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FIFTH ITEM ON THE AGENDA

Reports of the Committee on Freedom of Association

354th Report of the Committee on Freedom of Association

Contents

Introduction

1. The Committee on Freedom of Association set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 28 and 29 May and 5 June 2009, under the chairmanship of Professor Paul van der Heijden.

2. The members of Colombian, Japanese and Peruvian nationality were not present during the examination of the cases relating to Colombia (Cases Nos 2560, 2565, 2595, 2612 and 2668), Japan (Cases Nos 2177 and 2183) and Peru (Cases Nos 2587 and 2594), respectively.

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3. Currently, there are 134 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 26 cases on the merits, reaching definitive conclusions in 12 cases and interim conclusions in 14 cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

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

4. The Committee considers it necessary to draw the special attention of the Governing Body to Cases Nos 2268 and 2591 (Myanmar), 2318 (Cambodia) and 2323, 2508 and 2567 (Islamic Republic of Iran), because of the extreme seriousness and urgency of the matters dealt with therein.

New cases

5. The Committee adjourned until its next meeting the examination of the following cases: Nos 2698 (Australia), 2701 (Algeria), 2702 (Argentina), 2703 (Peru), 2704 (Canada), 2706 (Panama), 2707 (Republic of Korea), 2708 (Guatemala), 2709 (Guatemala), 2710 (Colombia) and 2711 (Bolivarian Republic of Venezuela), 2712 (Democratic Republic of the Congo), 2713 (Democratic Republic of the Congo), 2714 (Democratic Republic of the Congo), 2715 (Democratic Republic of the Congo), 2716 (Philippines), 2717 (Malaysia), 2718 (Argentina) and 2719 (Colombia), since it is awaiting information and observations from the Governments concerned. All these cases relate to complaints submitted since the last meeting of the Committee.

Observations requested from governments

6. The Committee is still awaiting observations or information from the Governments concerned in the following cases: Nos 1787 (Colombia), 2203 (Guatemala), 2361 (Guatemala), 2450 (Djibouti), 2516 (Ethiopia), 2518 (Costa Rica), 2557 (El Salvador), 2614 (Argentina), 2620 (Republic of Korea), 2630 (El Salvador), 2660 (Argentina), 2665 (Mexico), 2673 (Guatemala), 2675 (Peru), 2676 (Colombia), 2678 (Georgia), 2679 (Mexico), 2681 (Paraguay), 2683 (United States), 2687 (Peru), 2688 (Peru), 2689 (Peru), 2690 (Peru), 2691 (Argentina), 2692 (Chile), 2693 (Paraguay), 2694 (Mexico), 2695 (Peru), 2696 (Bulgaria), 2697 (Peru), 2699 (Uruguay) and 2700 (Guatemala).

Partial information received from governments

7. In Cases Nos 2265 (Switzerland), 2356 (Colombia), 2362 (Colombia), 2445 (Guatemala), 2522 (Colombia), 2533 (Peru), 2576 (Panama), 2596 (Peru), 2600 (Colombia), 2612 (Colombia), 2617 (Colombia), 2623 (Argentina), 2642 (Russian Federation), 2643 (Colombia), 2644 (Colombia), 2651 (Argentina), 2654 (Canada), 2659 (Argentina) and 2667 (Peru), 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

8. As regards Cases Nos 2254 (Bolivarian Republic of Venezuela), 2341 (Guatemala), 2355 (Colombia), 2422 (Bolivarian Republic of Venezuela), 2478 (Mexico), 2538 (Ecuador), 2571 (El Salvador), 2602 (Republic of Korea), 2638 (Peru), 2646 (Brazil), 2658 (Colombia), 2661 (Peru), 2666 (Argentina), 2670 (Argentina), 2674 (Bolivarian Republic of Venezuela), 2680 (India), 2682 (Panama), 2685 (Mauritius), 2686 (Democratic Republic of the Congo) and 2705 (Ecuador), the Committee has received the Governments' observations and intends to examine the substance of these cases at its next meeting.

Urgent appeals

9. As regards Cases Nos 2241 (Guatemala), 2528 (Philippines), 2609 (Guatemala), 2613 (Nicaragua), 2639 (Peru), 2640 (Peru), 2647 (Argentina), 2648 (Paraguay), 2652 (Philippines), 2655 (Cambodia), 2657 (Colombia), 2662 (Colombia), 2663 (Georgia), 2664 (Peru), 2669 (Philippines) and 2671 (Peru), the Committee observes that, despite the time which has elapsed since the submission of the complaints, it has not received the observations of the Governments. The Committee draws the attention of the Governments in question to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of these cases if their observations or information have not been received in due time. The Committee accordingly requests these Governments to transmit or complete their observations or information as a matter of urgency.

10. 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.

11. As regards the article 26 complaint against the Government of the Bolivarian Republic of Venezuela, the Committee recalls its recommendation for a direct contacts mission to the country in order to obtain an objective assessment of the actual situation.

Transmission of cases to the Committee of Experts

12. The Committee draws the legislative aspects of the following cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations: Chile (Case No. 2649), Greece (Case No. 2502), Japan (Cases Nos 2177 and 2183) and Pakistan (Case No. 2229).

