, restricted, due to the distinctive status and the public nature of the functions, the Government reiterates that public service employees benefit from the NPA recommendation system and other compensatory measures. There are still various concerns and opinions concerning measures for the autonomous labour-employer relations system, including that negotiation costs would increase or that prolonged labour-employer negotiations may affect the execution of operations. However, in line with the Amendment Bill for the Act on Remuneration of Officials in Regular Service established in January 2016, and the supplementary resolution of the House of Representatives Cabinet Committee dated 13 January 2016 calling for "efforts to reach agreements on measures for the autonomous labour-employer relations system, based on Section 12 of the Civil Service Reform Law, gaining the understanding of the people, and hearing from employees' organizations", the Government continues to carefully examine these issues by exchanging opinions with employees' organizations on various topics, in particular each year during spring when the NPA issues its recommendations. The latest topics concern, for example, remuneration, part-time employees, the promotion of women's activities/work–life balance, policies for elderly national public service employees, expanding of the flex-time system and review of family allowance.

400. In reply to the allegations that national public service employees perform long overtime work exceeding the guidelines of the NPA, the Government indicates that in recent years, there has been growing concern about work–life balance and the need for diversified working styles. The NPA issued a recommendation on expanding the flex-time system basically to all employees. In this regard, the Government indicates that the NPA held 216 official meetings with employees' organizations before the recommendation was issued. In addition to the guidelines of the NPA, various arrangements are being taken within ministries to reduce overtime work. Each year, the Government is promoting the months of July and August as "Work–life Balance Promotion Months". According to the Action Plan for the Realization of Work Style Reform, decided upon in March 2017, there is a need to work on more effective measures in consideration of private system reforms concerning national government officials, taking also into account the need to secure proper public services.

401. On another issue raised by the complainants, the Government observes that the payment standard for the retirement allowance of national public service employees has traditionally been set at a level which is seen as acceptable by the general public while also comparable to the retirement benefits in the private sector. Cabinet adopted in July 2014 the Basic Policy on Total Personnel Expenses for National Public Service Employees by which: (i) public–private sector comparisons will be earned out roughly every five years; (ii) the comparisons will combine retirement allowance and retirement pension benefits (employer contributions); and (iii) the method for adjusting the standard based on the public–private comparison shall depend on the revision of the retirement allowance payment standard. In reply to allegations that the payment standard for the retirement allowance was compulsorily reduced, the Government maintains that the retirement allowance of national public service employees fundamentally should be the mere reflection of the length of service and the degree of contribution. The Government intends to continue to consult with employees' organizations when making revision to these allowances.

402. Furthermore, the Government is in disagreement with ZENROREN's assertion that there is no provision in the State Public Service Act regarding the hiring and working conditions of temporary employees. It recalled in this regard that the laws and regulations regarding national public employees, including the National Public Service Act, are applied to part-time employees. Part-time employees are appointed to temporary services on a fixed-term basis. A fixed-term employment system was introduced in October 2010 to

replace the existing daily based employment system seen as insecure. The Government is working via the personnel management commission board and other government bodies to ensure that all ministries and agencies have a thorough understanding of the intent of the fixed-term employment system as well as the criteria for appropriate hiring and handling of part-time employees. Furthermore, the NPA issued a guideline on the remuneration of part-time employees to the ministries and continues to provide guidance on the appropriate remunerations for part-time employees. In 2016, the Cabinet Bureau of Personnel Affairs carried out a fact-finding survey relating to remuneration and related matters in relation to part-time employees. Based on the outcome of the survey and following discussions on the issue of equal pay for equal work, government ministries and agencies agreed in May 2017: (i) to set base pay in light of the knowledge, skills and experience required to perform the duties; and (ii) to seek to pay an end-of-term allowance to all part-time employees. Additionally, the Government is committed to use fact-finding surveys, any proposed Equal Pay for Equal Work Guidelines, as well as relevant initiatives in the private sectors to facilitate the implementation of such measures.

403. In reply to JTUC–RENGO's assertion that the NPA system is incomplete as a compensatory measure, the Government recalls that the Supreme Court maintained throughout its judgments that restrictions on the basic labour rights of the public service employees are constitutional, because appropriate measures have been implemented to compensate for the restrictions, in particular the NPA recommendation system. In this regard, it is essential that the NPA's independence as a third-party authority is strongly guaranteed by law. The National Public Service Act grants the NPA a high-level independence. And while the NPA is established "under the jurisdiction of the Cabinet" and reports to the latter pursuant to the Act, it is fully independent and performing operations without any direction, order or supervision from the Cabinet. Additionally, the Government respects the NPA recommendation system since it implemented the revision of the remuneration system according to the NPA recommendation even after the establishment of the Cabinet Bureau of Personnel Affairs.

404. The Government maintains that it is taking the necessary measures to engage meaningful discussions to achieve the public service reform, while bearing in mind that frank exchanges of views and coordination with relevant organizations are necessary. The Government was committed to continue with such an approach taking into account the recommendations from the supervisory bodies of the International Labour Organization.

Local public service employees

405. With regard to allegations on the growing number of temporary employees and part-time employees in local governments, the Government acknowledges that their number has increased considerably in recent years, and that the actual situation is not necessarily in line with the purpose of the law. Part-time employees whose working conditions are close to those of full-time employees who in general should work under the supervision of their bosses as regular service personnel are now appointed as special service personnel, raising a number of issues in relation to working terms and conditions (confidentiality obligations, benefit of terminal allowance). The Government refers to the enactment in May 2017 of the Amendment Bill for the Act on the Local Public Service and Local Autonomy Act (Act No. 29 of 2017) which secured a more rigid appointment system and a number of benefits to part-time employees such as allowance and access to administrative review, equal to those enjoyed by permanent staff.

Right to organize of firefighters

406. With regard to the right to organize of fire defence personnel the Government recalled the concerns expressed at national and local levels and the comprehensive discussions which led to the revision of the Fire Organization Act and the establishment of in October 1996. The purpose of the Fire Defence Personnel Committee institution is to facilitate communication, heighten the staff's morale, and consequently contribute to a smooth management of fire department office work. The Government indicates that it is planning a new initiative which includes surveys on how the system is being administered. A questionnaire is being disseminated in all fire defence headquarters, providing to both the management and the staff an opportunity to express their opinions. Based on the outcome of the survey, the Government would consider further improvement of the Fire Defence Personnel Committee system.

407. With regard to the specific allegations in relation to the number of women and the need to promote their participation and advancement among the fire defence personnel, the Government indicates that discussions are ongoing within the Fire Defence Personnel Committees on working conditions and welfare benefits of the personnel, including for women. As a result of the deliberation, facilities and equipment dedicated to females were established, and electromagnetic wave protection aprons for female communication commanders were furnished. Additionally, the Fire and Disaster Management Agency issued since 2015 a notice requesting fire departments to make efforts for the increase of the number of female fire defence personnel and for the promotion of an active role of female personnel, such as expanding the work of female fire defence personnel in all areas, following the concept of right place for the right people. The Fire and Disaster Management Agency is campaigning through various public relations medias (posters and websites) as well as through career seminars for female personnel (eight seminars organized in 2017). Moreover, the Fire and Disaster Management Agency provides financial support for improving specific facilities and equipment at the fire departments. As a result, the number of women fire defence personnel in Japan increased by 361 nationwide from 2015 and is steadily increasing.

408. The Government provided its reply to JTUC–RENGO's allegations on the growing number of incidents of harassment in fire defence departments, and that the "measures against harassment" notified by the Ministry of Internal Affairs and Communications and the Fire and Disaster Management Agency of the Ministry of Internal Affairs and Communications in July 2017 are merely stopgap measures to cover up the issue of granting of the right to organize. Recalling that the Fire and Disaster Management Agency of the Ministry of Internal Affairs and Communications announced a number of measures to be taken against harassment, including clarification of the determination of the fire chief to eradicate harassment, the establishment of a notification system for harassment, stricter disciplinary measures, and trainings, etc., the Government observes that these measures were compiled after a four-month discussion by a working group comprising of experts and on-site personnel. Moreover, the Fire and Disaster Management Agency established a dedicated hotline for consultation by telephone on harassment and held briefing sessions at 14 venues nationwide and urged fire departments nationwide to take necessary measures in response to its announcement. The Fire and Disaster Management Agency continues to supervise the fire departments nationwide in order to make sure that the necessary countermeasures against harassment are implemented.

409. With regard to the right to organize of prison officers, the Government reiterates that the functions of prison guards correspond to those of police forces mentioned in Article 9 of Convention No. 87. The exclusion of personnel in penal institutions from the right to organize is due to the specific nature of their duties, which makes it necessary for these employees to be subject to especially rigid control and strict discipline. Prison guards enjoy

pay and working conditions similar to, or better than, those of other administrative employees and the salary scale is the same as that of police officers. Their working conditions are improved under the National Personnel Authority recommendations system. In 1998 for instance, the NPA recommended a new and special rank in the salary scale, taking into special consideration the duties of prison officers, and the amendments were adopted and implemented the same year.

Information on lawsuits

410. With regard to the lawsuit filed by the KOKKORORENN, the Government recalls that in October 2014, the Tokyo District Court determined that given the severe fiscal situation of Japan and the Great East Japan Earthquake, the necessity of the Revision and Temporary Special Measures on Remuneration Law for taking the measure to reduce remuneration for national public service employees could not be denied, and since it cannot be said to be unreasonable legislation making the National Personnel Authority Recommendation unable to fulfil its original function, the Tokyo District Court dismissed KOKKORORENN's claim. KOKKORORENN appealed to the Tokyo High Court in November 2014, but the Tokyo High Court also dismissed the claim in December 2016. Following the ruling of the Tokyo High Court, KOKKORORENN appealed to the Supreme Court. In its communication of 23 April 2018, the Government indicates that, on 20 October 2017, the Supreme Court dismissed the appeal from KOKKORORENN, therefore the ruling of the Tokyo High Court became final.

D. The Committee's conclusions

411. *The Committee recalls at the outset that it decided to examine these two cases, initially filed in 2002, in conjunction taking into account that they both concern the reform of the public service in Japan and its consequence in terms of realization of freedom of association principles. The Committee notes the additional information from the complainants and the Government in relation to its previous recommendations.*

412. *With regard to the status of the national public service reform, the Committee notes with concern from the complainants' allegations that despite repeated requests to the Government to engage concrete discussions towards the establishment of an autonomous labour relations system with the concerned unions, based on the reiterated recommendations from the Committee to expedite such consultations, the Government's reply is invariably either that it wishes to study the question with caution or that it wishes to share views with unions. Therefore, these consultations which should aim at a swift resolution of the issue of ensuring basic labour rights for public service employees have still made no progress. The Committee notes that the Government refers to the supplementary resolution of the House of Representatives Cabinet Committee dated 13 January 2016 calling for "efforts to reach agreements on measures for the autonomous labour-employer relations system, based on section 12 of the Civil Service Reform Law, gaining the understanding of the people, and hearing from employees' organizations" and maintains that it continues to carefully examine these issues by exchanging opinions with employees' organizations on various topics, in particular when the NPA issues its recommendations. The latest topics concern, for example, remuneration, part-time employees, the promotion of women's activities/work–life balance, policies for elderly national public service employees, expanding of the flex-time system, and review of family allowance. While noting that the Government committed once again to engage meaningful discussions to achieve the public service reform, the Committee nevertheless observes that the issue of the basic labour rights of public servants still remains unresolved despite the time that has elapsed since the Committee first examined these cases in 2002.*

413. *The Committee deeply regrets that no concrete measures have yet been taken to provide basic labour rights to the public service in order to ensure full respect for the freedom of association principles embodied in Conventions Nos 87 and 98, ratified by Japan. Therefore, the Committee once again urges the Government to engage meaningful consultation with the social partners concerned to ensure, without further delay, basic labour rights for public service employees in line with its previous recommendations. The Committee expects that the necessary legislative amendments will be enacted without delay and requests the Government to keep it informed of developments in this regard.*

414. *Additionally, the Committee notes the complainants' specific allegations on various issues at both national and local levels such as working time, wage fixing and the increasing recourse to part-time or temporary employment of public service employees. The complainants hold the matters as a direct result of the denial of the right to organize of public service employees. The Committee notes in particular the indication that the Bill on the Partial Amendment of the Local Public Service Act and Local Autonomy Act enacted on 11 May 2017, which aimed at limiting the use of part-time staff on permanent duties, will now have the effect of increasing the workers stripped of their basic labour rights and thus heightening the urgency of addressing this matter. The Committee also notes the Government's reply on the issues raised.*

415. *With regard to the NPA recommendation mechanism, which was originally established as compensation for the restrictions placed on the basic labour rights of public employees, the Committee notes with concern ZENROREN's allegations that the NPA is subordinated to the Government and that over the last years the Government has used the mechanism as a tool for introducing changes which impact unfavourably on working conditions of public employees. ZENROREN recalls that in 2015, the NPA made recommendations on the flexibilization of working hours for state personnel despite the opposition of KOKKOROREN and which resulted in widespread long hours of work for state employees. Moreover, in 2016, the NPA advised a change in family allowances for state employees, without any consultation with KOKKOROREN. The Committee also notes JTUC–RENGO's assertion that the NPA system is incomplete as a compensatory measure.*

416. *The Committee takes note of the reply of the Government recalling that the Supreme Court maintained throughout its judgments that restrictions on the basic labour rights of public service employees are constitutional because appropriate measures have been implemented to compensate for the restrictions, in particular the NPA recommendation system. In this regard, the Government considers essential that the NPA's independence as a third-party authority is strongly guaranteed by law. The Government recalls that the National Public Service Act grants the NPA a high-level independence. And while the NPA is established "under the jurisdiction of the Cabinet" and reports to the latter pursuant to the Act, it is fully independent and performing operations without any direction, order or supervision from the Cabinet. The Committee once again requests the Government to continue to provide information on the functioning of the NPA recommendation system as a compensatory measure until the basic labour rights are granted to public servants.*

417. *With regard to the right to organize of firefighters, the Committee notes JTUC–RENGO's assessment of the low level of women among firefighters (2.4 per cent as of April 2015) compared to other job categories as well as the Fire and Disaster Management Agency of the Ministry of Internal Affairs and Communications campaign to raise the level of women staff among firefighters to 5 per cent by 2026 through the active promotion of women's participation and advancement. However, JTUC–RENGO regrets that the Fire and Disaster Management Agency of the Ministry of Internal Affairs and Communications failed to take into account the fact that the granting of the right to organize is indispensable for the realization of this campaign. The Committee notes the Government's indication that discussions are ongoing within the Fire Defence Personnel Committees on working*

conditions and welfare benefits of the personnel, including for women. As a result of the deliberation, facilities and equipment dedicated to women were established or furnished. The Government adds that the Fire and Disaster Management Agency issued a notice in 2015 requesting fire departments to make efforts for the increase of the number of female fire defence personnel and for the promotion of an active role of female personnel, such as expanding the work of women fire defence personnel in all areas. The Agency is campaigning through various public relations medias as well as through career seminars for female personnel (eight seminars organized in 2017). It also provides financial support for improving specific facilities and equipment. As a result, the number of women fire defence personnel in Japan increased by 361 nationwide from 2015 and is steadily increasing according to the Government.

418. *The Committee also notes JTUC–RENGO's concern on the increasing number of incidents of harassment of firefighters at the workplace, which it held as a direct result of the denial of the right to organize. Since 2015 there have been 19 incidents of outrageous verbal abuse, violence, etc. by staff officials, including fire station chiefs that deviate from work orders, and it is recalled that one incident led to a suicide. In July 2017, the Ministry of Internal Affairs and Communications and the Fire and Disaster Management Agency of the Ministry of Internal Affairs and Communications issued a notification on "measures against harassment, etc." to local municipalities and fire defence headquarters proposing the establishment of an internal reporting system, the setting up of consultation desks and the application of equity committees. In JTUC–RENGO's view, these are stopgap measures to cover up the issue of granting the right to organize to fire defence personnel. The Committee notes the Government's indication that the "measures against harassment" notified by the Ministry of Internal Affairs and Communications and the Fire and Disaster Management Agency of the Ministry of Internal Affairs and Communications in July 2017, included clarification of the determination of the fire chief to eradicate harassment, the establishment of a notification system for harassment, stricter disciplinary measures, and trainings, etc. The Government observes that these measures were compiled after a four-month discussion by a working group comprising of experts and on-site personnel. A dedicated hotline for consultation by telephone on harassment was established and briefing sessions were organized at 14 venues nationwide in order to make sure that the necessary countermeasures against harassment are implemented.*

419. *The Committee strongly encourages the parties to pursue their ongoing efforts with a view to achieving a consensus on granting the right to organize and to collective bargaining to firefighters.*

420. *With regard to the right to organize of prison officers, the Committee notes that the Government reiterates that the functions of prison guards correspond to those of police forces mentioned in Article 9 of Convention No. 87. In this regard, the Committee refers to the comments of the Committee of Experts on the Application of Conventions and Recommendations concerning the application of Convention No. 87 by Japan (2018 Report) which, recalling that the fact that some prison officers are authorized by virtue of the law to carry a weapon in the course of their duties does not mean that they are members of the police or armed forces, requested the Government, in consultation with the national social partners and other concerned stakeholders, to take the necessary measures to ensure that prison officers other than those with the specific duties of the judicial police may form and join the organization of their own choosing to defend their occupational interests. The Committee requests the Government to keep it informed of any progress made in this regard.*

421. *Furthermore, the Committee takes note of the information provided both by the Government and by ZENROREN on the outcome of the lawsuit filed by KOKKOROREN against the salary cut. ZENROREN recalls that KOKKOROREN filed a lawsuit on 25 May 2012 before the Tokyo District Court. The point of issue was whether a salary cut that was not based on*

the NPA recommendation constituted a violation of article 28 of the Constitution that guarantees the basic labour rights of workers to organize, bargain and act collectively. In its decision of 30 October 2014, the district court ruled that the salary cut was indeed constitutional. In its latest communication, ZENROREN regretted that in its decision of 5 December 2016 the Tokyo High Court upheld the ruling of the Tokyo District Court and that the High Court ruling failed to respond to the argument of KOKKORORENthat adopting legislation that provides for cuts in salary that are not grounded on the NPA recommendation, which is to operate as a compensatory mechanism for the denial of basic labour rights of state employees, may undermine the constitutional guarantee on these basic rights contained in the Constitution (article 28). Furthermore, the decision narrowed the requirements for deciding the unconstitutionality of a law by declaring that "a law is unconstitutional when it significantly lacks rationality". ZENROREN considers that this decision now makes it possible for the Government or the Diet to operate pay cuts for public employees anytime, without waiting for a NPA recommendation. The Committee takes note of the Government's indication that following the ruling of the Tokyo High Court, KOKKORORENappealed to the Supreme Court. It further notes that, on 20 October 2017, the Supreme Court dismissed the appeal, therefore the ruling of the Tokyo High Court became final.