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

Case No. 2433 (Bahrain)

13. The Committee last examined this case, which concerns legislation prohibiting government employees from establishing trade unions of their own choosing, at its November 2008 meeting. Stressing yet again that all public service employees (with the exception of the armed forces and police) should be able to establish organizations of their own choosing to further and defend their interests, the Committee had once again strongly urged the Government to take the necessary measures, without delay, to amend article 10 of the Trade Union Act in accordance with this principle. With respect to the disciplinary actions taken against Ms Najjeyah Abdel Ghaffar, the Committee requested the Government to take the appropriate steps to compensate her for the periods of suspension without pay imposed upon her, and to ensure that no further disciplinary action was taken against her or other members of public sector trade unions for activities undertaken on behalf of their organizations, pending the amendment to article 10 of the Trade Union Act [see 351st Report, paras 18–20].

14. In its communication of 11 February 2009, the Government indicates that the subject matter of the complaint falls within the competence of the Government sphere. The administrative system in Bahrain does not grant any authority to the Ministry of Labour with regard to employees governed by the Civil Service Act, promulgated by virtue of Act No. 35 of 2006. Ms Najjeyah Abdel Ghaffar may file a legal action with the judiciary against the Civil Service Office or the Ministry of Telecommunications in order to consider the legitimacy of the legal claim against her. Given the fact that Bahrain enjoys an impartial and independent legal system, all parties will abide by the decisions taken by the judiciary.

15. As regards amending article 10 of the Trade Union Act, the Government states that enactment and amendment of national legislation are subject to constitutional procedures. Therefore, any amendment to article 10 of the Trade Union Act will fall within the competence of the National Council. The Government has submitted the amendment to article 10 in such a way that employees in the public sector might be allowed to form their own trade unions.

16. *The Committee notes the information supplied by the Government. It deeply regrets that, while referring to the amendment to article 10 of the Trade Union Act proposed by Parliament in 2006, which granted public sector workers the right to establish trade unions of their own choosing, the Government now simply reiterates that the adoption of any such amendment depends on decisions taken by the National Council. The Committee recalls that it was the Government itself that intervened with Parliament in March 2007 to postpone adoption of the amendment to article 10 of the Trade Union Act [see 348th Report, para. 44].*

17. *The Committee further regrets the Government's indication that the remedy of Ms Najjeyah Abdel Ghaffar for the disciplinary action taken against her lies in a judicial proceeding to challenge the validity of the legal claims against her. The Committee recalls that the Government, in its communication of 26 May 2008, has indicated that the Bahraini judicial authorities have already rejected legal action taken by the General Confederation of Bahraini Trade Unions seeking authorization to form trade unions of Government employees, and that the claims against Ms Najjeyah Abdel Ghaffar occur in the circumstances where public sector workers are prohibited from forming trade unions of their own choosing, a situation which the Committee has consistently condemned as contrary to the principles of freedom of association.*

18. *Recalling that all public service employees (with the exception of the armed forces and police) should be able to establish organizations of their own choosing to further and defend their interests, the Committee once again strongly urges the Government to take the necessary measures, without delay, to amend article 10 of the Trade Union Act in accordance with this principle. It recalls once again that technical assistance of the Office is available in this regard. The Committee also expects that the Government, pending the amendment to article 10 of the Trade Union Act, will take appropriate steps to compensate Ms Najjeyah Abdel Ghaffar for the periods of suspension without pay imposed upon her, and to ensure that no further disciplinary action is taken against her or other members of public sector trade unions for activities undertaken on behalf of their organizations.*

Case No. 2382 (Cameroon)

19. In its last examination of the case at its March 2008 meeting [see 349th Report, paras 22–36], the Committee recalled the need for the Government to conduct an inquiry without delay into the conditions surrounding the detention of Mr Joseph Ze, General Secretary of the Single National Union of Teachers and Professors in the Teachers' Training Faculty (SNUIPEN), on 16 April 2004, taking into account the serious allegations of torture and extortion of which Mr Ze is said to have been the victim when in custody. The Committee also invited the Government or the complainant organization to keep it informed of any possible appeal before a competent court concerning the legality of calling a second SNUIPEN congress on 4 August 2004, as well as of any court rulings handed down in this case.

20. In a communication dated 9 May 2008, the complainant organization expresses its astonishment at the Government's statement that it has adopted a neutral position with regard to the dispute between the two opposing factions within SNUIPEN and in particular at its hope that the two factions will seek recourse to the courts to resolve the question of the legality of the congress convened on 4 August 2004. The complainant organization indicates that it is not competent to challenge in court any decisions adopted during the congress, allegedly held on 4 August 2004 by the dissident faction, given that it was never notified of such decisions. Furthermore, it indicates that there is no need to obtain validation by the courts of the legitimate national congress which was held on 28 September 2006. The complainant organization further recalls that the various administrative authorities were notified of the change in the composition of the members of the SNUIPEN executive following the congress held in September 2006. It also recalls the numerous formal complaints which it has registered with the State authorities relating to interference in its activities and regrets that no corrective steps have been taken by the Government to give effect to the recommendations of the Committee on Freedom of Association.

21. The complainant organization recalls in particular the Committee's previous recommendations concerning the need for an inquiry to be conducted by the Secretary of State for Defence into the events surrounding the interrogation and detention of Mr Ze from 16 April 2004 based on a decision adopted by the dissident faction of SNUIPEN. The complainant organization indicates that no inquiry has been conducted to date and adds that, based on the same accusations and documents from the dissident faction, Mr Ze was summoned by the Criminal Investigation Division of the Centre Region on 12 March 2007 and again on 17 March 2008. When summoned for the second time, Mr Ze was informed that he would be detained in custody and brought before the Public Prosecutor. He was released from custody on 24 March 2008 without being heard. For the complainant organization, these events illustrate the judicial harassment to which Mr Ze continues to be subjected.

22. In its communication dated 15 October 2008, the complainant organization alleges interference in its activities and attaches great importance to a press conference organized by the Ministry of Basic Education together with the dissident faction of SNUIPEN following the notice of strike action given by the General Secretary of the organization, Mr Ze. During this press conference, the Ministry declared to the media that the strike was without grounds since Mr Ze did not have authority as General Secretary of SNUIPEN. The complainant organization alleges that action of this kind is contrary to the principles of the ILO with regard to the steps which should be taken by the public authorities in the case of a crisis within a trade union executive board and when declaring a strike illegal.

23. Furthermore, the complainant organization indicates that Mr Jean-Pierre Ateba filed an appeal on behalf of the dissident faction of SNUIPEN to have the congress of 28–29 September 2006 declared null and void, but the appeal was dismissed by the court on the basis of lack of jurisdiction.

24. Finally, the complainant organization alleges anti-union harassment of Mr Ze, whose salary payments were suspended due to unauthorized absence from work, in violation of the relevant disciplinary procedures. The complainant organization indicates that the Ministry of Basic Education requested the suspension of Mr Ze's salary payments – which were his only means of support – by simple letter dated 23 July 2008, in violation of the legal provisions in force and without carrying out any checks. Mr Ze's salary payments were suspended due to unauthorized absence from work from 15 May 2007. However, according to the complainant organization, this finding is erroneous and is contradicted by a mission order sent to Mr Ze by his superior on 17 September 2007. The complainant organization recalls the provisions of the General Public Service Regulations in force concerning authorized absences for the purpose of carrying out a trade union mandate. The complainant organization sent additional information in a communication dated 2 March 2009.

25. In a communication dated 8 October 2008, the Government indicates that it is not a party to the legal proceedings and is therefore not in a position to intervene in cases involving the embezzlement of funds. Furthermore, the Government, reiterating its attachment to the principle of non-interference in the internal affairs of trade unions, states that with regard to this specific case, it does not support any faction of SNUIPEN and is awaiting the final verdict of the competent courts in this case.

26. In communications dated 14 January and 4 May 2009, the Government indicates that the suspension of Mr Ze's salary is not the result of his trade union activities, but of his unauthorized absences from work in violation of the regulations in force. These regulations require, in particular, that public servants request a discharge from duties to carry out a trade union mandate in order to be regarded as having active status. However, according to the Government, Mr Ze failed to request such discharge and was therefore punished for abandoning his post in accordance with section 105 of the General Public Service Regulations. The Government indicates that Mr Ze had his salary payments suspended for abandoning his post as of 14 February 2006 and not 15 May 2007 as alleged. Moreover, such conduct is punishable by a sanction of dismissal from service pursuant to article 121, paragraph 2, of Decree No. 20008/287 of 12 October 2000, amending and supplementing the 1994 Decree concerning the General Public Service Regulations.

27. *The Committee notes the information provided by SNUIPEN and the Government's reply. The Committee recalls that the present case, which it has been examining since 2005, concerns the arrest, detention and interrogation of the General Secretary of SNUIPEN, Mr Joseph Ze, and the interference by the authorities in an internal dispute within a trade union.*

28. *With regard to its previous recommendations in which it invited the Government or the complainant organization to keep it informed of any appeal filed before a competent court concerning the legality of calling the SNUIPEN congress of 4 August 2004, which is challenged by the complainant organization, and any rulings handed down in this case, the Committee notes the complainant's indication that it is not competent to challenge before the courts any decisions adopted at the congress allegedly held by the dissident faction, given that it was never notified of such decisions. Furthermore, there is no need for validation from the courts of the legitimate national congress held on 28 September 2006. The Committee notes the indication that the dissident faction of SNUIPEN filed an appeal to have the congress of September 2006 declared null and void, but this appeal was dismissed by the court on the basis of lack of jurisdiction. The Committee notes that the Government reiterates its attachment to the principle of non-interference in the internal affairs of trade unions, and states that it does not support any SNUIPEN faction and is awaiting the final verdict of the competent courts in this case. However, the Committee notes that the complainant organization refers to a situation in which, after notice of strike action was given, the Ministry of Basic Education allegedly organized a press conference together with the dissident faction of SNUIPEN to declare that the call for strike action was without grounds since Mr Ze did not have the authority as General Secretary of SNUIPEN.*

29. *The Committee expresses its concern at measures of this nature which, if proven true, would demonstrate an obvious bias on the part of the Government in favour of a faction in a dispute within a trade union which is recognized by all as being unresolved. Such intervention by the Government is a violation of Article 3 of Convention No. 87, under which it is bound by the obligation to refrain from any interference which would restrict the right of occupational organizations to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities, and to formulate their programmes. The Committee stresses firmly the Government's obligation to adopt a completely neutral attitude in disputes within the trade union movement.*