422. *Furthermore, the Committee notes the information provided by ZENROREN on lawsuits filed by eight workers' unions of national university corporations opposing unilateral reduction of wages. It informed that the legal actions ended in two state universities and one national institute of technology. ZENROREN is of the view that the courts only accepted the argument of the corporate authorities, hence legitimizing the disadvantageous modification of working conditions. The decisions were incorrect both in respect of the interpretation of the law and the determination of facts and was extremely unfair in dismissing the plaintiffs' claims. Noting the indication from the complainant that the legal actions are ongoing concerning seven state universities, the Committee requests the Government and the complainant to keep it informed of the results of the remaining lawsuits at the other state-run universities.*

The Committee's recommendations

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

(a) The Committee once again urges the Government to engage meaningful consultation with the social partners concerned, without further delay and in line with its previous recommendations, to:

(i) grant basic labour rights to public servants;

(ii) fully grant the right to organize and collective bargaining to firefighters. The Committee strongly encourages the parties to pursue their ongoing efforts with a view to achieving a consensus on granting the right to organize and to collective bargaining to firefighters;

(iii) fully grant the right to organize and to collective bargaining to prison staff. In this regard, the Committee requests the Government to keep it informed of any progress made in consulting with the social partners and other concerned stakeholders on measures to ensure that prison officers other than those with the specific duties of the judicial police may form and join the organization of their own choosing to defend their occupational interests.

(iv) ensure that public employees not engaged in the administration of the State have the right to bargain collectively and to conclude collective agreements, and that those employees whose bargaining rights can be legitimately restricted enjoy adequate compensatory procedures;

(v) ensure that those public employees who are not exercising authority in the name of the State can enjoy the right to strike, in conformity with freedom of association principles, and that union members and officials who exercise legitimately this right are not subject to heavy civil or criminal penalties; and

(vi) determine the scope of bargaining matters in the public service.

The Committee expects that the necessary legislative amendments will be enacted without delay and requests the Government to keep it informed of developments.

(b) The Committee once again requests the Government to continue to provide information on the functioning of the NPA recommendation system, as a compensatory measure until the basic labour rights are granted to public servants.

(c) The Committee requests the Government and the complainant organizations to keep it informed of the results of the remaining lawsuits filed by a number of workers' unions of national university corporations opposing unilateral reduction of wages.

CASE NO. 3283

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

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

Allegations: The complainants allege obstacles to registration created by the 2014 Law on Trade Unions, ensuing dissolution of trade unions, as well as intimidation and prosecution of trade union leaders

424. The complaint is contained in communications dated 14 May, 13 October and 11 December 2017 from the International Trade Union Confederation (ITUC). IndustriALL Global Union associated itself with the complaint in a communication dated 24 May 2017.

425. The Government submitted its observations in communications dated 28 July 2017, and 24 April and 22 May 2018 in light of recent significant developments.

426. Kazakhstan 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

427. In their communications dated 14 and 24 May, 13 October and 11 December 2017, the ITUC and IndustriALL Global Union allege obstacles to trade union registration and dissolution of trade unions, as well as intimidation and prosecution of trade union leaders. They further refer to the repressive measures undertaken by the Government on the Confederation of Independent Trade Union of Kazakhstan (KNPRK) and its member organizations.

428. By way of background, the complainants explain that upon its entry into force, the 2014 Law on Trade Unions (LTU) required all existing trade unions to re-apply for registration within one year (section 33). The complainants recall that the Law came under repeated criticism by the Committee of Experts on the Application of Conventions and Recommendations (CEACR), which considered that the Law limited the free exercise of the right to establish and join organizations as well as the right of workers to freely decide whether they wish to associate or become members of a higher-level trade union structure. In particular, the CEACR had requested the Government to amend sections 11(3), 12(3), 13(3) and 14(4) of the LTU which require, under the threat of deregistration pursuant to section 10(3), the mandatory affiliation of sector based territorial and local trade unions to a national trade union association within six months following their registration. The CEACR had also requested the Government to amend section 13(2) which requires a sector-based trade union to represent no less than half of the total workforce of the sector or related sectors, or organizations of the sector or related sectors, or to have structural subdivisions and member organizations on the territory of more than half of all regions, cities of national significance and the capital, with a view to lowering this threshold requirement.

429. The complainants allege that the Confederation of Free Trade Unions of Kazakhstan (KSPRK) (the KNPRK predecessor) and its affiliates (five sectoral and 19 enterprise-level unions) faced complicated and inconsistent registration procedures, and unnecessary interference with the right to draw up their constitutions and rules, resulting in a failure to register within the given period. The complainants point out that although section 6(6) of the Law recognizes the right to cooperate with foreign trade unions and organizations in the field of workers' rights, registration officials have repeatedly cited affiliation to international federations as a reason to refuse re-registration.

430. The complainants refer to the following examples of denial of re-registration and provide copies of the relevant documents:

- On 24 February 2016, the local trade union of workers of the DZO KMG was allegedly denied registration because, among other reasons, its by-laws provided for the right to join international trade union organizations; registration officials claimed that a local trade union has the right to affiliate only to a higher-level sectoral trade union.

- The Trade Union of Workers in the Construction sector "Decent work", initially registered on 10 September 2012, was not successful in re-registering. In July and August 2015, registration officials sent back the union by-laws for revision for the following reasons: the union could not include the words "decent work" in its name because another union had previously used it; its by-laws lacked a detailed description and illustration of trade union logos and contained a provision on the affiliation to international trade unions. The complainants point out that in 2012, the union by-laws containing the same provisions were registered.

– On 16 July 2015, the sectoral Trade Union of Workers in Mass Media, PR, Advertising and Publishing "Decent work" was denied re-registration. Previously registered on 27 October 2014, the union was denied re-registration for having included the term "decent work" in its name. Moreover, registration officials pointed out that the union may not refer to the affiliation to international federations in its by-laws. In addition, the union by-laws were deemed inadequate due to the lack of details regarding the description and illustration of the union symbols and the management of trade union funds.

– In May and June 2015, the Yuzhno-Kazakhstanskiy Region Justice Department refused to re-register the Independent Trade Union of Workers of the "Petro Kazakhstan" of the Petrochemical Industry "Decent Work". The registration officials pointed out that the union was not permitted to indicate the company's address as its own despite the fact that the office of the union was located at the company premises (pursuant to the collective agreement). The registration authority also considered that the union by-laws were not sufficiently detailed on the question of membership dues.

– The Confederation of Free Trade Unions of Yuzhno-Kazakhstanskiy Region had been registered and active since 20 December 2001. However, registration officials refused to re-register the Confederation because it missed the deadline for registration by four days. Twelve unions affiliated to the Confederation were forced to cease their activities.

– In June 2015, the Trade Union of Workers of the Oil Construction Company applied for re-registration but received a written refusal on 9 July 2015, just one day before the deadline for re-registration, which made it impossible for the union to rectify the issues raised by the authorities who found that the union by-laws were not in line with the Law for the following reasons: the union's postal code was not specified; there were minor discrepancies between the Kazakh and Russian versions; a provision stated that the union was active in Kazakhstan without specifying the region. The union made changes to the by-laws and resubmitted documents on 11 July 2015. The changes were rejected because the re-registration period ended on 10 July 2015. This decision was challenged in court but upheld.

431. The complainants indicate that despite these obstacles, some unions have been re-registered. However, their new registration was cancelled after the unions did not succeed in establishing the structures required by the Law. The complainants refer to the examples of the sectoral Trade Union of the Mining, Coal and Metallurgical Industries "Decent Work" (Karaganda) and the sectoral Trade Union of Social and Domestic Workers "Justice" (Astana), which were re-registered but were not successful in establishing unions in more than half of the regions of Kazakhstan. As a result, the specialized inter-district economic courts of the Karaganda Region and Astana cancelled the registration of these unions. During the hearing, members of the sectoral Trade Union of the Mining, Coal and Metallurgical Industries "Decent Work" proposed to re-register their organization as a local trade union, as opposed to a sectoral one. This proposal was declined. According to the complainants, the re-registration of the union was cancelled before the court handed its decision. Both unions petitioned the court to refer the matter to the Constitutional Council. This request was denied. Furthermore, as the courts did not clarify the legal status of either of the unions, the complainant indicates that it is not clear whether these unions are considered to be dissolved due to the cancelation of their registration or whether they will be able to re-apply for the re-registration.

432. Against the background above, the complainants refer to the case of KSPRK which was not successful in complying with the one-year deadline in order to set up the structure required by the LTU. Overall, more than 30 of its member organizations were denied re-registration, including:

– Confederation of Free Trade Unions of the Yuzhno-Kazakhstanskiy Region;

– Independent Trade Union of Medical Workers of the Municipal Hospital for Infectious Diseases, Shymkent;

– Confederation of Free Trade Unions of the Karaganda Region;

– Independent Trade Union of Medical Workers of the Clinic of MKTU;

– Trade Union of Workers in the Construction Sector "Decent Work";

– Independent Trade Union of Medical Workers in Emergency Medical Service;

– Saryagashskii District Trade Union Committee of Medical Workers;

– Trade Union Committee of Education, Culture and Sports Workers of Shymkent;

– Independent Trade Union of Medical Workers in Kentau;

– Independent Trade Union of Medical Workers of TsAKhTig;

– Independent Trade Union of Workers "Vodokanal";

– Trade Union of Faculty Employees of the Medical Institute of Shymkent;

– Independent Trade Union of Medical Workers of the Diagnostic Center; and

– Trade union of Workers of the Kazakh-Turkish University named after A. Yasawi.

The KSPRK was forced to reapply for registration as a new organization – the KNPRK. Many unions formerly affiliated to the KSPRK took a similar decision. However, they all experienced difficulties in registering their new entities.

433. The complainants allege that the KNPRK registration process was extremely burdensome and irregular and explain that on 8 June 2015, the KNPRK submitted an application for registration to the Ministry of Justice, which was returned on 22 June 2015. According to the registration authority, the KNPRK did not have affiliates in more than half of the regions, cities of republican importance and the capital of Kazakhstan. The complainants state that this decision is contrary to section 10(2) of the LTU, according to which, a national trade union centre must establish the required structures six months after its registration. The KNPRK made a second attempt to register but its application was declined by Ministerial Order No. 158 of 21 July 2015, which referred to the absence of property ownership as the reason for refusal. The complainants point out that it would have been impossible for the KNPRK to acquire property without being registered as a legal entity. The owner of the union offices submitted relevant documents to the Ministry of Justice, which finally registered the KNPRK on 15 February 2016.

434. The complainants further refer to the following examples of unions which also faced difficulties with registration:

– Registration officials did not accept for the term "and other services" to be included in the title of the sectoral Trade Union of Workers in Health and Social Development as they considered that this was not sufficiently specific for a sector union. Certain provisions of the union by-laws were sent back for revision. After rectifying the areas of concern, on 6 November 2015, the union was registered. Its branches, however, faced serious obstacles and were systematically denied registration due to minor

differences in wording in the Russian and Kazakh languages versions; failure to indicate the region in the postal address; and typographical errors in the by-laws. The complainants refer, in particular, to the example of the branch office of the Health Workers' Union in Mangistauskiy Region, which was refused registration because it had underpaid the registration fee by 0.5 tenge (about €0,0015). In many cases, registration officers did not clarify the reasons for refusal to register. As a result of these difficulties, the sectoral Trade Union of Health and Social Development Workers was unable to confirm its status by the deadline of 6 May 2016. On 5 January 2017, the union was dissolved by a decision of the Yuzhno-Kazakhstanskiy Region Specialized Inter-District Economic Court.

– The Trade Union of Workers in Mass Media and Telecommunications was registered on 27 October 2014. After the adoption of the Law, the union did not succeed in its efforts to re-register and was therefore forced to create a new organization, namely, the Sectoral Trade Union of Workers in Mass Media and Telecommunications. The Karaganda Region Justice Department twice denied the registration of a branch office, stating that one of its by-laws provision contradicted section 43(1) of the Civil Code, but without specifying the exact problem and outlining possible options for rectifying it. In four regions (Almaty, Aktyubinsk, West Kazakhstan and Pavlodar), registration officials refused to receive the documents to register branch offices stating verbally that the documents contained errors, without explaining the essence of the errors. Having failed to establish the branches, due to often arbitrary refusals to register branch unions, the sectoral union attempted to bring its structures into compliance with the law by setting up enterprise-level unions which are not subject to registration procedures. The required number of enterprise-level unions was met and the relevant documents were submitted to the Ministry of Justice. However, on 11 January 2017, the Ministry of Justice argued that only three branch offices of the trade union were registered. Documentation about the establishment of enterprise-level unions was completely disregarded. The official stated that the union had missed the deadline for confirming its status.

– The sectoral Trade Union of Workers of the Fuel and Energy Complex had also faced difficulties registering as a new union. In October 2015, the Ministry of Justice denied registration citing incorrect wording in the by-laws, such as reference to the "union legal address" rather than "location". On 26 November 2015, the union succeeded in registering but its branches subsequently faced difficulties: registration officials in Almaty stated that the activities of the branch office in the city were in contradiction with section 43 of the Civil Code without providing any details; when registering a branch office in the Zapadno-Kazakhstanskiy Region, registration officials did not approve of the Russian–Kazakh translations of the branch office's name.

– The sectoral Trade Union of Social and Domestic Workers "Justice" was established in late 2014, registered on 2 March 2015 and re-registered on 6 November 2015. However, its branches had serious difficulties in obtaining registration. The reasons provided for refusal included minor discrepancies between Russian and Kazakh languages in the by-laws, grammatical errors and mistakes in the postal code. In the Akmolinskiy region, registration officials cited the incorrect use of the Kazakh letter "k" in the branch office's name, instead of the letter "k", as one of the reasons for the refusal to register the branch office. As a result, the union was unable to register the number of branches required by the Law. In late 2016, the Ministry of Justice filed an application with the courts, requesting the cancellation of the trade union's re-registration. During the hearing, the chair of the trade union, Ms Olga Rubakhova, made it clear that five branches had been registered and that the union pursued registration of enterprise-level primary trade unions in Astana and Almaty. In addition, Ms Rubakhova requested the court to refer the Law to the Constitutional Council for review. The court decided in favour of the Ministry of Justice, confirmed the

cancellation of the re-registration of the sectoral union and rejected the request to refer the Law to the Constitutional Council for review. The trade union appealed the decision on 3 February 2017. On 10 March 2017, the Astana Municipal Judicial Board for Civil Cases upheld the decision arguing that the union had committed to certain structures itself and that therefore there was no interference by public authorities. The complainants consider that this argument had clearly ignored the fact that the by-laws were drafted pursuant to the Law requirements. The complainants also point out that by the time the Appellate Court reviewed the decision, the union had set up the required number of branches. Nonetheless, this fact was considered to be irrelevant by the court. While the union's registration was cancelled, no decision was taken to dissolve its structures.

435. The complainants further allege that certain trade unionists and leaders were put under surveillance by the authorities and intimidated. They allege, in particular, that in 2016, officials of the National Security Committee (KNB) repeatedly came to the KNPRK office in Shymkent to convey the message that the KNPRK should not affiliate the Mangistauskiy Region trade unions of oil workers and that several union members were put under surveillance. The complainants explain in this respect that several trade unions active in the oil sector had expressed interest in joining the KNPRK. In November 2015, the Trade Union of Workers of the Oil Construction Company, which at that time had been denied re-registration and was facing obstacles in registering as a new legal entity, expressed its desire to join the sectoral Trade Union of Workers of the Fuel and Energy Complex, a KNPRK affiliate. On 1 March 2016, the Local Trade Union of Workers "Tupkaragan" joined the sectoral Trade Union of Workers of the Fuel and Energy Complex.

436. The complainants further allege systematic and arbitrary interrogation of the KNPRK chairperson, Ms Larisa Kharkova. They explain that on 6 January 2017, a complaint was filed by a former member of a local trade union affiliated to the KNPRK accusing Ms Kharkova of illegally appropriating funds amounting to 3 million tenge in the period between March 2013 and December 2016. This complaint resulted in a search warrant for Ms Kharkova's apartment and the seizure of all KNPRK accounts. Ms Kharkova made it clear that the funds were withdrawn in line with the decisions taken by the KNPRK Coordinating Council and were spent for trade union activities such as litigation and registration procedures. The Council confirmed that Ms Kharkova had acted in accordance with its decisions when she withdrew the funds.