30. *The Committee recalls that, in cases of internal conflict within a trade union organization, judicial intervention would permit a clarification of the situation from the legal point of view for the purpose of settling questions concerning the management and representation of the organization concerned. Another possible means of settlement would be to appoint an independent arbitrator to be agreed on by the parties concerned, to seek a joint solution to existing problems and, if necessary, to hold new elections. In either case, the government should recognize the leaders designated as the legitimate representatives of the organization [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 1124]. In view of the above, the Committee once again invites the Government and the complainant organization to keep it informed of any appeal before the competent courts which would permit a clarification of the situation concerning the legitimate representation of SNUIPEN, or of any other steps taken by the parties concerned to settle the dispute.*

31. *With regard to its recommendations concerning the need for an inquiry to be conducted by the Secretary of State for Defence on the events surrounding the interrogation and detention of Mr Ze from 16 April 2004 based on a decision adopted by the dissident faction of SNUIPEN, the Committee notes with regret the lack of information from the Government in this regard. It further notes the complainant's indication that no inquiry has been conducted to date. Furthermore, based on the same accusations and documents from the dissident faction, Mr Ze was allegedly summoned by the Criminal Investigation Division of the Centre Region on 12 March 2007 and again on 17 March 2008 and, on the second occasion, Mr Ze was informed that he would be detained and brought before the Public Prosecutor. He was released from custody on 24 March 2008 without being heard.*

32. *The Committee requests the Government to take the necessary steps to give effect to its previous recommendation to conduct an inquiry into the conditions of the interrogation and detention of Mr Ze in April 2004. It recalls that the inquiry is needed in the light of the serious allegations of torture and extortion of which Mr Ze is said to have been the victim when in custody, and this inquiry would make it possible not only to determine the facts, ascertain responsibilities and punish those responsible, but above all prevent a recurrence of such acts. Furthermore, the Committee requests the Government to provide without delay its observations on the allegations concerning the interrogation of Mr Ze by the Criminal Investigation Division of the Centre Region in March 2007 and March 2008 and his detention during several days without any hearing.*

33. *Finally, the Committee notes the complainant's allegations concerning the suspension of Mr Ze's salary payments for unauthorized absence from work at the request of the Ministry of Basic Education, in violation of the relevant disciplinary procedures. The decision to suspend Mr Ze's salary payments was allegedly taken without following the relevant procedures laid down in the General Public Service Regulations, in particular the need to issue a prior warning, the right of the public servant concerned to provide an explanation with regard to the allegations made against him or her, and the referral of the case to a public service disciplinary board for a completely independent and objective ruling. The Committee notes that, according to the Government, the reason for the suspension of Mr Ze's salary payments was not his trade union activities but his unauthorized absence from work in violation of the regulations in force, under which public servants are required to request a discharge from duties to carry out a trade union mandate so as to be regarded as having active status. The Committee notes that, according to the Government, Mr Ze failed to request such discharge and was therefore punished for abandoning his post in accordance with section 105 of the General Public Service Regulations. The suspension of his salary payments was imposed for abandoning his post as of 14 February 2006 and not 15 May 2007 as alleged, and such conduct is punishable by a sanction of dismissal from service pursuant to article 121, paragraph 2, of Decree No. 20008/287 of 12 October 2000, amending and supplementing the 1994 Decree concerning the General Public Service Regulations.*

34. *Taking into account the background of the present case and the information provided by the complainant organization and the Government on the suspension of Mr Ze's salary payments for alleged unauthorized absence from work, the Committee requests the Government to consider without delay, based on the facts presented, the possibility of granting a discharge from duties to Mr Ze for the purpose of carrying out a trade union mandate, including, if necessary, explaining to Mr Ze the procedure for obtaining such discharge. In this regard, the Committee draws attention to the relevant provisions of the Workers' Representatives Convention, 1971 (No. 135), which has been ratified by Cameroon, concerning the facilities to be afforded to workers' representatives in order to enable them to carry out their functions promptly and efficiently. It recalls that it is expressly established in that Convention that workers' representatives shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative 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 further recalls that the affording of facilities to representatives of public employees, including the granting of time off, has as its corollary ensuring the efficient operation of the administration or service concerned. This corollary means that there can be checks on requests for time off for absences during hours of work by the competent authorities solely responsible for the efficient operation of their services [see* ***Digest****, op. cit., para. 1111]. The Government is requested to indicate any developments in this regard.*

Case No. 2173 (Canada)

35. The Committee last examined this case, which concerns violations of freedom of association principles on collective bargaining in respect of public employees through several pieces of legislation in the education sector (Bills Nos 15, 18, 27 and 28), at its March 2006 meeting [see 340th Report, paras 42–49]. The Committee wishes to recall that it had initially examined several cases of collective bargaining restrictions by the Government of the Province of British Columbia in the education sector as well as in the health and social services together with this case [see Cases Nos 2166, 2180 and 2196, 330th Report]. The Committee recalls that, as regards the education sector and this specific case, it had in particular recommended the Government to repeal Bill No. 18; to adopt a flexible approach, eventually amending Bill No. 27 to give the parties an opportunity to vary by agreement the working conditions unilaterally imposed by the legislation; and to include in the mandate of the Commission established under Bill No. 27, the issues raised in connection with Bill No. 28 [see 330th Report, para. 305(a)(i)–(iv)]. The Committee had also noted that the Minister of Labour had appointed an individual to consult with interested parties and to recommend terms of reference for a review commission, and that based on its report, the Minister had appointed, in December 2003, a commissioner who would consult with groups in the education sector and review procedures in other jurisdictions to recommend procedures for a new collective bargaining arrangement. The Committee had requested the Government to keep it informed on the conclusions of the review commission [see 333rd Report, paras 23–30].