437. Ms Kharkova was interrogated on a daily basis without any explanation provided to her or her lawyers why it was necessary. The daily interrogations interfered with Ms Kharkova's trade union activities and infringed on her freedom of movement. She was unable to leave Shymkent to resolve issues regarding trade union registration or to petition various authorities regarding the infringement of the KNPRK rights. Ms Kharkova's son, who works in a public hospital, was advised to take unpaid leave because of the ongoing lawsuits in relation to the KNPRK.

438. According to the complainants, on 11 January 2017, the KNB officers blackmailed Ms Kharkova into participating in a press conference organized by the KNB where she would have to condemn protests in the Mangistauskiy Region and express approval of the decision to dissolve the KNPRK. In exchange, she was promised that trade unions would no longer face difficulties with the registration and that the criminal case against her would be dropped. Despite making the agreed upon statement, the promises were not kept and the pressure on the union and specifically on Ms Kharkova persisted. The complainants allege that the agreement was made under duress.

439. The complainants further inform that on 29 September 2017, the appellate instance of the Regional Court of Shymkent upheld the decision of the Yenbekshinskiy District Court in

Shymkent ordering Ms Kharkova to perform 100 hours of community service and imposing restrictions on her freedom of movement for the next four years. Ms Kharkova is not permitted to change residence or workplace and may only leave the city she resides in with the permission of the public authorities. The courts have further ordered that she may not hold any leadership position in a non-governmental organization, including trade unions, for five years. Furthermore, her bank accounts and other assets will be blocked for as long as the court will deem necessary. The Regional Court noted that Ms Kharkova was guilty because as the chairperson of the KSPRK and subsequently the KNPRK, she abused her power by acting in her personal interest and for personal gain thereby causing pecuniary damage to the organizations. The complainants consider that the courts decisions were not based on any proof as there is no evidence that any credible member of the KSPRK or KNPRK has claimed or shown any pecuniary damage to the union. To the contrary, the evidence remains that for the accounts in question, proper authorization was sought and approval granted by the mandated governing structure of the respective union. Proper accounting has since been completed and accepted by the authorized union structures.

440. The complainants allege that Ms Kharkova, her family and trade union colleagues continue to suffer from harassment and intimidation. On 14 September 2017, the car of Ms Kharkova's son was set on fire. Firefighters extinguished the fire and police arrived on the following day to investigate the scene. On 12 September 2017, an unidentifiable object looking like an explosive device was discovered attached to the bottom of the KNPRK press secretary's car. Police and firefighters examined the object but did not find any explosives. On 27 September 2017, an unknown driver created a dangerous situation on the road, which resulted in a car accident in Almaty involving the husband of the KNPRK press secretary. The complainants allege that there are serious concerns that these acts of violence have been perpetrated in retaliation for the trade union activities of Ms Kharkova and the KNPRK and are intended to intimidate trade union members and leaders.

441. The complainants further allege that any person associated with the workers who protested against the cancellation of the KNPRK registration became a target of intimidation and harassment. For example, Ms Ayman Tokaeva, who delivered statements of Ms Olga Rubakhova, leader of the sectoral Trade Union of Social and Domestic Workers "Justice", to the public authorities, was repeatedly approached by unknown individuals who blocked her way or insulted her. After Ms Tokaeva made a complaint to the police, the person who harassed her was identified as Y.E. In her statement to the police, Y.E. claimed that Ms Tokaeva had injured her during an incident. As a result, a criminal case was opened against Ms Tokaeva and is still pending. On 6 February 2017, Ms Tokaeva was interrogated once more. However, the interrogation was not limited to questions concerning the incident with Y.E. The investigator asked whether Ms Tokaeva knew Ms Rubakhova, was a member of a trade union, knew Ms Kharkova and was in contact with her. The complainants consider that this information had nothing to do with the criminal case against Ms Tokaeva.

442. Furthermore, the complainants allege that on 5 January 2017, around 300 workers employed at the Oil Construction Company started a peaceful hunger strike to protest against the dissolution of the KNPRK. While the workers were willing to continue working during their hunger strike, the company stopped its operations, allegedly for safety reasons. On 18 January 2017, the company's management requested Aktau municipal court No. 2 to declare the hunger strike illegal and to expel workers from the union premises.

443. The complainants allege that the court decided on both the preliminary aspects and the merits of the case in an extremely hasty manner and delivered the judgment on 19 January 2017. It found that the hunger strike was illegal because it contravened internal company laws. Moreover, the court found that the workers did not have permission to hold a public event even though workers had notified municipal authorities in advance. Journalists were misled about the court proceedings in order to prevent public exposure. Upon their arrival at the

courthouse, they were told that the proceedings were already completed. However, the workers were only brought in after all journalists had left.

444. On 20 January 2017, the police began to detain protesters and to write protocols of administrative offences. The protesters were taken to the Aktau municipal special administrative court. The court considered all cases during the same night and fined all workers for violating the procedure for holding public events pursuant to section 488 of the Code of Administrative Offenses. Workers were fined around 45,380 tenge (about €137). In addition, on 23 January 2017, the Mangistauskiy district court decided that workers were liable to pay compensation to the company for the losses incurred by the hunger strike. Each protester was condemned to pay 124,000 tenge (about €375) in compensation. The average salary of a worker in Kazakhstan is around 136,777 tenge (about €409).

445. On 20 January 2017, Mr Amin Eleusinov, the chairperson of the Trade Union of Workers of the Oil Construction Company, and Mr Nurbek Kushakbaev, the health and safety inspector of the same union, were detained in Aktau. Mr Eleusinov was charged with embezzlement of trade union funds (section 189(4) of the Penal Code) and Mr Kushakbaev was charged with incitement of workers to continue the hunger strike (section 402(2) of the Penal Code).

446. The complainants allege the following irregularities in the judicial proceedings against the trade union leaders:

- While pursuant to section 188 of the Criminal Procedure Code of the Republic of Kazakhstan pre-trial investigation should be conducted at the location where the alleged crime was committed, the cases were referred from Aktau to Astana without any justification provided.
- The police did not inform the family of the accused nor their lawyers of the arrests.
- Journalists were not permitted to attend the trial.
- There is no trace of a formal investigation into the allegations against Mr Eleusinov.
- Mr Kushakbaev's indictment included declassified material from the KNB Department in Mangistauskiy Region and the Office for Combating Organized Crime, which proves that the phones of the union and its leaders have been tapped since 9 October 2015.
- Mr Eleusinov was blackmailed into making a false confession which was drafted by prison staff in exchange for being released; the false confession was videotaped without the presence of his lawyer and then disseminated to trade unionists by phone.

447. The complainants indicate that after consulting his lawyer, Mr Eleusinov retracted the false confession. In a statement, he explained that he accepted to sign the confession because he was promised that he would be allowed to go free and did not realize the consequences of writing a confession. He also described the conditions in which he was detained: the prisoners are not allowed to lie or sit on beds from 6 a.m. to 10 p.m. and are only allowed to sit on a stool without backrest; the cell is very damp; he has been quarantined for one month; and began having heart problems and problems with his leg joints. Mr Eleusinov continues to be detained.

448. The complainants inform that on 7 April 2017, Mr Kushakbaev was found guilty of inciting trade union members to continue an illegal strike. Astana District Court No. 2 sentenced him to two and a half years of imprisonment and condemned him to pay 25 million tenge (more than €75,000) in compensation to Techno Trading Ltd. (hereinafter "the enterprise"). Furthermore, he was condemned to pay 800,000 tenge (more than €2,400) in criminal costs. The court also banned Mr Kushakbaev from engaging in "public activities" for two years

following his sentence. The complainants consider that criminal sanctions should have never been imposed for leading peaceful and legitimate strike actions. They contend, however, that the allegations against Mr Kushakbaev did not reflect the truth as he was not in the country when the strike was carried out and was in no way involved in its organization. According to the complainants, the judgment relied mainly on inconsistent and thus highly questionable accounts of witnesses. Furthermore, the determination of the company losses was not based on the opinion of an independent expert but of an economist employed by the company with an obvious conflict of interest.

449. On 18 October 2017, Mr Kushakbaev filed an appeal with the Supreme Court arguing that under no circumstance was it reasonably probable that Mr Kushakbaev could have called for a strike action or its continuation because at the time he is alleged to have had the discussions, the strike itself was over and the court had already declared the strike illegal. Mr Kushakbaev's appeal also covers the issue of financial damages as the company did not establish any causation between Mr Kushakbaev, the strike and the damages or loss to the company. The complainants add that the haste by the lower courts to grant such unreasonably huge amounts of damages without proof of damage or loss and without any established causal link shows the Government's intent to send intimidating messages to leaders of independent trade unions.

450. The complainants indicate that following unsuccessful appeals in the case of the dissolution of KNPRK and the cancellation of the re-registration of the Social and Domestic Sector Workers' Union "Justice" with the Supreme Court all legal processes for seeking redress have now been exhausted.

451. In view of the above, the complainants call on the Committee to urge the Government to register the KNPRK and its member organizations; simplify the registration procedures and clarify the criteria for the registration of trade unions; refer the LTU to the Constitutional Council for review; bring the LTU, in particular its sections 10(3), 11(3), 12(3), 13(2), 13(3) and 14(4), in compliance with Convention No. 87, in consultation with the social partners; allow unions at all levels to freely decide on their membership in branches, sectoral, national and international federations; and drop the criminal charges against trade union leaders and members for organizing and participating in peaceful trade union activities.

B. The Government's reply

452. In its communication dated 28 July 2017, the Government indicates that the LTU adopted in June 2014 is aimed at strengthening the organizational foundations of trade union movement and enhancing its role in protecting workers' rights and interests. The Government also points out that discrimination against citizens on the basis of their trade union membership is forbidden and that trade unions are established on the basis of equal rights for their members. All trade unions are granted equal opportunities under the law and may carry out their activities independently of state bodies and of employers and their associations.

453. Two national trade union associations currently exist and carry out their activities in the country. Between them, they represent about 3 million workers, that is, half of all employed in the country. The Government adds that in the context of mutual cooperation, it has prepared a roadmap, as part of the implementation of Convention No. 87, to develop a blueprint for an amendment of several pieces of legislation and that a tripartite working group has been set up to that end. The working group met on 31 March and 28 April 2017 to review the comments of the ILO supervisory bodies and proposed further amendments as regards the procedure for setting up and registration of trade unions, as well as the conduct of strikes under the Labour Code. On May 2017, the Interdepartmental Commission on Legislative Activities approved the blueprint for the proposed amendments.

454. With regards to the cases of Messrs Eleusinov and Kushakbaev, the Government points out in its communication of 28 July 2017, as well as in its subsequent communication of 24 April, that they were convicted of criminal offences relating to the embezzlement of trade union funds (8,2 million tenge) and acts leading to continued participation in a strike declared illegal by the courts. The Government indicates that the case of Mr Eleusinov was opened on 31 January 2015 following complaints brought forward by workers. According to the Government, he admitted his guilt and on 16 May 2017 was sentenced to two years of imprisonment. As for Mr Kushakbaev, on 7 April 2016, he was sentenced to two-and-a-half years of imprisonment for having instigated the continuation of strikes which the court had previously declared illegal. According to the Government, during the appeal, he recognized the wrongdoing.

455. As regards Ms Kharkova, she was convicted of misappropriation of trade union membership fees (6 million tenge) and the deposit of 5 million tenge of that amount on her personal account. She was sentenced to the minimum penalty of four years of restriction of freedom and prohibition to occupy leadership positions in any public association for five years. The Government indicates that Ms Kharkova deposited the money on her bank account following the court's decision of 4 January 2017 to cancel the registration of the KNPRK. According to the Government, Ms Kharkova publicized her case as political, whereas the case against her was opened after members of the KNPRK filed allegations of misappropriation of trade union dues.

456. Regarding the dissolution of the KNPRK, the Government indicates that its registration was cancelled by the court because the union had failed to confirm its representation in nine regions within six months following registration. The Government points out that certain structures of the Federation of Trade Unions of the Republic of Kazakhstan and of the Confederation of Labour had also been liquidated for the same reason.

457. By a communication dated 22 May 2018, the Government provides the following information regarding the three trade union leaders. On 4 May 2018, at the request of Mr Eleusinov, the court granted him an early conditional release. The decision came into force on 19 May 2018. On 22 May 2018, Mr Eleusinov was released. At the request of Mr Kushakbayev on 10 May 2018, the court issued a decision regarding his early conditional release. According to the Government, he will be released from prison on the first working day upon the entry into force of the court decision on 25 May 2018.

458. Regarding the case of Ms Kharkova, further to the information provided in its earlier communications, the Government indicates that the court has fully proved her guilt and that according to the Prosecutor General's Office, there is no reason for the review and subsequent cancellation of the sentence. The Government points out that the court demonstrated leniency because in part 1, article 205, of the Criminal Code (abuse of power) the upper limit of imprisonment is four years. Also, the court granted the petition of Ms Kharkova on the exemption from the community service (100 hours per year). The Government indicates that Ms Kharkova may apply for conditional release on or after 9 February 2019 and that as from 9 November 2018, she can petition for the replacement of her restriction of freedom sentence by the payment of a fine. To that end, it is necessary that Ms Kharkova fully compensate the amount of damages.

459. As regards the issue of trade union registration, the Government indicates that the necessary measures have been elaborated together with the Ministry of Justice and that it is planned to open a hotline and appoint a contact person within the Ministry of Labour and Social Protection of Population. According to the Government, 467 trade unions operate in the country (166 among them are newly created unions), the registration process is transparent and no complaints from trade unions have been received. Organizations that were previously members of the KNPRK may establish a Republican level trade union or join an existing

Republican level union. In this respect, the Government points out that some of the former KNPRK members (branch trade union of workers of institutions of science and education, trade union of workers of emergency medical care, trade union of workers of multifunctional hospital in Shymkent) became part of the Commonwealth of trade unions of Kazakhstan "Amanat".

460. The Government informs that following a request of the Conference Committee on the Application of Standards (CAS) it had hosted, from 14 to 17 May 2018, an ILO high-level tripartite mission. The mission had a series of meetings, including with the Deputy Prime Minister, Mr Dosayev, Ministers of Justice, National Economy, Labour and Social Protection of the Population, Deputy Minister of Foreign Affairs and the Head of the public interest service of the General Prosecutor's Office. In addition, the mission met with the leaders of the national trade unions, branch trade unions, the leadership of the National Chamber of Entrepreneurs "Atameken", the Confederation of Employers and the Union of Judges. The mission had a meeting with Ms Kharkova in Astana.

461. The Government further informs that the Ministry of Labour and Social Protection of Population developed a draft roadmap for the implementation of the recommendations of the CAS and the CEACR on the application of Convention No. 87. The roadmap provides for a number of activities (seminars/discussions, legislative amendments, etc.), which involve both the Government and the ILO. The Government reaffirms its commitment to continue working on bringing the legislation into conformity with the requirements of Convention No. 87.

C. The Committee's conclusions

462. *The Committee notes that the complainants in this case, the ITUC and IndustriALL Global Union, allege obstacles created by the 2014 Law on Trade Unions to trade union registration, ensuing dissolution of trade unions, as well as intimidation and prosecution of trade union leaders. The Committee notes, in particular that pursuant to section 33 of the Law, all existing trade unions were required to re-register within one year following its the entry into force. It further notes that under the Law, the registration procedure consists of two stages (section 10): (1) registration (within two months of the establishment [or 12 months in the case of re-registration]); and (2) confirmation of the membership and compliance with the law (within six months). The Committee notes that at the (re)registration stage, the compliance of the union by-laws with the Law on Non-commercial Organizations (2001), the Law on Public Associations (1996), the Civil Code (1999), the Law on State Registration of Legal Entities and Record Registration of Branches and Representatives (1995), and the Law on Trade Unions is verified by the relevant authority. The union in question is then either registered or is denied registration. As indicated above, within six months following (re)registration, the (re)registered trade union shall prove that it is in compliance with the requirements set by the Law on Trade Union regarding its structure and membership. The failure to do so would result, pursuant to section 10(3), in deregistration and liquidation of the union.*

463. *In the present complaint, the complainants allege and provide supporting evidence (copies of orders denying registration) that some trade unions were denied re-registration (first stage) because their by-laws were found not to be in conformity with either one or with all of the following pieces of legislation: the Law on Non-commercial Organizations (2001), the Law on Public Associations (1996), the Civil Code (1999), the Law on State Registration of Legal Entities and Record Registration of Branches and Representatives (1995). The Committee notes, however, that pursuant to section 1 (paragraph 2) of the Law on Non-commercial Organizations, "special aspects of legal status, establishment, activity, reorganization and liquidation of […], trade unions shall be regulated by the special Laws". It further notes that same by-laws had been previously found in compliance with the above*

laws and registered. The Committee regrets that the Government provides no observations in this regard despite the fact that this situation had been brought to its attention by the direct contacts mission, which visited the country in September 2016 pursuant to a request of the CAS at its 105th Session (June 2016). The Committee notes from the direct contacts mission's report that:

> 15. The DCM raised the issue of difficulties with the registration encountered by the KNPRK affiliates with the Ministry of Health and Social Development and the Ministry of Justice and was assured that the authorities would look into this matter and assist the unions, as relevant. The Deputy-Minister of Justice indicated, in particular, that while trade unions which did not re-register following the entry into force of the Law on Trade Unions should be subject to mandatory liquidation upon the appeal of a competent body (i.e. the MHSD) to the court, in practice, this had never occurred. She also pointed out that the major reason for the denial of re-registration were technical mistakes and that an administrative penalty may be imposed on an official for refusing to register or re-register an organization.
>
> […]
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> 37. As regards the registration of some KNPRK member organizations, the DCM expressed its trust that the Ministry of Justice together with the MHSD would look into the matter with a view to providing the necessary assistance to the organizations concerned.