36. In a communication dated 20 May 2008, Education International and the British Columbia Teachers' Federation (BCTF) provided additional information which relates to findings of a decision of 2007 of the Supreme Court of Canada concluding that certain provisions of the Health and Social Services Delivery Improvement Act interfered with the process of collective bargaining protected by the Canadian Charter of Rights and Freedoms [Decision of the Supreme Court, *Health Services and Support – Facilities Bargaining Association.* v. *British Columbia, 2007 SCC27*]. The complainants underline that for the first time the Supreme Court of Canada extended constitutional protections to collective bargaining rights by virtue of section 2(d) of the Charter.

37. The complainants indicated that, following that decision, the Government of the Province of British Columbia signed settlement agreements with health-care workers in the four health-care bargaining associations. It committed 85 million Canadian dollars for compensation, retraining, clinical upgrading and professional development, and settled more than 3,000 outstanding grievances relating to the legislation and its effects on health-care workers.

38. While commending the settlement between the Government of the Province of British Columbia and the bargaining associations in the health-care sector pursuant to the decision of the Supreme Court of Canada, the BCTF indicates that it had advised the Government of its intention to pursue its constitutional challenge of the legislation concerning the education sector in court, and despite this knowledge the Government has not sought resolution of the case.

39. In a communication dated 2 March 2009, in reply to the complainants' communication above, the Government states that in response to the *Health Services* decision it reached agreements with various health sector bargaining associations and the Health Employers Association of British Columbia, and amended the Health and Social Services Delivery Improvement Act (Bill No. 29) and the Health Sector Partnerships Agreement Act (Bill No. 94). The Government considers that these agreements and legislation are in conformity with the principles set out in the *Health Services* decision.

40. The Government further states that it has undertaken numerous measures to facilitate and support the collective bargaining process between teachers and school employers. The Government states that in October 2005 it appointed an experienced mediator to act as an Industrial Inquiry Commission to make recommendations on the collective bargaining process between teachers and employers. The Commission's role was to make inquiries, consult with the parties and make recommendations to the Minister of Labour and Citizens' Services concerning the following: matters which should be concluded at local bargaining; the methods and costs associated with the harmonization of compensations structures within the financial mandate established by the Government from time to time; establishment of a provincial master collective agreement; and bargaining processes for provincial negotiations that are timely, structured and provide for public accountability, promote settlement at the bargaining table, and foster effective and productive union/management relations. The Commission issued its final report on 2 February 2007, based on the Commission's interim report of April 2006 which helped the collective bargaining of a five-year collective agreement effective 1 July 2006.

41. Also in April 2006, the Government introduced the Education (Learning Enhancement) Statutes Amendment Act (Bill No. 33), establishing new class size limits, accountability measure and requirements for consulting parents and teachers on class size and composition.

42. The Government further claims it created in fall 2005 a Learning Roundtable as a forum for education partners to discuss critical issues related to learning conditions in the public school system, such as class size and class composition. The Government indicates that by the end of 2006, over 130 public sector collective agreements were settled through collective bargaining, with further settlements thereafter, securing unprecedented labour peace in the province.

43. *The Committee takes note with great interest of the information provided by the complainants, in particular the decision dated 8 June 2007 of the Supreme Court of Canada, Health Services and Support – Facilities Bargaining Association v. British Columbia, 2007 SCC27, and the settlements between the Government of the Province of British Columbia and the bargaining associations representing health-care workers pursuant to that decision, thus resolving a number of the pending issues relating to collective bargaining raised in the Committee's 330th Report. The Committee takes due note of the conclusions of the Supreme Court that "the protection of collective bargaining under section 2(d) of the Charter is consistent with and supportive of the values underlying the Charter and the purposes of the Charter as a whole" and that "recognizing that workers have the right to bargain collectively as part of their freedom to associate reaffirm the values of dignity, personal autonomy, equality and democracy that are inherent to the Charter". It further notes with interest reference made by the Supreme Court to provisions of Convention No. 87 and to interpretations of the provisions and principles concerning collective bargaining by the various supervisory bodies of the ILO, including the Committee on Freedom of Association.*

44. *The Committee further notes with interest that following the Supreme Court decision, agreements were concluded with health services bargaining associations and that a committee and roundtable composed of social partners to discuss issues of mutual interest were created. The Committee also notes that the Industrial Inquiry Commission, created in 2005 in order to improve bargaining between teachers and employers, issued its final report in February 2007. The Committee however notes with regret that, according to the BCTF, the Government of the Province of British Columbia had not shown any sign of willingness to search resolution of grievances concerning the education sector. It notes the intention of the BCTF to continue to pursue its constitutional challenge of the legislation concerning the education sector in court.*

45. *The Committee trusts that the settlement reached by the Government of the Province of British Columbia and the bargaining associations in the health-care sector pursuant to the decision of the Supreme Court of Canada of 8 June 2007, in relation to the Health and Social Services Delivery Improvement Act will serve as an inspiration for the settlement of grievances prevailing in the education sector. It further trusts that the commissioner's final report will prove helpful in further ameliorating the collective bargaining process between teachers and employers and asks the Government to keep it informed of the implementation of the report.*

46. *In addition, the Committee notes with regret that the Government has failed to provide information on the measures taken to give effect to its previous recommendations with regard to the Skills Development and Labour Statutes Amendment Act and the Education Services Collective Agreement Act. The Committee expresses the firm hope that steps will be taken by the Government of the Province of British Columbia with a view to reaching a settlement with the unions concerned in the education sector in order to amend the legislation – in particular, the Skills Development and Labour Statutes Amendment Act and the Education Services Collective Agreement Act – so as to bring it into line with the principles of collective bargaining recalled by the Committee for many years and now enshrined in the Canadian Charter of Rights and Freedoms. The Committee once again urges the Government to provide information without further delay on the steps taken in this regard.*

Case No. 2462 (Chile)

47. The Committee last examined this case at its June 2008 session and on that occasion made the following recommendations [see 350th Report, paras 326–340]:

(a) The Committee requests the Government to keep it informed of the outcome of any judicial proceedings with respect to: (1) the legal basis of the payments corresponding to the so-called compensatory meals and transport allowance and the end-of-negotiation bonus; and (2) the dispute arising from the alleged non-payment of social security contributions relating to certain bonuses payable under the collective labour agreements between 1994 and 2000. Similarly, the Committee requests the Government to inform it whether, as a result of the agreement concluded between the complainant union and Correos de Chile on 31 January 2008, the legal proceedings in question have been discontinued. The Committee trusts that the judicial authority will pronounce itself in an expeditious manner.

(b) The Committee once again requests the Government to confirm whether Correos de Chile has been included in the list of enterprises and trade union organizations found guilty of unfair or anti-union practices (as required by law).

48. In a communication of 23 January 2009, the Government indicates, with regard to judicial decisions issued with respect to the legal basis of the payments corresponding to the so-called compensatory meals, transport and end-of-negotiation allowance, that the trade union and the enterprise in question, in a settlement contained in a public instrument of 23 May 2008, signed before the Santiago public notary Ms María Gloria Acharan Toledo, agreed to bring to a close the legal proceedings in which the recognition and payment of such allowances were discussed. According to section 2446 of the Civil Code, such a settlement "is a contract whereby the parties settle a pending lawsuit out of court or forestall a lawsuit in the future", through mutual concessions. The Civil Code provides in section 2460 that such settlements "have the force of res judicata", which is why the discussion of the matter could not be reopened between the same parties for the same purpose, or with the same cause of action. Under this settlement, the enterprise paid the complainant workers the amounts which it was instructed to pay in the text, which were received by the complainants in full satisfaction. No disputes are still pending, either with the trade union or with the workers who belong to that organization, and any dispute that

might have arisen in this respect must be considered to have been settled. *The Committee notes this information with interest.*

49. The Government indicates that, with regard to the dispute arising from the alleged non-payment of social security contributions corresponding to certain bonuses payable under collective labour agreements between 1994 and 2000, on 10 October 2008 a final decision was handed down in the first instance, under Case No. 248-2006 of the Second Labour Court of Santiago, rejecting the claims that formed the basis of the aforementioned dispute. The complainants filed an appeal against this decision. A decision on the appeal, which has to be made by the Santiago Court of Appeals, is pending. *The Committee notes this information and requests the Government to keep it informed of the outcome of the appeal in question.*

50. As to whether the enterprise Correos de Chile has been included in the list of enterprises and trade union organizations found guilty of unfair or anti-union practices, as required by law, the Government indicates that the enterprise in question was sentenced on 21 December 2006, in Case No. 6777-2005 of the Ninth Labour Court of Santiago, to pay 100 monthly tax units, plus costs, for discriminating against the members of the National Trade Union of Professionals, Postal Technicians, Supervisors and other Employees of Correos de Chile, by not paying them compensatory benefits. *The Committee notes this information.*

Case No. 2068 (Colombia)

51. The Committee last examined this case at its June 2008 meeting [see the 350th Report, paras 55 to 59]. On that occasion, the Committee requested the Government: (1) in relation to the allegations made by the Employees' Association of the National Penitentiary and Prison Institute (ASEINPEC) respecting the dismissal of Buyucue Penagos, Gutiérrez Rojas, Nieto Rengifo and Amaya Patiño, to inform it of the final outcome of the legal action instituted; and (2) with regard to the allegations made by the Single Confederation of Workers (CUT) that the Alcalis de Colombia Ltda. company had not given effect to the settlements reached with the workers who had been dismissed in the context of the company's liquidation, to conduct an investigation in order to determine whether the workers have indeed been compensated and, if not, to take the necessary measures to ensure that the corresponding compensation is paid without delay to the dismissed workers.

52. In its communications dated 29 and 31 May 2008, ASEINPEC also refers to the refusal by the prison authorities to engage in collective bargaining, the absence of protection for leaders who are subject to death threats (Freddy Antonio Mayorga Melendez, Julio César Walteros García, María Elsa Páez García, José Gerardo Estupiñan and José Fernando Salazar), the refusal to grant trade union leave and the transfer of leaders to other jobs, and the failure of the courts to recognize the trade union immunity of union leaders Buyucue Penagos, Gutiérrez Rojas and Nieto Rengifo.