464. *The Committee further notes that trade unions that have not succeeded in re-registering had to establish anew and follow the two-step procedure. Trade unions that have succeeded in passing this stage had six months to complete the second stage. The Committee notes the requirements set by the Law on Trade Unions in this respect:*

- *sections 11(3), 12(3), 13(3) and 14(4) require the mandatory affiliation of sector-based, territorial and local trade unions to a national trade union association within six months following their registration; and*

- *section 13(2) requires a sector-based trade union to represent no less than half of the total workforce of the sector or related sectors, or organizations of the sector or related sectors, or to have structural subdivisions and member organizations on the territory of more than half of all regions, cities of national significance and the capital.*

465. *The Committee notes that the above provisions have been reviewed by the CEACR which requested the Government to engage with the social partners in order to review the abovementioned sections so as to ensure the right of workers to freely decide whether they wish to associate with or become members of a higher-level trade union structure and to lower thresholds requirements for the establishment of higher-level organizations.*

466. *The Committee notes with deep concern that ultimately, the failure to comply with the above requirements, either at the first or second stage of the (re)registration procedure by its members organizations, led to the revocation of the KNPRK registration despite the assurances given to the direct contacts mission by the Ministry of Justice and the Ministry of Labour and Social Development that they would look into this matter and assist the unions, as relevant.*

467. *The Committee notes the information provided to it by the Government, as well as the information provided by the Government to the CEACR as noted in its most recent comments published in 2018. It notes, in particular, the Government's expressed intention to amend the Law on Trade Unions so as to: (i) lower the minimum membership requirement from ten to three people in order to establish a trade union; and (ii) simplify the registration procedure (so as to combine the two stages). While welcoming this information, the CEACR noted that the proposed amendments did not address its concerns and once again recalled that the free exercise of the right to establish and join organizations implies the right of workers to freely decide whether they wish to associate or become members of a higher-*

level trade union structure and that the thresholds requirements to establish higher-level organizations (currently set at over half of the workforce) should not be excessively high. The Committee welcomes the Government's renewed expressed intention to bring its legislation into conformity with Convention No. 87 and expects that the Law on Trade Unions would be amended without further delay. It requests the Government to keep it informed of all progress made in this respect.

468. *The Committee notes the allegations in relation to the KNPRK chairperson. The complainants allege that the courts found Ms Kharkova guilty of abusing her power as the chairperson of the KSPRK, and subsequently the KNPRK, by acting in her personal interest and for personal gain and thereby causing pecuniary damage to the organization. According to the complainants, on 29 September 2017, the appellate instance of the Regional Court of Shymkent upheld the decision of the Yenbekshinskiy District Court in Shymkent ordering Ms Kharkova to perform 100 hours of community service and imposing restrictions on her freedom of movement for the next four years. Ms Kharkova is not permitted to change residence or workplace and may only leave the city she resides in with the permission of the public authorities. The courts have further ordered that she may not hold any leadership position in a non-governmental organization, including trade unions, for five years. Her bank accounts and other assets will be blocked for as long as the court will deem necessary. The complainants consider that the courts decisions were not based on any proof as there is no evidence that any credible member of the KSPRK or KNPRK has claimed or shown any pecuniary damage to the union. To the contrary, the evidence remains that for the accounts in question, proper authorization was sought and approval granted by the mandated governing structure of the respective union. Proper accounting has since been completed and accepted by the authorized union structures. The Committee expresses its deep concern over the situation where not only the KNPRK was liquidated but its chairperson was found guilty of misappropriation of its funds in a process alleged to be devoid of any evidence. The Committee takes note of the visit of a tripartite high-level mission to Kazakhstan. The Committee notes that the mission met with Ms Kharkova. The Committee notes the Government's indication that the decision in her case is final, but that the court had granted Ms Kharkova's petition to exempt her from the community service (100 hours per year). The Government further indicates that Ms Kharkova may apply for conditional release on or after 9 February 2019 and that as from 9 November 2018, she can petition for the replacement of her restriction of freedom sentence by the payment of a fine. To that end, it is necessary that Ms Kharkova fully compensate the amount of damages (6 million tenge). The Committee requests the Government to keep it informed of any developments in this regard and to indicate, should Ms Kharkova compensate the said amount, how and to which entity the said funds will be devolved.*

469. *The Committee further notes with concern that two trade union leaders, Mr Eleusinov, chairperson of the Trade Union of Workers of the Oil Construction Company, and Mr Kushakbaev, health and safety inspector of the same union, have been convicted and sentenced in application of section 189 (appropriation or embezzlement) and 402 (incitement to continue a strike declared illegal by the court) of the Penal Code, respectively. The Committee notes the information provided by the Government in relation to the case of Mr Eleusinov who was found guilty of misappropriation of trade union funds and sentenced to two years of imprisonment. The Committee notes, in particular, his early conditional release on 22 May 2018.*

470. *The Committee notes that by its decision of 7 April 2017, a copy of which was transmitted by the complainants, Astana regional court sentenced Mr Kushakbaev to two and half years of imprisonment and condemned him to pay to the enterprise damages amounting to approximately 25 million tenge (€63,000) and a fine amounting to approximately €1,900. The Committee notes that the decision is based on the following information established by the court. From December 2016 up to 9 January 2017, Mr Kushakbaev, as an experienced*

trade unionist (health and safety inspector of the Trade Union of Workers of the Oil Construction Company), provided advice to the deputy chairperson of the Trade Union of the Techno Trading Ltd., who later on, together with other trade unionists, organized and conducted a strike at the enterprise. Specifically, two strikes were conducted by workers of the two production units. The strike that took place from 15 to 26 December 2016 was declared illegal by the court on 28 December 2016 and the strike that took place between 23 and 26 December 2016 was declared illegal by the court on 28 December 2016. As workers from both production units did not return to work on 28 December 2016, the enterprise imposed a lockout in one production unit as from 29 December and closed the other production units for renovation. However, following a request from the community elders, the enterprise revoked the lockout as from 5 January 2017. As not all workers returned to work, the production was not launched on that day, nor on the following day. According to one of its accountants, due to the strikes in questions, between 15 December 2016 and 6 January 2017, the enterprise suffered losses of about 91 million tenge. The enterprise considers that Mr Kushakbaev is responsible for 25 million tenge in damages for the period between 28 December 2016 and 6 January 2017. At the same time, it is accepted by the court that Mr Kushakbaev was away from the country between 25 December 2016 and 4 January 2017 and that the leaders of the trade approached Mr Kushakbaev for advice regarding the situation occurred after 28 December 2016 (declaration of the strike illegal, lockout and closing for renovation) only upon his return, on 4 January at about 5 p.m. It is alleged that Mr Kushakbaev suggested to the trade union leaders in question to call a hunger strike. The Committee notes from the court decision that the "incitement to continue an illegal strike" by Mr Kushakbaev took the form of advice provided to the trade union leaders of the enterprise who then conveyed the messages to the workers and took their own decisions as to future action. The Committee notes that the leaders of the Trade Union of the Techno Trading Ltd. who organized the strikes and, following the declaration of their illegality, transmitted messages to the striking workers inciting them to continue striking, were initially charged under section 402 of the Penal Code. However, as they have admitted their guilt, the case against them was dropped and they then appeared as witnesses testifying against Mr Kushakbaev who refused to plead guilty.

471. *The Committee notes that pursuant to section 402 of the Penal Code:*

1. Calls for continued participation in the industrial action, recognized by court as illegal, committed publicly or with the use of mass media or information and communication networks, as well as bribery of employees for this purpose -

   shall be punished by the fine in the amount of up to one thousand monthly calculation indices or correctional works in the same amount, or restriction of liberty for the term of up to one years, or imprisonment for the same term, with deprivation of the right to occupy determined posts or to engage in a determined activity for the term of up to one year or without it.

2. The same actions, inflicted substantial harm to the rights and legal interests of citizens or organizations or legally protected interests of society or the state or entailed the mass disorders, -

   shall be punished by the fine in the amount of up to three thousand monthly calculation indices or correctional works in the same amount, or restriction of liberty for the term of up to three years, or imprisonment for the same term, with deprivation of the right to occupy determined posts or to engage in a determined activity for the term of up to three years or without it.

472. *Recalling that penal sanctions should not be imposed on any worker for participating in a peaceful strike [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 954], the Committee requests the Government to take the necessary measures to review section 402 of the Penal Code in order to bring it into conformity with principles of freedom of association. The Committee notes the Government's indication that*

Mr Kushakbaev's petition for an early release has been granted by the court and that the court decision will enter into force on 25 May 2018. He will then be released on 28 May 2018.

473. *Finally, in view of the issues raised in relation to a number of legal provisions already being reviewed within the framework of the regular supervisory procedure, the Committee draws the legislative aspects of this case to the attention of the CEACR.*

The Committee's recommendations

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

(a) The Committee expects that sections 11(3), 12(3), 13(2) and (3), and 14(4) the Law on Trade Unions would be amended without further delay in consultations with the social partners so as to ensure the right of workers to freely decide whether they wish to associate with or become members of a higher-level trade union structure and to lower thresholds requirements to establish higher-level organizations. It requests the Government to keep it informed of all progress made in this respect.

(b) The Committee requests the Government to keep it informed of any developments regarding the case of Ms Kharkova and to indicate, should she decide to compensate 6 million tenge, how and to which entity these funds will be devolved.

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

CASE NO. 3226

DEFINITIVE REPORT

Complaint against the Government of Mexico presented by the Progressive Union of Food Industry Workers of the Republic of Mexico (SPTRARM)

Allegations: Irregularities in procedures in response to a set of demands containing a call to strike; intimidation of union members

475. The complaint is contained in a communication of 8 June 2016 from the Progressive Union of Food Industry Workers of the Republic of Mexico (SPTRARM).

476. The Government sent its observations in a communication dated 15 May 2017.

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

A. The complainant's allegations

478. In its communication of 8 June 2016, the SPTRARM alleges irregularities in procedures in response to a set of demands containing a call to strike, and also intimidation of union members.

479. The complainant organization states that: (i) Servicios Integrados de Envasado S.A. de C.V. (Integrated Packaging Services Company – hereinafter: the company), which deals with the production and packaging of beverages, is located in the state of Puebla; (ii) the company is party to a so-called collective labour agreement with the union known as the Single Independent Union of Service Workers (SUITS); (iii) the aforementioned collective agreement is null and void and without legal effect since it was registered with the Local Conciliation and Arbitration Board (JLCA) of the state of Puebla (on account of the company's activity, comprising both the packaging and the production of beverages), whereas under section 527 of the Federal Labour Act, which gives the federal authorities sole regulatory power with respect to producers of packaged or canned beverages, it should have been registered with the Federal Conciliation and Arbitration Board (JFCA); (iv) the company workers indicated that they did not know any persons supposedly representing the union which was party to the collective agreement (SUITS); (v) of the 250 workers at the company, over 200 were members of the complainant union; consequently, on 6 May 2016, in view of the fact that the collective agreement was null and void, a list of demands containing a call to strike was presented with a view to securing the signature of a collective agreement in conformity with the law; (vi) on 27 May 2016, at the statutory conciliation hearing, the company indicated that it provided packaging services and cited the existence of a collective agreement in force; (vii) as a result of the conciliation hearing, the JFCA issued a ruling to the effect that it was not proven that the packaged products were produced by the company and that its activity was therefore not one of those that came solely within the jurisdiction of the federal labour authority; (viii) the aforementioned ruling violates national law since the records of the case show that it was fully proven that the company did produce beverages for subsequent packaging; and (ix) the complainant indicates that it filed an appeal for *amparo* (protection of constitutional rights), which is still pending.

480. Furthermore, the complainant organization alleges that the company began to use intimidatory tactics against its members, and that some of them had been obliged to resign as a result of being informed that they could be liable to criminal prosecution for supporting the strike call.

B. The Government's reply

481. In its communication of 15 September 2017, the Government sent observations in reply to the complainant's allegations further to the information sent by the Under-Ministry of Labour, the JFCA, the Legal Affairs Department at the Ministry of Labour and Social Welfare, the JLCA of the state of Puebla, and the company concerned.

482. With regard to the alleged irregularities in procedures in response to a set of demands containing a call to strike and the allegation that the collective labour agreement between the company and the SUITS union is null and void, the Government indicates that: (i) at the conciliation hearing of 27 May 2016, the company cited the existence of a collective agreement registered with the Puebla JLCA and affirmed by notarial act that the corporate purpose of the company is to provide packaging services for all types of products, including beverages, and also to conduct business operations in relation to articles for packaging, highlighting the fact that the packaged products do not originate from the company but are produced by various enterprises; (ii) consequently, the local nature of the company was confirmed (in this connection, a copy of the act of establishment of the company was forwarded); (iii) in view of the existence of the collective agreement, dated 27 May 2016, at

the Puebla JLCA, the JFCA decided not to continue with procedures relating to the strike; (iv) the complainant filed an *amparo* appeal, which was dismissed on 25 July 2016 by the Eighth District Labour Court, on account of the existence of a collective agreement governing employer–worker relations; and (v) the JFCA stresses that it was fully proven that its actions were in conformity with the law, with the Federal Labour Act and with the case law emanating from the Supreme Court of Justice.

483. With regard to the allegation that the workers do not know who the SUITS representatives are, the Government has supplied detailed information and documents relating to the establishment and registration of SUITS in 2012, its assemblies, and the conclusion of collective agreements with the company. The Government states that the foregoing demonstrates the recognition of SUITS by the company workers, and this is borne out particularly by documentation substantiating the initial support in 2012 from 85 workers, and by the participation of 158 workers in assemblies in 2015 and 2016 (the Government has sent attendance lists for SUITS assemblies held in March 2015 – for appointing an executive committee – and March 2016, which include a detailed record of the names of the 158 participating workers). Moreover, the Government indicates that, as regards the complainant organization's claim to have a membership of over 200 workers, the union has failed to demonstrate or provide proof of the alleged membership.

C. The Committee's conclusions

484. *The Committee observes that the complainant is concerned with allegations of irregularities in procedures in response to a set of demands containing a call to strike, and also with the intimidation of union members. The main argument of the complainant organization is the assertion that a collective agreement previously concluded with another union at the company is null and void. The complainant argues that: (i) under the provisions of the Federal Labour Act, since the company's activities include not only the packaging but also the production of beverages, competence for labour matters lies with the federal authority; (ii) the collective agreement concluded by the other union is null and void since it was registered with the local authority (the JLCA); (iii) since the collective agreement was null and void, the complainant was entitled to submit a set of demands for collective negotiation and issue a call to strike; and (iv) however, the authorities blocked this by not accepting that the collective agreement was null and void.*

485. *The Committee observes that the issue raised by the complainant organization concerns the application of national law: in particular, determining which authority has competence for dealing with the activities of the company – an issue on which the Committee is not in a position to comment. In this regard, the Committee duly notes the Government's statement that: (i) by notarial act it was demonstrated vis-à-vis the federal authority (the Federal Conciliation and Arbitration Board – JFCA) that the activities of the company belong to the local sphere; and (ii) the labour court examined the issue and dismissed the* amparo *appeal lodged by the complainant.*

486. *The Committee also observes, with regard to the allegation that the workers do not know the representatives of the trade union which is party to the collective agreement (SUITS), that the documentation provided by the Government shows that a considerable number of workers are SUITS members. In particular, the Committee notes the attendance lists for the SUITS assemblies of March 2015 (for appointing an executive committee) and March 2016 (shortly before the complainant organization presented its set of demands), which contain a detailed record of names substantiating the participation of 158 workers (out of the 250 workers who, according to the complainant, work at the company). However, the Committee observes that, as emphasized by the Government, the complainant did not supply any documentation to support its claim that it has over 200 members.*

487. *With regard to the allegation of anti-union discrimination, the Committee observes that this is presented in brief and general terms, without any details or evidence. The Committee will therefore no pursue its examination of this allegation.*

488. *In the light of its foregoing conclusions, the Committee considers that this case does not call for further examination.*

The Committee's recommendation

489. ***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. 3235

DEFINITIVE REPORT

Complaint against the Government of Mexico presented by the Single Trade Union for Employees of the State, Municipal Authorities and Decentralized Institutions in Nayarit State (SUTSEM) supported by the Trade Union Confederation of the Americas (TUCA)

Allegations: Irregularities and interference on the part of the authorities of Nayarit State in the electoral process and official recognition of the executive board of a public workers' union

490. The complaint is contained in a communication dated 18 March 2015 from the Single Trade Union for Employees of the State, Municipal Authorities and Decentralized Industries in Nayarit State (SUTSEM), supported by a communication dated 11 October 2016 from the Trade Union Confederation of the Americas (TUCA).

491. The Government sent its observations in a communication dated 15 September 2017.

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

A. The complainant's allegations

493. In its communication of 18 March 2015, SUTSEM alleges irregularities and interference on the part of the authorities (the government of Nayarit State, through the Conciliation and Arbitration Court (TCA) and the High Court of Justice (TSJ) of the State) in the electoral process and official recognition of its executive board.

494. The complainant indicates that, in response to SUTSEM's work in defence of state employees, the government of Nayarit State has been carrying out a campaign to discredit and interfere in the life of the union. In particular, and in this context, SUTSEM alleges that: (i) at the end of 2014, an electoral process began, strictly in line with SUTSEM's statutes and in which a single candidacy was presented, headed by C. Águeda Galicia Jiménez, which was duly registered; (ii) the state government illegitimately promoted and advanced another candidacy and brought a claim before the TCA in an attempt to forestall the trade union's electoral assembly and obtained, as an interim measure, the suspension of the electoral process; (iii) however, in opposition to these anti-union actions, on 29 November 2014, the electoral assembly was held with the participation of more than 8,700 members (91 per cent of the members) who elected the candidacy of C. Águeda Galicia Jiménez; (iv) the state government continued to interfere and refused to recognize the elected leaders; it threatened to carry out dismissals and launch criminal proceedings against the elected executive committee, announced labour improvements without the agreement of SUTSEM, and obtained interim measures to prevent the recognition of the elected executive committee; (v) in the light of this situation, SUTSEM filed a series of appeals for *amparo* against these actions of the state, which came up against measures to delay the proceedings and hinder the

trials; (vi) in particular, on 26 December 2014, SUTSEM filed an appeal for *amparo* before the Second District Court for civil, administrative and labour appeals and federal trials against the decision of the TSJ to order the TCA not to recognize the members of the elected executive board (the authorities concerned provided their reports and deferred the hearing on three occasions). The complainant indicates that, while the court proceedings are ongoing, it decided to bring the case before the ILO owing to the recurrence of acts of interference through the failure to acknowledge the democratically elected leaders; and requests that the procedure be conducted to recognize the elected executive committee.

B. The Government's reply

495. In its communication of 15 September 2017, the Government provides its comments in response to the complainant's allegations based on the information it was sent by the TCA and TSJ of Nayarit State, and by the Second District Court for civil, administrative and labour appeals and federal trials.

496. The Government states that this information reveals that: (i) it was not the Nayarit State government nor its authorities (the TCA and TSJ) that acted *motu proprio*, but rather a group of 25 SUTSEM members who filed a request for a new call for the general electoral assembly and for an interim measure to suspend the current call, which was declared admissible by the TCA in accordance with legitimate interest criteria and not respected by SUTSEM; (ii) the TCA could not officially recognize the executive board as it had been ordered to suspend all processes under the TSJ decision in the context of proceedings for the protection of fundamental rights brought by the members who were not in agreement; (iii) this was an internal trade union dispute and the parties (both active members of SUTSEM) had the remedies afforded by national legislation available to them; (iv) it was the processing of all the hearings and remedies that caused the delay in the decision; (v) on 4 January 2016, SUTSEM, through C. Águeda Galicia Jiménez, filed an appeal for *amparo* before the Second District Court for civil, administrative and labour appeals and federal trials against the failure of the authorities to provide the recognition requested, which was granted; (vi) therefore, after processing the third party's claims, on 14 October 2016, the TCA complied with the ruling and issued the corresponding recognition of the SUTSEM state executive committee.

497. The Government therefore states that the Nayarit State government in no way acted inappropriately and that it is clear that the courts acted strictly in line with legal procedures and provided the protection of the courts to all parties in the proceedings brought, which resulted in the recognition requested by the complainant.

C. The Committee's conclusions

498. *The Committee observes that the complaint is concerned with allegations of irregularities and interference on the part of the authorities of Nayarit State at the end of 2014 in the electoral process and official recognition of the executive board of the complainant (SUTSEM).*

499. *The Committee notes that meanwhile, as alleged by SUTSEM, with the purpose of interfering in internal issues and as part of an anti-union campaign, the state authorities promoted an alternative candidacy and used judicial mechanisms in an attempt to prevent the recognition of the new, legitimately elected board. The Government indicates that the dispute derived from an internal trade union dispute (as it was other members of the union who brought the legal proceedings to challenge the electoral process) and the opposing members used the judicial remedies available to them, which delayed the settlement of the dispute.*

500. *The Committee also notes that, as a final outcome of the legal proceedings brought in October 2016, the recognition requested by the complainant was issued. In these circumstances, the Committee will not pursue its examination of the case.*

The Committee's recommendation

501. ***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. 2902

INTERIM REPORT

Complaint against the Government of Pakistan presented by the Karachi Electric Supply Corporation Labour Union (KESC)

Allegations: The complainant organization alleges refusal by the management of an electricity enterprise in Karachi to implement a tripartite agreement to which it is a party. It further alleges that the enterprise management ordered to open fire at the protesting workers, injuring nine, and filed criminal cases against 30 trade union office bearers

502. The Committee last examined this case at its March 2017 meeting, when it presented an interim report to the Governing Body [see 381st Report, paras 505–515, approved by the Governing Body at its 329th Session].

503. The Government provides its observations in a communication dated 25 April 2018.

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

A. Previous examination of the case

505. At its March 2017 meeting, the Committee made the following recommendations [see 381st Report, para. 515]:

(a) The Committee requests the Government to indicate whether a subsequent agreement replaced the July 2011 agreement, and if so, to provide further information on it, including the issues covered, and to specify the labour situation of those retrenched workers who did not accept the voluntary separation scheme offered by the company.

(b) The Committee expects that the High Court of Sindh will finally conclude on the matter concerning KESC workers' petitions without delay so that the claims of anti-union discrimination can be effectively examined either by the NIRC or the appropriate judicial body. The Committee also requests the Government to take all necessary measures to enable the concerned workers to have effective access to such means of redress for any alleged prejudice based on trade union membership or activities, and further urges it to

promote negotiation between the complainant and the company with a view to solving any pending issues. The Committee requests the Government to inform it of any developments in this regard.

(c) In view of the gravity of the matters raised in this case, the Committee urges the Government to provide information on the investigations instituted into the allegations that: (i) violence was used against trade union members during the August 2011 demonstration against the refusal of the company to implement the July 2011 tripartite agreement, injuring nine; and (ii) 30 trade union office bearers were dismissed following this demonstration and/or criminal charges were brought against them; with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. It expects that, should it be found that these unionists were dismissed or charged for the exercise of legitimate trade union activities, the Government will take all necessary steps to ensure their reinstatement and the dropping of all pending charges. If reinstatement is found not to be possible for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the union members concerned are paid adequate compensation so as to constitute a sufficiently dissuasive sanction for anti-union discrimination.

(d) Recalling that Presidential Ordinance No. IV of 1999, which amended the Anti-Terrorism Act by penalizing with imprisonment the creation of civil commotion, including illegal strikes or slowdowns, had been repealed and is no longer in force, and noting from the complainant's allegations that charges were brought against trade union officers under the Anti-Terrorism Act, the Committee once again requests the Government to indicate under which provisions of the Anti-Terrorism Act the trade union officers were charged and invites it to ensure that any pending charges are dropped should they relate to the exercise of legitimate strike action.

B. The Government's reply

506. In its communication dated 25 April 2018, the Government indicates that the July 2011 agreement has not been replaced and is thus still in force, that out of the 4,500 retrenched workers, 467 have not yet accepted the voluntary separation scheme, and that the enterprise has earmarked funds for these employees who can take advantage of them at any time, although the date for the voluntary separation scheme has expired.

507. The Government further states that after the 18th Constitutional Amendment, the operation of the Industrial Relations Act, 2012 (IRA) was suspended and both the management and the employees of the electricity enterprise approached the Sindh High Court to redress the grievances against each other. Since 2014, the IRA was allowed to operate again and cases were therefore lodged to the National Industrial Relations Commission (NIRC), however, as seven out of ten posts in the NIRC were vacant, the cases remained pending. Now that the vacant posts have been filled, cases are being disposed of expeditiously and the Ministry of Overseas Pakistani Human Resource Development (OPHRD) has requested members of the Karachi Bench of the NIRC to take up the cases concerning the enterprise as a priority.

508. The Government further indicates that the NIRC was assigned to probe into the matter of violence by the enterprise against the workers during the August 2011 demonstration but that due to its suspension, the probe could not be undertaken. As regards the 30 trade union office bearers dismissed following the August 2011 demonstration, the Government states that they are still dismissed, their cases are under trial in the District Court of Karachi, where they are being vigorously followed, and the Ministry of OPHRD is pursuing the enterprise to withdraw these cases and compensate the workers under the voluntary separation scheme. The Government also explains that the August 2011 protest turned violent – workers ransacked the enterprise's sensitive installations and properties and when the police tried to stop them, it resulted in clashes between the protestors and the law enforcement agencies in which three police officers were severely injured. Several complaints were therefore registered by the police against the workers under different charges, including section 7 of

the Anti-Terrorism Act, but the charges based on the Anti-Terrorism Act were later dropped by the relevant courts and no other case has been registered under anti-terrorist laws.

C. The Committee's conclusions

509. *The Committee recalls that the complaint in this case was lodged in 2011 and concerned allegations that the management of an electricity enterprise in Karachi refused to implement a tripartite agreement to which it was a party, as well as allegations of violence against protesting workers, dismissals and the filing of criminal charges against trade union office bearers.*

510. *With regard to the alleged refusal by the management to implement a tripartite agreement to which it was a party, the Committee recalls that the agreement in question was signed in July 2011 and provided for the reassignment of the 4,500 enterprise workers declared redundant, as well as recovery of unpaid wages. While noting the Government's indication that the agreement is still in force and that out of the 4,500 retrenched workers, 467 have not yet accepted the voluntary separation scheme even though funds have been earmarked for this purpose by the enterprise, the Committee understands that, although being in force, the July 2011 agreement which provides for reassignment of the retrenched workers does not appear to have been implemented, as the majority of the workers accepted the voluntary separation scheme offered by the enterprise and several hundreds of them refused but have not been reassigned. The Committee observes from the information provided that no substantial progress has been made in this regard since its last examination of the case and therefore requests the Government to take the necessary measures to ensure that the July 2011 tripartite agreement is implemented, in particular that workers who refused the voluntary separation scheme are reassigned without delay or, if reassignment is not possible for objective and compelling reasons, the concerned workers are paid adequate compensation. The Committee requests the Government to inform it of any developments in this regard.*

511. *The Committee further notes the Government's indication that cases filed to the National Industrial Relations Commission (NIRC) by the management and the employees of the enterprise were pending for some time due to the suspension of the NIRC, but that since the resumption of its work, cases are being dealt with expeditiously and the Karachi Bench of the NIRC was asked by the Government to take up the cases relating to the enterprise as a priority. While taking due note of the efforts made by the Government to expedite the examination of the pending matters, the Committee regrets that, despite the time that has elapsed since the submission of the claims by members of the Karachi Electric Supply Corporation Labour Union (KESC), these claims are still pending and workers thus continue to lack access to effective means of redress for alleged prejudice based on trade union membership or activities. Recalling once again 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* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1142], the Committee expects the NIRC to examine the pending claims of anti-union discrimination without delay so that, where applicable, adequate remedy can be ordered and urges the Government once again to promote negotiation between the complainant and the enterprise with a view to solving any pending issues. The Committee requests the Government to inform it of any developments in this regard.*

512. *In relation to the allegations that violence was used against trade union members during the August 2011 demonstration against the refusal of the enterprise to implement the July 2011 agreement, injuring nine, the Committee notes the Government's indication that the NIRC was supposed to probe into the alleged violence of the enterprise against the workers but*

this did not occur due to the suspension of its operation. As to the allegations that 30 trade union office bearers were dismissed following this demonstration and/or criminal charges were brought against them, the Committee understands from the information provided by the Government that the 30 workers have not yet been reinstated, that the cases filed against them are under trial in the District Court of Karachi but that the Ministry of the OPHRD is engaged with the enterprise to persuade it to withdraw the pending cases and that the criminal charges filed under the Anti-Terrorism Act have been dropped by the relevant courts. While taking due note of these efforts by the Government, the Committee must regret that more than six years after the alleged incidents, an independent investigation has still not taken place into the allegations of violence, dismissals and criminal charges filed against trade unionists following the August 2011 demonstration. The Committee, therefore, urges the Government to take the necessary measures to institute an independent investigation into these allegations, with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing repetition of such acts. The Committee expects such investigation to be undertaken without delay and further expects that, should it be found that these unionists were dismissed or charged for the exercise of legitimate trade union activities, the Government will take all necessary steps to ensure their reinstatement and the dropping of all pending charges. If reinstatement is found not to be possible for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the union members concerned are paid adequate compensation so as to constitute a sufficiently dissuasive sanction for anti-union discrimination.

The Committee's recommendations

513. ***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 ensure that the July 2011 tripartite agreement is implemented, in particular that workers who refused the voluntary separation scheme are reassigned without delay, or, if reassignment is not possible for objective and compelling reasons, the concerned workers are paid adequate compensation. The Committee requests the Government to inform it of any developments in this regard.

(b) The Committee expects the National Industrial Relations Commission to examine the pending claims of anti-union discrimination filed by the Karachi Electric Supply Corporation Labour Union workers without delay so that, where applicable, adequate remedy can be ordered and urges the Government once again to promote negotiation between the complainant and the company with a view to solving any pending issues. The Committee requests the Government to inform it of any developments in this regard.

(c) In view of the gravity of the matters raised in this case, the Committee urges the Government to take the necessary measures to institute an independent investigation into the allegations that: (i) violence was used against trade union members during the August 2011 demonstration against the refusal of the company to implement the July 2011 tripartite agreement, injuring nine; and (ii) 30 trade union office bearers were dismissed following this demonstration and/or criminal charges were brought against them; with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. It expects such investigation to be undertaken without delay and further expects that, should

it be found that these unionists were dismissed or charged for the exercise of legitimate trade union activities, the Government will take all necessary steps to ensure their reinstatement and the dropping of all pending charges. If reinstatement is found not to be possible for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the union members concerned are paid adequate compensation so as to constitute a sufficiently dissuasive sanction for anti-union discrimination.

CASE NO. 3289

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

Complaint against the Government of Pakistan presented by the Building and Wood Workers' International (BWI) supported by the Pakistan Federation of Wood Workers (PFBWW)

Allegations: The complainant organizations denounce military intervention in collective bargaining, failure by two construction companies to implement a collective bargaining agreement and anti-union dismissals of union members. They also allege delays in justice and the Government's inability to ensure respect for trade union rights

514. The complaint is contained in a communication from the Building and Wood Workers' International (BWI) dated 15 June 2017 and supported by the Pakistan Federation of Building and Wood Workers (PFBWW) in a communication dated 6 July 2017.

515. The Government provides its observations in communications dated 11 January and 9 May 2018.

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

A. The complainants' allegations

517. In their communications dated 15 June and 6 July 2017, the complainants denounce military intervention in collective bargaining negotiations, failure by two construction companies to implement a collective bargaining agreement, anti-union dismissal of union members, as well as delays in justice and the Government's inability to ensure respect for trade union rights.

518. The complainants explain that the allegations in this case refer to the Neelum-Jhelum Hydropower Project in Muzaffarabad region in Azad Jammu and Kashmir – a self-governing

administrative district in Northern Pakistan. The project was developed by the Pakistan Water and Power Development Agency (WAPDA) and the construction of the power plant was undertaken by a consortium of Chinese state-owned enterprises comprising of China Gezhouba Group Company and China Machinery Engineering Corporation (hereinafter: the construction companies). The complainants allege that since the beginning of the construction, the companies failed to comply with national labour law (non-payment of the minimum wage, non-provision of contracts, etc.) which prompted the workers to form the Awami Labour Union (ALU-NJHP) in 2010. According to the complainants, in February 2010, around 700–800 workers took strike action to demand compliance with national law, as well as reinstatement of ten workers who had been previously unlawfully dismissed. Following a meeting between the union leaders and the management, an informal agreement, witnessed by the WAPDA, was reached providing for compliance with the labour law, reinstatement of the ten workers, wage increases and other benefits. However, the management of the construction companies refused to comply with the agreement, as a result of which a further strike action was taken by the ALU-NJHP in October 2011. After the strike, it was agreed that a meeting would take place between the management and the union to further negotiate but the complainants allege that inadequate protection of the right to freedom of association undermined these negotiations. In particular, they denounce that the meeting was attended by a number of military officials – the Chief Executive Officer of the construction project Lieutenant-General Muhammad Zubair, the area commander Brigadier Saaed, Major Kiani and one captain whose name is not known – who made specific threats to the union leaders and demanded they sign a document concerning the termination of a union member who had been blamed by the companies for allegedly stealing petrol but whose termination the union considered to be for anti-union reasons. The complainants consider that the fact that the military intervened in a meeting following a strike action and threatened trade union leaders amounts to a serious violation of the right to freedom of association.

519. The complainants further indicate that despite the alleged military intervention and associated threats, an agreement was reached on 19 October 2011 between the ALU-NJHP and the companies' management on a number of matters concerning working conditions at the construction site (provision of appointment letters, medical facilities, safety equipment, overtime and holiday benefits and compliance with labour law). Although the agreement was to be applied with immediate effect, the complainants denounce the companies' failure to implement its terms and conditions for a prolonged period of time, even though they were requested to do so on numerous occasions by the union, the regional administration and the judiciary. In particular, in June 2012, the ALU-NJHP submitted an application to the Muzaffarabad Labour Court demanding implementation of the October 2011 agreement; in its decision of 3 April 2013, the Court stated that participants to the agreement are bound to act upon its terms and conditions. In May 2013, the Principal Staff Officer to the Prime Minister of Azad Jammu and Kashmir addressed a communication to the Secretary of the Industries and Labour Department in Muzaffarabad, noting that he had received a letter from the ALU-NJHP President requesting assistance in implementing the April 2013 court decision and the October 2011 agreement and demanded that appropriate necessary action be promptly taken. In June 2013, the Joint Director of Labour for Muzaffarabad directed the companies to implement the court order immediately and to report back. According to the complainants, the companies nevertheless refused to implement the agreement and the above letter of the Joint Director of Labour constitutes the only engagement of the Government to ensure compliance with the collective agreement. The complainants further indicate that in view of this continued refusal to implement the October 2011 agreement, on 20 February 2014, the ALU-NJHP began the process of negotiating a new agreement, provided the management with a charter of demands and requested for bilateral negotiations to start within ten days, as specified in section 31(2) of the Industrial Relations Order, 1974. On 3 March 2014, negotiations began and while some points were agreed on, others remained unresolved and the parties were to meet again within a week. However, the complainants allege that a

month later, still no meeting had been called and the ALU-NJHP President addressed a letter to the construction companies explaining that there was great unrest among the workers working on the project.