53. In a communication of September 2008, the Workers' Union of Puerto Berrio refers to the restructuring process by the Municipality of Puerto Berrio, which was examined earlier in the present case, and indicates that no solution has yet been found concerning the situation of the workers that were dismissed during this process.

54. In communications dated 15 September 2008, 25 February and 17 and 18 March 2009, the Government provides the following information.

55. The action for *amparo* (protection of constitutional rights) brought by Germán Amaya Patiño in the 22nd Administrative Court of Medellín was rejected on 16 January 2008 and

referred to the Constitutional Court for review on 14 May 2008. The legal proceedings instituted by Buyucue Penagos, Nieto Rengifo and Gutiérrez Rojas have been before the Administrative Tribunal of Antioquia, in the first two cases, and the Tribunal of Medellín, in the latter case, since the beginning of 2007. *The Committee notes this information and expects that the proceedings will be finalized in the near future.*

56. With reference to the allegations concerning the failure to pay compensation to the workers of Alcalis de Colombia Ltda. under the settlements concluded in the context of the process of liquidating the company, the Government recalls that the company was liquidated in 1993 and that the employment contracts were terminated under the terms of a conciliation agreement mediated by the Ministry of Labour and Social Security providing for the payment of the corresponding benefits, wages and compensation. The Government attaches the reply provided by the company's legal representative according to which the enterprise's debts were taken over by the State in 2000 in relation to the persons covered by the actuarial calculation approved in 1999. All of the workers who were not covered by this calculation and who subsequently won their court cases were confronted by the lack of financial assets of the liquidated company. A solution was found through Decrees Nos 4380 of 2004 and 0637 of March 2007, under which Alcalis settled 188 debts out of a total of 213. The company is currently engaged in settling the remaining debts through the ordinary procedures. The legal representative adds that the workers who made the complaint have the status of pensioners of the company and that the corresponding pensions are being paid to them in accordance with the collective agreement and the respective court rulings. *The Committee notes this information and expects that the remaining debts will be settled in the near future.*

57. In relation to the new allegations made by ASEINPEC concerning the lack of protection for certain union leaders under the menace of death threats, the Committee notes that the Government has not provided information in this respect. *The Committee recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition 2006, para. 44]. The Committee requests the Government to take the necessary measures to investigate the reported threats, punish those responsible and provide appropriate protection for the union leaders who are under threat. The Committee will follow up these allegations in the context of Case No. 1787.*

58. With reference to the allegations that the prison authorities refuse to engage in collective bargaining, the Government indicates that bargaining exists in the public sector, but is more limited, and adds that on 24 February 2009 collective bargaining procedures were established in the public sector by Decree No. 535. *The Committee notes this information with interest and expects that the new legal provision will promote collective bargaining in the prison sector.*

59. Regarding the refusal to grant trade union leave and the transfer of leaders to other jobs, the Government indicates that it is necessary to be provided with further indications on these allegations so as to be able to request information from the corresponding local authorities. *The Committee notes this information and invites the union to provide this information to the Government so that it can determine the reasons for the refusal to grant trade union leave.*

60. As regards the allegations concerning the Municipality of Puerto Berrio, the Government says that, in the context of the restructuring process, the courts, in second instance, acquitted the Municipality of Puerto Berrio of charges of the violation of freedom of association and that during the conciliation procedure undertaken under the aegis of the

Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT), the mayor of Puerto Berrio indicated that it was not possible to reinstate the dismissed workers in the absence of a court order to do so and in view of the lack of funds for that purpose. The Government adds that there exist social programmes for the dismissed workers implemented by the Ministry of Social Protection. *The Committee notes this information.*

Case No. 2297 (Colombia)

61. The Committee last examined this case at its June 2008 meeting [see the 350th Report, paras 60 to 62]. On that occasion, it requested the Government to carry out an investigation to determine whether the trade union officials of the General Directorate of Taxation Support of the Ministry of Finance and Public Credit were dismissed without their trade union immunity being taken into account and, if that was the case, to take the necessary measures for their reinstatement and the payment of the wages owed to them.

62. In a communication of 15 September 2008, the Government indicates that the events covered by the complaint date from 1991, which makes it difficult to investigate them. The Government observes that no legal proceedings were initiated on grounds of anti-union discrimination in the context of the restructuring of the General Directorate of Taxation Support of the Ministry of Finance and Public Credit, as the officials who were dismissed did not start proceedings on grounds of the violation of their trade union immunity. Consequently, they are out of time to take administrative or legal action. In this regard, the Government recalls in relation to the dismissed trade unionists that: Ms Elba Rosa Zapata was relieved of her duties and dismissed, and was subsequently reinstated and ultimately resigned; Ms Imelda Alzate was reinstated and now works in the National Tax Administration; and José Vivencio Jiménez Suárez was relieved of his duties. *The Committee observes that the allegations relating to Ms Zapata and Ms Alzate are no longer timely, as the former resigned voluntarily and the latter was reinstated. The Committee requests the Government to indicate the reasons why the trade unionist Jiménez Suárez was relieved of his duties and in particular whether the legal procedures for the lifting of trade union immunity were followed when he was dismissed.*

Case No. 2384 (Colombia)

63. The Committee last examined this case at its June 2008 meeting [see the 350th Report, paras 437 to 449]. On that occasion, the Committee made the following recommendations:

(a) Regretting that the Government has not provided the information and documents requested despite having received an urgent appeal, the Committee requests the Government to inform it whether, in the context of the dismissal of 54 workers belonging to the Trade Union of Public Employees of the Medellín Municipal Sports and Recreation Institute (ASINDER), with respect to which the High Court of Medellín ordered the payment of full compensation to 49 claimants, the other five trade union members who were dismissed were duly compensated.