520. The complainants also allege that in response to the ALU-NJHP's efforts to improve working conditions and conclude a collective agreement, the companies victimized trade union leaders and activists. According to the complainants, around 180 union members were unjustifiably dismissed during the duration of the construction process and in June 2012, on application of the union, the Azad Jammu and Kashmir District Labour Court granted a stay order, restraining the companies from dismissing any further workers. However, in September 2012, a further 64 workers and union members engaged by the companies' subcontractor were terminated and the ALU-NJHP applied to the District Judge in Muzaffarabad alleging contempt of court for failure to comply with the June 2012 stay order and demanding an order of reinstatement for the 64 workers. The complainants allege that among the dismissed workers were four particularly active union officials and activists – Muhammad Abdul Rasheed, Qamar Zaman, Ghulam Murtaza and Waqas Naseem – who were terminated due to their trade union activities and without due process under Pakistani labour law. Although they have sought justice through the judicial system, their cases remain outstanding, subject to unreasonable delay. The complainants provide the following detailed information:

– On 2 January 2013, Muhammad Abdul Rasheed, a safety inspector employed at the construction for more than three years, was terminated from his post without complying with the process required under Pakistani labour law (the employer can terminate an employee on grounds other than misconduct provided a month's notice is served in writing on the employee or the employee is paid one month's wages; the employer is required to provide an order in writing explicitly stating reasons for the action taken). According to the complainants, there had been no previous complaints about Rasheed, to the contrary, he had been awarded a certificate indicating his work was more than satisfactory. Both the Director of Labour for Muzaffarabad and the ALU-NJHP President addressed a letter to the management requesting the companies to pay Rasheed's termination benefits and an application was submitted to court on his behalf demanding his reinstatement and alleging contempt of court due to the violation of the June 2012 court order restraining the companies from dismissing further workers. This application was also supported by a letter of the Joint Director of Labour for Muzaffarabad. The complainants indicate that when on 3 April 2013, the Court issued its decision demanding the companies to comply with the collective agreement of October 2011, it did not pronounce itself on the possible contempt of court and rejected the application to set aside the notification of termination of Rasheed. The ALU-NJHP therefore lodged an appeal before the High Court/Labour Appellate Tribunal of Azad Jammu and Kashmir asking to set aside the order of 3 April 2013, declare contempt of court and order reinstatement of Rasheed. The ALU-NJHP President also sent a letter to the Prime Minister of Azad Jammu and Kashmir requesting assistance on the matter. Rasheed's case subsequently became a core demand of the ALU-NJHP and also appeared in its charter of demands in February 2014. On 3 September 2015, the Labour Appellate Tribunal found that the court order of 3 April 2013 did not incorporate the contents of the application for initiating contempt, set it aside and remanded the case to the Muzaffarabad Labour Court to be decided anew within 60 days.

– On 5 December 2013, an application was filed to court regarding Qamar Zaman who was allegedly removed from service due to his trade union membership and activities, as the companies did not allow anyone to become union members and knew about the workers who were union members and their activities. A separate application was filed requesting the issuance of a stay order restraining the companies from terminating any further workers until Zaman's case is disposed of. On 10 September 2014, the Labour

Court noted that a collective agreement had been negotiated between the parties in October 2011, that no written termination was provided for Zaman's dismissal and that the Labour Welfare Department also supported Zaman's case. The Court thus declared the termination unlawful and void and directed the companies to follow the earlier judgment of 3 April 2013 to which both the ALU-NJHP and the companies were parties.

– An application was filed in the District Labour Court Muzaffarabad for Ghulan Murtaza and for Waqas Naseem on 3 February and 17 May 2014 respectively. Both applications demanded implementation of the October 2011 agreement, as well as reinstatement or payment of termination benefits of the two workers, who were allegedly dismissed verbally, without show cause notice, and due to their participation in the struggle for the workers' rights, as the companies did not allow any workers to become members of a union. For instance, Murtaza had, on a number of occasions, approached the companies requesting them to implement the October 2011 agreement. Separate applications were also submitted to court requesting a stay order to restrain the companies from terminating any further workers during the duration of the cases.

521. Finally, the complainants denounce the Government's failure to intervene and address the pending conflicts and its active role in trade union discrimination and repression, which they perceive as part of a deliberate attempt to undermine the work of the PFBWW. They allege that poor protection of the right to freedom of association leads to a decrease in health and safety standards on infrastructure projects, which has caused the death of several tens of workers in recent years, and the inability of construction unions to successfully conclude and implement collective agreements, restricts the rise in living standards in the concerned regions.

B. The Government's reply

522. In its communications dated 11 January and 9 May 2018, the Government indicates that the alleged military intervention during collective bargaining negotiations in October 2011 was limited to attendance of a military representative to the momentary dispute with the companies but that no military action whatsoever was taken against any union bearers. After the meeting, the military was never involved in any matters relating to the hydropower project, as military involvement is not permissible under the law of Pakistan and Azad Jammu and Kashmir unless there arises a very serious law and order situation and the military is called to assist the civil administration.

523. The Government further states that according to the contract concluded with one of the companies, the contractors are bound to follow the relevant labour rules and the contract administrators never compromised on labour laws, as this was never the policy of the WAPDA. Although the complainants give the impression that the construction companies violated all labour laws and commitments, the Government indicates that only some inadvertent minor mistakes might have occurred. The Government provides further details on matters that have been complied with, including payment of daily wage, bonus, overtime and religious holidays, compensation in case of injuries, free medical treatment, as well as provision of free residences and safety equipment. It also states that since the work on the project has been substantially completed, there was an overwhelming demand from the ALU-NJHP and the workers for payment of terminal benefits by the contractor of the project at the time of termination of employment and the WAPDA arranged a number of meetings between the union and the contractor for this purpose. As a result of these efforts, an agreement was signed between the parties on 20 December 2017, in which the contractor agreed to pay all benefits as per the law and around 4,000 workers have benefitted from it. The Government adds that the process has been completed in a fair and transparent manner,

that there is currently no concern relating to the ALU-NJHP and that industrial relations are extremely satisfactory.

524. Furthermore, the Government clarifies that while it is true that four workers were terminated, according to the companies' record, they were not terminated on the basis of their activities in the trade union but due to poor performance. According to the companies, the complaint submitted does not accurately reflect the facts and they specify that: the workers were not punctual in their duties with unsatisfactory performance, they used to incite others not to follow the procedures and compromised safety standards. In addition, before termination, the workers were served with notices for improvement which proved ineffective. After termination, the workers resorted to court and their cases are still under litigation but any decision or ruling of the court will be implemented as per the law.

C. The Committee's conclusions

525. *The Committee notes that the complainants in this case denounce military intervention in collective bargaining negotiations, failure by two construction companies to implement a collective bargaining agreement, anti-union dismissal of union members, as well as delays in justice and the Government's inability to ensure respect for trade union rights.*

526. *The Committee notes the complainants' allegations that inadequate protection of the right to freedom of association undermined the collective bargaining process at the Awami Labour Union (ALU-NJHP). The complainants allege in particular that the negotiations that took place in October 2011 between the union and the employer (the construction companies) with a view to improving the working conditions at the construction site were attended by several military officials who threatened the trade union leaders and demanded they sign a document concerning the dismissal of one union member. The Committee observes that while the complainants allege that this military intervention which followed a strike action amounts to a serious violation of trade union rights, the Government indicates that although a military representative attended the meeting involving a momentary dispute with the employers, no military action was taken and that according to the law, the military may only get involved if they are called to assist in situations of serious threat to law and order. The Committee understands from this information that the presence of the military during the negotiations is not contested by either of the parties but that their views differ on the exact role played by the military. The Committee also observes that it remains unclear from the information provided why military presence during collective bargaining negotiations between the trade union and the employer was necessary, especially considering that the Government does not suggest that there was any threat to the law and order during that period. In this regard, the Committee recalls that the voluntary negotiation of collective agreements, and therefore the autonomy of the bargaining partners, is a fundamental aspect of the principles of freedom of association and that the intervention of the army in relation to labour disputes is not conducive to the climate free from violence, pressure or threats that is essential to the exercise of freedom of association [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, paras 1313 and 929]. The Committee further wishes to emphasize that military presence during collective bargaining negotiations may have an intimidating effect on the parties and thereby a significant impact on the collective bargaining process as a whole, as well as on the content of any agreement concluded. In view of the above, the Committee expects the Government to take the necessary measures to ensure that in the future the military does not directly or indirectly participate in collective bargaining negotiations.*

527. *The Committee further notes that while the complainants denounce the employers' prolonged failure to implement the agreement concluded in October 2011, despite an intervention from the regional administration to this effect and a court order indicating that parties to the settlement are bound to act upon its terms and conditions, the Government, for*

its part, states that although some minor infractions to the labour law may have occurred at the construction site, the companies generally complied with national labour laws. The Committee also notes that the Government provides a list of criteria respected by the employer, including payment of adequate wages and various compensation benefits, and observes that its statement seems to suggest that at least some matters covered by the 2011 agreement or those contained in the 2014 charter of demands were in general terms implemented by the employers. The Committee further observes from the information provided by the Government that as a result of its efforts, an agreement was signed between the union and the contractor in December 2017 providing for the payment of terminal benefits to workers and that, since the project has been substantially completed, around 4,000 workers benefited from it. While noting with interest that the parties were finally able to conclude a new agreement, the Committee finds it important to recall, especially in view of the opposing views expressed above with regard to the implementation of the 2011 collective agreement, 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 ***Compilation****, op. cit., para. 1336]. With regard to the complainants' allegations that the companies did not fully participate in the negotiations of a new agreement in 2014, the Committee recalls that the principle that both employers and trade unions should negotiate in good faith and make efforts to reach an agreement means that any unjustified delay in the holding of negotiations should be avoided [see* ***Compilation****, op. cit., para. 1330]. In light of the above and while taking due note of the fact that the construction project is at its concluding stage, the Committee expects the Government to take any necessary measures to ensure that for the remainder of the project, the December 2017 agreement concluded between the trade union and the employers is fully implemented and that, should any further negotiations take place at the construction site, the principle of bargaining in good faith will be fully respected by all parties. The Committee requests the Government to keep it informed of any developments in this regard.*

528. *The Committee further notes that the complainants denounce unlawful dismissals of around 180 workers at the construction site during the past years, without however providing details as to the exact reasons for and circumstances of their dismissals, with the exception of four active trade union leaders and activists. In this regard, the complainants allege that they were dismissed verbally without show cause notice and thus in violation of national labour law and that their dismissals were motivated by trade union membership and activities. The Committee observes that applications were filed to court to declare the dismissals unlawful, that these applications are based on the alleged lack of a written termination notice but also refer to trade union activities of the workers and that the trials are still pending, leading the complainants to denounce the considerable delays in justice. The Committee notes, that contrary to the above allegations, the Government states that according to the companies' records, the four workers were terminated due to their poor performance and failure to follow procedures and were also served with notice to improve their conduct before being dismissed. While observing that the complainants and the Government have opposing views on the nature of the dismissals of the four trade unionists, the Committee considers that when trade union leaders are dismissed without an indication of the motive it becomes extremely difficult for them to prove that the real motive for dismissal was to be found in their trade union activities. In these circumstances, the Committee must recall that no person should be prejudiced in employment by reason of legitimate trade union activities and cases of anti-union discrimination should be dealt with promptly and effectively by the competent institutions [see* ***Compilation****, op. cit., para. 1077]. In light of the above, the Committee requests the Government to take the necessary measures to ensure that the court cases relating to the dismissals of the four trade union leaders are rapidly concluded and effectively implemented by all parties and to provide it with copies of the final decisions. While noting that the construction project is at its concluding stage, the Committee requests the Government to ensure that trade union leaders dismissed unlawfully are reinstated*

without further delay or, once the project has been finalized and reinstatement is impossible for objective and compelling reasons, paid adequate compensation and any incumbent benefits.

529. *Finally, the Committee notes the complainants' general allegation that the Government failed to ensure respect for trade union rights, as it did not take sufficient measures to address and remedy the above issues, including the failure by the companies to implement the collective agreement and to reinstate the dismissed workers. While observing that some measures, such as letters, appeals to the construction companies and organization of meetings, were made by the Government of Azad Jammu and Kashmir and the WAPDA, the Committee must indeed recall that the ultimate responsibility for ensuring respect for the principles of freedom of association lies with the Government [see* ***Compilation****, op. cit., para. 46] and that it is thus upon the Government to take all necessary measures to this effect.*

The Committee's recommendations

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

(a) The Committee expects the Government to take the necessary measures to ensure that in the future the military does not directly or indirectly participate in collective bargaining negotiations.

(b) While taking due note of the fact that the construction project is at its concluding stage, the Committee expects the Government to take any necessary measures to ensure that for the remainder of the project, the December 2017 agreement concluded between the trade union and the employers is fully implemented and that, should any further negotiations take place at the construction site, the principle of bargaining in good faith will be fully respected by all parties. The Committee requests the Government to keep it informed of any developments in this regard.

(c) The Committee requests the Government to take the necessary measures to ensure that the court cases relating to the dismissals of the four trade union leaders are rapidly concluded and effectively implemented by all parties and to provide it with copies of the final decisions. While noting that the construction project is at its concluding stage, the Committee requests the Government to ensure that trade union leaders dismissed unlawfully are reinstated without further delay or, once the project has been finalized and reinstatement is impossible for objective and compelling reasons, paid adequate compensation and any incumbent benefits.

CASE NO. 3127

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

Complaint against the Government of Paraguay presented by the Single Confederation of Workers of Paraguay (CUT)

Allegations: The complainant alleges the absence of dialogue and collective bargaining, mass anti-union dismissals, and failure to respect trade union immunity

531. The complaint is contained in a communication dated 31 March 2015 from the Single Confederation of Workers of Paraguay (CUT).

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

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

A. The complainant's allegations

534. In its communications of 31 March and 20 April 2015, the complainant organization denounces action taken against the Yacyretá Binational Entity Employees' Union (SEMEBY), affiliated to the CUT, by the Argentine–Paraguayan Yacyretá hydroelectric power plant (hereinafter: binational entity). The CUT alleges that the use of force, ideological violence, discrimination and systematic anti-union persecution are widespread at the binational entity, and negotiation of a collective agreement – let alone of any internal regulations – is not allowed. The complainant alleges that anti-union persecution has been occurring since August 2013.

535. According to the complainant organization, the binational entity has arbitrary recourse to its founding treaty despite the fact that, under the terms of the treaty, the authorities' conduct is subject to the laws in force in each country. The CUT also states that the binational entity adopted new internal regulations behind the backs of the workers without consulting the trade unions. In its opinion, the binational entity used this instrument to launch a campaign of dismissals, thereby causing a serious labour dispute within the entity. The CUT adds that the union members expressed the wish to talk to the director of the entity on several occasions but the latter refused to see the workers. Furthermore, the CUT indicates that the new regulations do not recognize the Paraguayan Labour Code and do not safeguard seniority or trade union immunity. In this regard, the complainant alleges that the binational entity sent a note to the Government stating that staff regulation matters cannot be addressed through the laws of either of the States signatory to the agreement but are subject to the machinery of international law, in the particular case of the binational entity, by the standards established by it. The CUT asserts that, according to the binational entity, the founding treaty prevails unquestionably over the laws of either of the signatory States (Argentina and Paraguay).

536. As regards the mass dismissals, the complainant organization alleges that from 15 August to 31 December 2013 hundreds of dismissals occurred for ideological reasons and trade union

persecution occurred within the binational entity. The CUT indicates that the dismissals included those of 40 SEMEBY members. According to the complainant, the dismissals were unjustified and evidently stemmed from discrimination of a partisan and ideological nature. In its opinion, the measure is part of the downsizing of government structures by the current national executive, involving the dismissal of persons branded as "leftists" purely for having gained entry under the last national executive, in 2008. The CUT indicates that since this was a case of mass dismissals, authorization should have been sought from the labour administrative authority, but this did not happen. The complainant adds that Argentine law, which applies at the binational entity, prohibits mass dismissals except for reasons of force majeure. In this respect, the complainant alleges that the binational entity failed to send its representative to a tripartite meeting scheduled for 28 November 2013 which had been convened by the Ministry of Justice and Labour to deal with the reinstatement of 800 dismissed workers.

537. The CUT also adds that the dismissals included leaders who enjoyed trade union immunity (such as negotiators of the collective agreement on conditions of work), a delegate at the office in Encarnación, and a founding member of SEMEBY. In this regard, the complainant indicates that appeals from 32 of the 40 dismissed SEMEBY members are in progress.

538. As regards the dismissal on 18 November 2013 of Mr Jorge Luis Bernis, collective agreement negotiator and general secretary of the union, the complainant indicates that: (i) by Decision No. 1385 of 13 December 2012 of the Office of the Deputy Labour and Social Security Minister, Mr Bernis had been recognized as a negotiator of the collective agreement; (ii) under section 319 of the Labour Code, Mr Bernis had double trade union immunity on account of being both the general secretary of SEMEBY, with over 200 members, and a negotiator of the collective agreement; (iii) on 19 November 2013, Mr Bernis filed an appeal for reinstatement in trade union office and payment of outstanding remuneration, and requested the precautionary measure of reinstatement; (iv) on 20 November 2013, Mr Bernis attached to his appeal the certificate of trade union immunity issued by the supreme labour authority; and (v) however, observing the pressure that existed and the collusion of high-ranking officials within the binational entity and the Government, Mr Bernis decided to withdraw the appeal and accept the partial compensation provided in the staff regulations. In this regard, the complainant alleges irregularities in the judicial proceedings and interference by the Government and the binational entity, in particular: (i) in the precautionary measure for the reinstatement of Mr Bernis, the CUT alleges that the judge showed active bias favouring the employer in the production of evidence by requesting a series of background documents from the Ministry of Justice and Labour which were used in the binational entity's presentation; (ii) on 2 December 2013, the representatives of the binational entity challenged the appeal lodged by Mr Bernis without the due notification having occurred (according to the complainant, this abuse of procedure was intended to put pressure on the judge, and on 3 December 2013, the response was allowed by order, in violation of the principles of labour law); (iii) as regards union immunity, the CUT denounces the statement by the Legal Director at the Ministry of Justice and Labour that Mr Bernis does not have union immunity because the negotiation of the collective agreement was the subject of judicial proceedings (this constituted interference in the union's decision, with disregard for the certified trade union immunity of Mr Bernis and lack of competence to interpret the labour legislation); and (iv) on 18 November 2014, the Minister of Labour annulled the trade union immunity granted to Mr Bernis and two other union members by Decision No. 534/14 (in this regard, the CUT indicates that revocation of notified acts such as the registration of trade union immunity for a collective agreement negotiator is restricted to cases of clear irregularities, and denounces the fact that the power of the administration prohibits the revocation of regular administrative acts that grant subjective rights once they have been notified).

539. Furthermore, the CUT denounces that for 40 years the binational entity has not negotiated a single collective agreement, contrary to the terms of section 334 of the Labour Code, which states as follows: "Any enterprise that employs 20 or more workers shall have the obligation to conclude a collective agreement on conditions of work. The general conditions shall be negotiated with any organized trade union that exists there." According to the complainant organization, the entity is failing to comply with its statutory obligation to conclude, sign and validate a collective agreement.

540. In addition, the complainant organization reports persecution of labour judges. In this regard, it alleges that two judges were reported and suspended for having reinstated officials in their posts at the binational entity. It adds that the competence to interpret and enforce labour regulations and the rules of labour procedure in the event of a dispute lies exclusively with the labour courts and tribunals and not, as has occurred in practice, with the Judicial Disciplinary Board.

B. The Government's reply

541. In its communication of 25 July 2016, the Government sent its observations relating to the allegations made by the complainant organization. As regards the allegations concerning the arbitrary use of the founding treaty, the Government indicates that the binational entity is a Paraguayan–Argentine undertaking with equal capital investment, established under a treaty signed by the Republic of Paraguay and the Argentine Republic on 3 December 1973, and ratified in Paraguay by Act No. 433 of 3 December 1973. The Government indicates that the entity is governed by the provisions of the treaty, its annexes and other diplomatic instruments in force. With regard to labour matters, the Government indicates that the binational entity is governed by the "labour and social security protocol" adopted in Paraguay through Act No. 606 of 19 November 1976.

542. As regards the allegations concerning trade union immunity, the Government states that the certificate of trade union immunity for Mr Jorge Luis Bernis and Mr Hernan Viera, as collective agreement negotiators, was registered at the Department of Collective Relations and Registration on 20 November 2013. However, the Government indicates that Decision No. 534/14 of the Office of the Deputy Minister of Labour annulled the aforementioned certificate.

543. As regards the dismissal of members of SEMEBY, the Government indicates that the Collective Dispute Mediation Department at the Ministry of Labour stated that a note was submitted denouncing the mass dismissal of workers, and this led to the scheduling of a tripartite meeting for 28 November 2013 to seek conciliation between the parties. However, the Government indicates that this meeting did not go ahead because of the withdrawal of the complainant. As regards the legal actions brought in the labour court by the dismissed workers, the Government provides copies of judicial decisions relating to six of the lodged appeals. These judicial decisions show that: the case of Mr Jose Rafael Ciro Rojas is before the Labour Appeal Court; the cases of Mr Hernan Ignacio Viera Zorrilla, Mr Ymer Hanamel Garay Sanchez and Ms Andrea Lorena Pintos Santander are before the first-instance labour court (second rota); the case of Mr Jorge Luis Bernis concerning restoration of union status was before the third rota of the court but the union leader withdrew his complaint; and in the case of Ms Rogelia Esmelda Zarza Sanabria, the action was declared out of time at the appeal stage.

544. As regards the negotiation of a collective agreement on conditions of work, the Government indicates that a note of 8 March 2016 from the Secretariat-General of the Office of the Deputy Labour Minister stated that no collective agreement relating to the binational entity has been registered and no decision validating a collective agreement has been issued.

545. The Government indicates, in a communication dated 6 April 2016, that the binational entity categorically rejected the allegations made in the complaint. The Government adds that it asked the entity to expand its response and provide more details of the events that occurred, with supporting documentary evidence.

C. The Committee's conclusions

546. *The Committee notes that the present case is concerned with allegations of absence of dialogue and collective bargaining, mass dismissals of trade union leaders and members, and failure to respect trade union immunity.*

547. *As regards the allegations of mass anti-union dismissals and failure to respect trade union immunity, the Committee notes the complainant organization's indications that: (i) in the context of mass dismissals of hundreds of workers on ideological and anti-union grounds, approximately 40 leaders and members of the SEMEBY union were dismissed between 15 August and 31 December 2013 (the complainant supplies the names of 32 dismissed members who lodged appeals with the labour tribunals); and (ii) in the case of the SEMEBY general secretary and collective agreement negotiator Mr Jorge Luis Bernis, the trade union immunity that he enjoyed was not respected and there was interference by the authorities in the proceedings that were conducted, until the aforementioned union leader, on account of the pressures and perceived irregularities, decided to withdraw from the judicial proceedings and accept partial compensation. In this regard, the Committee notes that the Government: (i) has provided copies of the judicial decisions relating to six of the appeals referred to by the complainant (from the content of these decisions, the Committee understands that, at the time of the Government's communication, four of the court cases were still in progress and two had been concluded without entering into the substance, one on account of withdrawal, the other for having expired); and (ii) indicates that Decision No. 534/14 of the Office of the Deputy Labour Minister annulled the trade union immunity of Mr Jorge Luis Bernis and of another negotiator of the collective agreement on conditions of work. The Committee observes that the Government has not sent a copy of Decision No. 534/14, does not specify any grounds for annulling the union immunity, and does not make any observation regarding the allegations of interference by the authorities. Furthermore, the Committee notes that, in view of the report of mass dismissals, the Collective Dispute Mediation Department at the Ministry of Labour scheduled a tripartite meeting for 28 November 2013 with a view to achieving conciliation but that the information provided by the parties with regard to the meeting differs: the complainant alleges that the initiative was unsuccessful because the binational entity did not send its representative, while the Government indicates that the meeting was not held because of the withdrawal of the complainant.*

548. *Expressing regret at not having more information on these serious allegations of mass anti-union dismissals despite the time that has elapsed (information has only been received on six of the 32 appeals referred to by the complainant organization and so far there has been no comment whatsoever on the alleged anti-union motives), the Committee recalls that complaints against acts of anti-union discrimination should normally be examined by national machinery which, in addition to being speedy, should not only be impartial but also be seen to be such by the parties concerned, who should participate in the procedure in an appropriate and constructive manner [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1152]. The Committee requests the Government to take the necessary steps to investigate the alleged anti-union motives for the mass dismissals and to keep it informed in this respect, particularly with regard to the outcome of the judicial proceedings under way, and to send copies of the respective rulings.*

549. *The Committee also notes that the complainant organization: (i) denounces the absence of collective bargaining at the binational entity (emphasizing that for 40 years the binational*

entity has not negotiated a single collective agreement, and that the above allegations of anti-union action and interference were connected with an attempt to negotiate); and (ii) alleges that the binational entity, without consulting the trade union, adopted new internal regulations which do not recognize the applicability of the Labour Code, particularly with regard to trade union immunity, and that these were used in the campaign of dismissals. Furthermore, the Committee notes the Government's statements that: (i) there is no record in its registers of any collective agreement on conditions of work relating to the binational entity, or any decision validating a collective agreement; and (ii) for labour matters, the binational entity is governed by the "labour and social security protocol" adopted in Paraguay by Act No. 606 of 19 November 1976 (the Committee has noted the fact that under section 4 of the protocol the trade union rights of workers at the binational entity are determined by the law of the country in which the workers are hired).

550. *In this regard, the Committee underlines the importance that it attaches to the promotion of dialogue and consultation. It recalls that measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements; and it recalls the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations [see* ***Compilation****, op. cit. paras 1231 and 1327]. The Committee requests the Government to take the necessary steps to promote within the binational entity: (i) collective negotiation in good faith on conditions of work; and (ii) social dialogue and consultation between the parties to address any issues that are still pending, including with regard to the internal regulations of the binational entity, in the light of the principles of freedom of association and collective bargaining. The Committee requests the Government to keep it informed in this respect.*

551. *The Committee observes that despite the time that has elapsed since the presentation of the complaint, no detailed information has been received from the binational entity concerning these allegations, other than a denial thereof, despite the Government's indication that it asked the entity to expedite this process. The Committee requests the Government to seek information from the employers' organization concerned, so that the Committee may be apprised of its views and those of the binational entity.*

The Committee's recommendations

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

(a) The Committee requests the Government to take the necessary steps to investigate the alleged anti-union motives for the mass dismissals and to keep it informed in this respect, and particularly with regard to the outcome of the judicial proceedings under way, and to send copies of the respective rulings.

(b) The Committee requests the Government to take the necessary steps to promote within the binational entity: (i) collective negotiation in good faith on conditions of work; and (ii) social dialogue and consultation between the parties to address any issues that are still pending, including with regard to the internal regulations of the binational entity, in the light of the principles of freedom of association and collective bargaining. The Committee requests the Government to keep it informed in this respect.

(c) The Committee requests the Government to seek information from the employers' organization concerned, so that the Committee may be apprised of its views and those of the binational entity.

CASE NO. 3242

INTERIM REPORT

Complaint against the Government of Paraguay presented by
– the Authentic Central Confederation of Workers (CUT-A)
– the Union of Drivers and Employees of the La Limpeña Transport Company (route 49) and
– the Union of Drivers and Employees of the Julio Correa Transport Company (route 51)

Allegations: the complainant organizations allege dismissals and the refusal by the Ministry of Labour to recognize and approve a trade union, thereby favouring the member of Parliament owning the company concerned

553. The complaint is contained in two communications from the Authentic Central Confederation of Workers (CUT-A) dated 24 May and 13 September 2016.

554. The Government sent its reply in a communication dated 31 October 2017.

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

A. The complainants' allegations

Union of Drivers and Employees of the La Limpeña Transport Company (Bus company 1)

556. In their communication dated 24 May 2016, the complainant organizations indicate that on 24 June 2015, two days after the Union of Drivers and Employees of the La Limpeña Transport Company was established, 40 members of the union were dismissed from the company on anti-union grounds and the administrative authority refused to register the union, acting in favour of the company owner, Mr Celso Maldonado, a member of the Paraguayan Parliament.

557. The complainant organizations explain that because of their poor working conditions the transport company workers agreed on 9 June 2015 to convene a general assembly to establish a trade union. The assembly took place on 22 June 2015 with the attendance of 51 workers, the trade union was established, its constitution was adopted and its executive committee elected. The complainants indicate that on the day of the general constituent assembly, the union's executive committee sent a telegram to the company management informing them

accordingly. However, the latter allegedly failed to acknowledge receipt of the telegram until 27 June 2015.

558. The complainant organizations allege that on 24 June 2015, two days after the general constituent assembly, the company dismissed the trade unionists with the sole objective of depriving the union of the requisite minimum of 20 members, as stipulated by section 292 of the Labour Code. The complainants indicate that: (i) ten trade unionists, including union leaders, were dismissed without a valid reason by the company, 24 union members were dismissed for dereliction of duty, three had their employment contracts suspended, five reportedly resigned from the union and the company claimed that three members were not its employees; (ii) on 15 August 2015, the company submitted a request to make payments on deposit for the ten union members dismissed without a valid reason, since the latter allegedly declined the proposed severance pay, and it filed an action to justify the grounds for dismissal against Mr Julio Osvaldo Maisana, Mr Antonio Jara, Mr Rafael Andino Bogado and another 22 members for unjustified mass dereliction of duty; (iii) 44 workers filed complaints against the company for dismissal; and (iv) in response to the anti-union dismissals that took place on 24 June 2015 and in view of the unwillingness of the Ministry of Labour, Employment and Social Security to approve the registration of the union, 23 union members, including the general secretary and the records secretary, decided to hold a crucifixion protest opposite the ministry building.

559. The complainant organizations indicate that the Ministry of Labour convened a round table for settling the dispute between the company and the trade union. The documentation sent by the complainants shows that: (i) the representatives of the company did not attend the first meeting on 20 July 2015; (ii) at the second meeting, on 21 July 2015, the company representative said that the situation of the first ten dismissed workers was non-negotiable but indicated the possibility of dialogue regarding the other dismissed trade unionists; (iii) during the meeting of 4 August 2015, the signature of the president of the Paraguayan Transport Workers' Federation was allegedly forged, whereupon the president filed a complaint with the Public Prosecutor's Office.

560. According to the complainant organizations, the action of the Ministry of Labour was politically motivated. They indicate that: (i) on 17 July 2015, the company asked the Ministry to reject the application for provisional registration of the trade union on the grounds that the minimum number of members had not been attained; (ii) on 23 July 2015, the Legal Advice Department at the Ministry of Labour stated in opinion No. 796/2015 that in order to obtain provisional registration the union needed to rectify some defects in terms of form, attach a copy of the record of the constituent assembly and amend the union's constitution, although the opinion did not include the objection made by the company; (iii) on 17 August 2015, the union responded to the objections made by the company and the Legal Advice Department regarding its provisional registration; these communications show that the union considers that it met all the formal legal requirements, it denies that it failed to inform the company management of the establishment of the union until 27 June 2015 or that it admitted individuals from outside the company as members of the union; (iv) on 4 September 2015, the Legal Advice Department issued opinion No. 1088/2015 indicating that the union had still not fully met all the requirements referred to previously and again asked the union to send the original and a certified copy of the act of constitution, to send information on the members who attended, and to communicate the balance of the social funds; (v) on 17 September, the trade union sent the information requested in opinion No. 1088/2015 but indicated with regard to the certified copy of the act of constitution that the general secretary, Mr Miguel Garcete, and the records secretary, Mr Esteban Álvarez, were not in a position to provide signatures since both were participating in the crucifixion protest, and so authorization was given through the signatures of other members of the executive committee; (vi) on 15 October 2015, the Legal Advice Department indicated once again that Mr Miguel Garcete and Mr Esteban Álvarez, in their respective capacities as

general secretary and records secretary, had to comply with section 294(a) of the Labour Code, and that to date they had not signed the certified copy of the act of constitution, "other persons having done so instead of them, without having explicit authorization to sign such documents"; (vii) on 20 October 2015, in a communication to the Labour Director-General, the union attached, in compliance with the abovementioned opinion issued in October, the certified copy of the act of constitution, and also the notarial act of confirmation and authorization of the general secretary and the records secretary, indicating that the latter "were unable to sign any required documents since their hands were nailed", and authorizing the finance secretary, the legal affairs secretary and the disputes secretary to sign all necessary documents; (viii) on 19 November 2015, the Ministry of Labour, by decision No. 44, provisionally registered the union and gave the union 30 days to validate all the legal measures adopted prior to this date; (ix) on 7 December 2015, the general secretary and the records secretary, since they were no longer incapacitated, validated their previous measures; (x) on 17 December 2015, the company once again objected and called for the definitive registration of the union to be refused; and (xi) on 2 May 2016, the Ministry of Labour issued decision No. 257 setting forth the objections made against the definitive registration of the trade union, stating that "it was not valid to argue that at the time of the constituent assembly the dismissed individuals were workers of the company; rather, what was relevant was to determine the number of members remaining in the union further to the dismissals for various reasons". The union appealed against this decision, calling for it to be declared null and void.

561. The complainant organizations emphasize that the Ministry of Labour filed an appeal for *amparo* (protection of constitutional rights) against 17 members of the trade union, since its members had set up tents opposite the Ministry and a number of them had engaged in a crucifixion protest, thereby causing a breach of the peace and disrupting public services. The information sent by the complainants shows that on 10 November 2015 the Court of First Instance dismissed the *amparo* appeal, that decision was appealed against by the Ministry, and on 22 February 2016 the Agreements Division of the First Chamber of the Criminal Appeals Court in turn dismissed the Ministry's appeal.

Union of Drivers and Employees of the Julio Correa Transport Company (Bus company 2)

562. The complainant organizations allege that, in the context of a bidding process for the operation of route 51, the successful company refused for anti-union reasons to re-engage the workers of the Julio Correa Transport Company (the original licensed operator) and they denounce the lack of action by the Government in this respect.

563. The complainant organizations explain that transport companies operate on the basis of government licences, and so the public transport service is provided through private operators. They emphasize that the original licensed operator had an established, active trade union, namely the Union of Drivers and Employees of the Julio Correa Transport Company. In October 2015, the Office of the Deputy Transport Minister launched a public bidding process for the provision of passenger transport services on route 51. Two companies submitted bids but one then withdrew, leaving the San Isidro Company (the new licensed operator) as the only bidder. According to the complainants, the licence for the route was awarded on condition that the successful company would hire all the drivers and workers employed by the original licensed operator. However, on 8 January 2016, at a meeting between the union leaders, the original operator and the new operator, the trade union was informed of a public instrument which stated that the employees of the original operator "approved and endorsed" the hiring of 25 per cent of the workers.

564. The appendices and the allegations sent by the complainant organizations show that: (i) on 20 January 2016, the Deputy Labour Minister, in the context of the process to re-engage the former employees of the original licensed operator, requested the designation of representatives of the former employees to participate in the employer changeover process; (ii) on 26 January 2016, the trade union sent a list of representatives; (iii) on 17 February 2016, during a meeting with the Ministry of Labour, the Office of the Deputy Transport Minister and the management of the new licensed operator, the union gained access to the public instrument which legitimized the engagement of 25 per cent of the former employees and discovered its content to be fake; (iv) in February 2016, the union sent two requests to the Ministry of Labour and the Office of the Deputy Transport Minister to expedite procedures to enable it to become part of the committee on the re-engagement of former employees of the Julio Correa Transport Company; (v) on 18 February 2016, the union submitted a request for mediation under file No. 286/16 to the Ombudsman's Office; (vi) on 3 March 2016, the Deputy Labour Minister, Mr Cesar Agusto Sagovia, informed the union, in reply to the requests to expedite procedures, that no union representative or former employee had participated in designing the re-engagement process or come forward during the 30-day employer changeover period; (vii) on 8 March 2016, Mr Miguel Rojas, the union's general secretary, and Mr Remigio Segovia, the disputes secretary, filed a criminal complaint regarding the alleged faking of the document; and (viii) on 26 April 2016, the union filed an *amparo* appeal against the company calling for the re-engagement and reinstatement of 47 former workers. The complainants emphasize that, to date, the new operator has not hired any workers previously employed by the original operator, and they consider this to constitute a violation of freedom of association.

B. The Government's reply

Bus company 1

565. In its communication of 31 October 2017, the Government forwarded the information supplied by the Labour Directorate, in which the latter denies the allegations of the complainant organizations concerning the Ministry of Labour's refusal to register or recognize the trade union. The Government indicates that, by decision No. 44 of 19 November 2015, the Ministry provisionally registered the union in accordance with the procedure established in section 300 of the Labour Code, the company made objections to this registration, and decision No. 257 was issued on 2 May 2016, setting out the objections to the provisional registration of the union.

566. The Government indicates that the trade union appealed against the decision of the Ministry of Labour and that the case file was referred to the judiciary for processing. On 30 November 2016, the Labour Appeal Court declared null and void the procedural measures on which the appeal filed on 19 July 2016 was based, and also declared the appeal filed by the union to be null and void. Subsequently, on 11 August 2017, the Supreme Court of Justice rejected the union's action to have the decision of the Labour Appeal Court declared unconstitutional, on the grounds that there was no indication of the alleged arbitrariness, that no specific infringement of constitutional provisions had been demonstrated, and no violation of the right of defence or due process had occurred.

567. Furthermore, the Government sent note No. 294/17 of the register of employers and workers dated 27 March 2017, indicating that the company was registered until 2015. The Government rejects the allegation of lack of action to settle the dispute. Specifically, it indicates that the Collective Disputes Mediation Department attached to the Ministry of Labour convened two tripartite meetings for the purpose of addressing the situation of the transport company workers.

568. Moreover, the Government forwarded the company's reply indicating that the union had been recognized only provisionally, and that subsequently the company had made objections because it considered that there had been irregularities in the establishment of the union, thereby contravening the provisions of the Labour Code, and that it did not have a sufficient number of members.

569. As regards the crucifixion protests held opposite the premises of the Ministry of Labour, the Government indicates that this type of demonstration does not involve the features of crucifixion associated with the Greek and Latin terms, that the state of health of the demonstrators was continuously monitored by doctors from the Ministry of Public Health and Social Welfare, and that the photos sent by the Government at the time of making a statement before the competent judge show the good physical condition of the demonstrators.

Bus company 2

570. In its communication of 31 October 2017, the Government forwarded information provided by the Ministry of Labour, indicating that the last registered executive committee of the union dates from 4 March 2014, and sent the report of the Department for the Register of Employers and Workers, which shows that the original licensed operator submitted lists of employees up to 2015.

571. The Government sent the reply of the new licensed operator referring to the court's decision regarding the *amparo* appeal filed by the union. The new operator indicates that it can be seen from the copy of the *amparo* documentation that this case involves the new operator winning a public bidding process, that the workers employed by the original operator asked to be re-engaged by the successful company and that, through public instrument No. 30/10/2015, the successful company undertook to incorporate 25 per cent of these drivers and employees in its workforce. However, no employee came forward during the 30-day employer changeover period to undertake the necessary registration for the process of re-engagement of the former employees.

572. Furthermore, the Government attached a copy of the *amparo* appeal filed by the trade union, which was declared inadmissible on 16 August 2016 on the grounds that the issue of the legitimacy of the public instrument was not a matter for the *amparo* proceedings, that another appropriate channel existed, that there had been no urgency, and that administrative and judicial procedures had not been exhausted. Subsequently, the trade union filed an appeal with the Court of Appeal for Children and Young Persons, and this was dismissed on 28 March 2017.

573. As regards the current situation of the original licensed operator, the Government states that the aforementioned company was shut down by the board of the now defunct Secretariat of Transport of the Metropolitan Area of Asunción and has ceased to operate the route concerned since 2016, when the bidding process was completed and the operation of the route was awarded to a different company.

574. In conclusion and with respect to both cases, the Government considers that there are no violations of the right of freedom of association, and that the State of Paraguay promotes the full exercise of freedom of association since this principle constitutes a fundamental element of the democratic system.

C. The Committee's conclusions

Bus company 1

575. *The Committee observes that the complainant organizations report the mass dismissal of trade unionists at a public transport company on account of the establishment of the trade union and the unjustified refusal by the labour administrative authority to grant definitive registration to the union.*

576. *The Committee observes that in its communication of 13 September 2016 the complainant organizations allege that: (i) the workers of the transport company were invited to attend a general constituent assembly on 22 June 2015 during which it was voted to establish a trade union; (ii) the executive committee of the union informed the company the same day that the union had been established but the company did not formally acknowledge receipt of this communication until 27 June 2015; (iii) on 24 June 2015, the transport company workers, all of whom were union members, were dismissed; (iv) as regards the provisional registration of the union, on 17 July 2015 the company called for the registration to be rejected, and from 23 July to 20 October 2015 the Legal Advice Department at the Ministry of Labour refused to process the registration of the trade union because of formal defects, which did not include the company's objection regarding membership, and which were reportedly rectified by the union; (v) the Ministry of Labour filed an* amparo *appeal against the members of the union because the union members had decided to hold a demonstration opposite the ministry premises; (vi) on 19 November 2015, the Ministry granted provisional registration to the union subject to the validation of all previously taken legal measures, which was effected by the executive committee on 7 December 2015; (vii) on 17 December 2015, the company once again called for the definitive registration of the union to be refused; and (viii) on 4 May 2016, the Labour Director-General rejected the union's application for definitive registration and rescinded its registration on the grounds that the employment of 42 of the 51 founding members of the union had been terminated through resignations or dismissals.*

577. *The Committee observes that the complainant organizations also formulate various allegations of dismissal of trade union leaders and members on anti-union grounds. The Committee emphasizes that, according to the complainants, ten members of the executive committee were dismissed without a valid reason and 25 other workers were dismissed for mass dereliction of duty. In addition, the Committee note the complainants' allegations indicating that the Ministry of Labour failed to act impartially, refusing to register the union with an objection to mere defects of form, and thereby favouring the owner of the company, who is a member of Parliament.*

578. *Furthermore, the Committee notes the Government's reply indicating that the Ministry of Labour at no time refused to recognize the trade union. As regards the Ministry's decision regarding the definitive registration of the union, the Government indicates that the union appealed against this decision and that on 30 November 2016 the Labour Appeals Court declared the union's appeal inadmissible. Furthermore, it notes the Government's reply denying the alleged lack of action by the Collective Disputes Mediation Department, given that the Ministry convened tripartite meetings with a view to settling the dispute. Lastly, the Committee notes the company's allegations, forwarded by the Government, indicating that there had been irregularities in the establishment of the union, involving persons from outside the company and an insufficient number of members.*

579. *As regards the refusal to register the trade union, the Committee observes that on 19 November 2015 the Ministry of Labour granted provisional registration to the trade union – without taking account of the company's allegation that there was an insufficient number of members and hence without highlighting this as a requirement that needed to be*

met – but that the registration was subsequently rescinded by a decision of the same administrative authority of 2 May 2016 on the grounds of failing to meet the requirement of 20 workers laid down in section 294 of the Labour Code. In this respect, the Committee considers that a minimum of 20 members to form a union does not seem excessive in this case. The Committee also observes that, according to the supporting documentation supplied by the complainant organizations, the union maintained an ongoing correspondence with the competent authorities and rectified all the defects of form which had been pointed out. The Committee observes that in decision No. 257 the administrative authority rejected the union's application for registration on the basis that the criterion for determining the number of union members at the company was not the number of members at the time of the constituent assembly but the number of members remaining in the union after the terminations of employment for various reasons. The Committee observes that over ten months elapsed between the date of establishment of the union (24 June 2015) and the date of the administrative authority's decision concerning the definitive registration of the union (2 May 2016). In this regard, the Committee recalls that a long registration procedure constitutes a serious obstacle to the establishment of organizations and amounts to a denial of the right of workers to establish organizations without previous authorization [see ***Compilation****, op. cit., para. 463].*

580. *As regards the dismissal of trade union leaders, the Committee notes that some 40 trade unionists in total – including at least 11 members of the executive committee – were dismissed two days after the constituent assembly was held. The Committee recalls that especially at the initial stages of unionization in a workplace, dismissal of trade union representatives might fatally compromise incipient attempts at exercising the right to organize, as it not only deprives the workers of their representatives, but also has an intimidating effect on other workers who could have envisaged assuming trade union functions or simply joining the union [see* ***Compilation****, op. cit., para. 1131]. While noting with regret that neither the complainant organizations nor the Government have provided detailed information on the labour grievances submitted by the dismissed workers and the outcome thereof, the Committee recalls that where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see* ***Compilation****, op. cit., para. 1159].*

581. *Since it is unable to rule out the possibility that the delay in proceedings may have had a negative impact on the possibility of meeting the membership requirement (with a number of resignations having occurred in this space of time, further to the alleged acts of anti-union discrimination) and of securing the registration of the union and also on the enjoyment of trade union immunity by the executive committee, and observing that: (i) in its initial examination of the application for registration the authorities did not take account of the company's objection with regard to attaining the minimum number of members; they did not include it in the list of issues to be resolved but referred to it subsequently in order to refuse registration; (ii) the reduction in the union's membership was due to the dismissal of a large number of its members a few days after the constituent assembly; and (iii) since the Committee has no knowledge of whether the alleged anti-union motives for these dismissals were investigated, it requests the Government to keep it informed of any administrative or judicial proceedings in progress and to send copies of any decisions. Lastly, in view of the seriousness of the allegations of acts of anti-union discrimination carried out in the days following the establishment of the union, the Committee recalls that in cases of the dismissal of trade unionists on the grounds of their trade union membership or activities, the Committee has requested the Government to take the necessary measures to enable trade union leaders and members who had been dismissed due to their legitimate trade union activities to secure reinstatement in their jobs and to ensure the application against the enterprises concerned of the corresponding legal sanctions [see* ***Compilation****, op. cit., para. 1167]. The Committee requests the Government to conduct an investigation into these*

acts and to take the appropriate measures in consequence. The Committee requests the Government to keep it informed in this respect.

582. *Lastly, the Committee recalls that for many years the Committee of Experts has been observing the need to strengthen the legal provisions against anti-union discrimination, the lack of appropriate penalties for non-observance of the provisions concerning trade union immunity and interference in relation to workers' organizations, and that the Committee of Experts asked the Government in the context of Case No. 3019 to hold consultations with the social partners concerning the establishment of mechanisms to guarantee effective protection against acts of anti-union discrimination, including rapid and impartial procedures, with provision for appeals and sufficiently dissuasive sanctions. The Committee hopes that the Government will send its observations on this matter without delay as part of the follow-up to Case No. 3019.*

Bus company 2

583. *The Committee observes that in the present complaint the complainant organizations report that in the context of a bidding process the successful company refused to re-engage the employees of the original licensed operator on allegedly anti-union grounds and denounce the lack of action by the competent authorities in this respect.*

584. *The Committee notes the allegations of the complainant organizations indicating that: (i) in October 2015, when the Office of the Deputy Transport Minister launched a bidding process for the operation of bus route 51, one of the conditions of the bidding process was reportedly that that the new licensed operator would give an undertaking to hire all the workers previously employed by the original licensed operator; (ii) during a meeting between the company that won the contract, the Ministry of Labour, the Office of the Deputy Transport Minister and the trade union, the latter was informed of the existence of a document allegedly agreed upon by the former employees approving the re-engagement of 25 per cent of the workers and decided to file a criminal complaint regarding the alleged faking of the document; (iii) on 20 January 2016, the Deputy Labour Minister, in the context of the process to re-engage the former employees, requested the designation of representatives of the former employees to participate in the employer changeover process, and the trade union sent its list; (iv) the union sent two requests to the Ministry of Labour and the Office of the Deputy Transport Minister to expedite procedures to enable it to become part of the committee on the re-engagement of former employees of the original licensed company; and (v) on 3 March 2016, the Deputy Labour Minister informed the union, in reply to the requests to expedite procedures, that no union representatives had participated formally in the re-engagement process and no former employee had come forward during the 30-day employer changeover period.*

585. *The Committee also notes the Government's observations indicating that: (i) the new licensed operator won the public bidding process, the employees of the original licensed operator then asked to be re-engaged by the successful company and, through public instrument No. 30/10/2015, the successful company undertook to incorporate 25 per cent of these drivers and employees in its workforce; (ii) no workers or union members came forward during the 30-day employer changeover period to undertake the necessary registration for the process of re-engagement of the former employees; (iii) the* amparo *appeal filed by the trade union in relation to the supposed forgery of signatures was dismissed by the competent authority in view of the existence of other appropriate channels; and (iv) the original licensed company was shut down and ceased to operate the route concerned as from 2016, when the bidding process was completed and the operation of the route was awarded to a different company.*

586. *While noting the different versions relating to failure to re-engage the workers by the company that was successful in the bidding process, the Committee recalls that no person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment [see* ***Compilation****, op. cit., para. 1075]. The Committee also considers that the liquidation of a company and the fact that the legal person under which the company operated has ceased to exist should not be used as a pretext for anti-union discrimination nor should they be an obstacle to the competent authorities determining whether or not there were acts of anti-union discrimination and, if such practices are shown to have taken place, to sanctioning such illegal acts and ensuring that the affected workers are duly compensated [see* ***Compilation****, op. cit., para. 1115].*

587. *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* ***Compilation****, op. cit., para. 1159], with a view to determining whether or not there was anti-union discrimination in the reported occurrences, the Committee requests the Government to take the necessary steps to conduct an investigation without delay into the allegations of failure to re-engage the employees of the original licensed operator on anti-union grounds. Moreover, the Committee invites the complainant organizations, with a view to facilitating the investigation, to send the Government information on the allegedly anti-union nature of the reported occurrences. The Committee requests the Government to keep it informed in this respect.*

The Committee's recommendations

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

(a) As regards the allegations concerning the refusal to register the Union of Drivers and Employees of the La Limpeña Transport Company and the alleged anti-union dismissals, the Committee requests the Government to keep it informed of any administrative or judicial proceedings in progress and to send copies of any decisions. In view of the seriousness of the allegations of acts of anti-union discrimination carried out in the days following the establishment of the union, the Committee requests the Government to conduct an investigation into these acts in accordance with its conclusions in this regard and to take the appropriate measures in consequence. The Committee requests the Government to keep it informed in this respect.

(b) As regards the allegations of anti-union discrimination against the Union of Drivers and Employees of the Julio Correa Transport Company, the Committee requests the Government to take the necessary steps to conduct an investigation without delay into the allegations of failure to re-engage the employees of the original licensed operator on anti-union grounds. Moreover, the Committee invites the complainant organizations, with a view to facilitating the investigation, to send the Government information on the

allegedly anti-union nature of the reported occurrences. The Committee requests the Government to keep it informed in this respect.

Geneva, 1 June 2018

(Signed) Mr Takanobu Teramoto
Chairperson

Points for decision:

paragraph 85
paragraph 120
paragraph 133
paragraph 148
paragraph 159
paragraph 213
paragraph 242
paragraph 259
paragraph 270
paragraph 296
paragraph 314
paragraph 340
paragraph 352
paragraph 378
paragraph 423
paragraph 474
paragraph 489
paragraph 501
paragraph 513
paragraph 530
paragraph 552
paragraph 588