(b) Concerning the dismissal of Mr Libardo Pearson, the Committee once more requests the Government to keep it informed of the final outcome of the legal action instituted.

(c) Lastly, the Committee requests the Government to institute independent investigations without delay in order to determine whether or not the mass dismissal of the workers of the Public Services Enterprise of Cartagena and the creation of a state industrial and commercial enterprise Productora Metalmecánica de Gaviones de Antioquia (PROMEGA) and its subsequent liquidation resulting in the dismissal of all the workers belonging to the trade union organization SINTRAEMSDES occurred for anti-union reasons. The Committee requests the Government, if the allegations are confirmed, to take the necessary measures to ensure that the workers are fully compensated, to impose

sufficiently dissuasive sanctions on those responsible and to keep it informed in this respect.

64. The Government provided the following information in communications of 15 September 2008 and 9 March 2009. With regard to recommendation (a), the Government indicates that the number of workers affected by the collective dismissal was 51, and not 54 as indicated when the case was examined previously. Of those 51 workers, 49 took legal action on the grounds of violation of trade union immunity with the High Court in Medellín, Fourth Labour Chamber, and were accordingly compensated in 2005 in accordance with the court's ruling. The other workers, who had not taken legal action, received compensation in 2001. *The Committee notes this information*.

65. With regard to recommendation (b) concerning the dismissal of Mr Libardo Pearson by the Public Services Enterprise of Cartagena, its liquidation and the pending court cases, the Government indicates that on 26 October 2007, the Eighth Labour Court of the Cartagena Circuit acquitted the enterprise, but that the ruling has been appealed. *The Committee requests the Government to keep it informed of the final outcome of this legal action*.

66. With reference to recommendation (c) concerning the mass dismissal of the workers of the Public Services Enterprise of Cartagena and the creation of a state industrial and commercial enterprise, Productora Metalmecánica de Gaviones de Antioquia (PROMEGA) and its subsequent liquidation, resulting in the dismissal of all the workers belonging to the union SINTRAEMSDES, the Government indicates that in view of the time that has passed it is difficult to institute administrative labour investigations. *In this respect, the Committee notes that the allegations relating to PROMEGA date from 1994 and those respecting the Public Services Enterprise of Cartagena from 1997. The Committee also notes the Government's indication that the unions did not institute legal or administrative action or court proceedings and that they could only take action within the time limit of three years (section 488 of the Substantive Labour Code).*

Case No. 2480 (Colombia)

67. The Committee last examined this case at its June 2008 meeting [see the 350th Report, paras 63 to 65]. On that occasion, the Committee requested the Government to indicate whether Mr Bonilla Vargas and Mr Marín Tovar, members of SINTRATELEFONOS who were dismissed by the Bogotá Telecommunications Enterprise (according to the allegations, with the aim of creating a climate of intimidation, without first informing the union) had initiated legal proceedings against the decision to dismiss them.

68. In a communication of 15 September 2008, the Government indicates that Mr Bonilla Vargas initiated legal proceedings against the Bogotá Telecommunications Enterprise in the Sixth Labour Court of the Bogotá Circuit seeking reinstatement and the award of the benefits and wages owed from the date of his dismissal until his reinstatement. The proceedings are still pending. With regard to Mr Marín Tovar, according to the information provided by the enterprise, he has not taken any legal action.

69. *The Committee notes this information and requests the Government to keep it informed of the final outcome of the proceedings initiated by Mr Bonilla Vargas.*

Case No. 2483 (Dominican Republic)

70. The Committee last examined this case at its March 2007 meeting [see 349th Report, paras 80–83]. On that occasion it requested the Government, in relation to the dismissal of trade union leaders Mr Familia and Mr Novas from the Teachers' Health Insurance

Company (SEMMA), to send it the text of ruling No. 035-2007, of 29 October 2007 issued by the Fiscal and Administrative Disputes Tribunal, and to inform it of the outcome of the appeal against the ruling. The Committee also asked the Government to send the requested information relating to the allegations of interference by SEMMA in the activities of ASOESEMMA and the withholding of union membership dues for March, April and May 2006.

71. In a communication dated 3 March 2008, the Government sent the text of ruling No. 035-2007 of 29 October 2007 issued by the Fiscal and Administrative Disputes Tribunal, which declared the administrative appeal filed in June 2006 by the trade union leaders in question to be inadmissible. The Committee also notes the Government's statement to the effect that this ruling ends the proceedings instituted by the appellants.

72. *The Committee notes this information. The Committee requests the Government to inform it of the outcome of the appeal which, according to the complainant's statement in the previous examination of the case, was filed against ruling No. 035-2007 of 29 October 2007, issued by the Fiscal and Administrative Disputes Tribunal in relation to the dismissal of trade union leaders Mr Familia and Mr Novas from SEMMA. Furthermore, the Committee urges the Government once again to send the requested information relating to the allegations of interference by SEMMA in the activities of ASOESEMMA and the withholding of union membership dues for March, April and May 2006.*

Case No. 2423 (El Salvador)

73. At its March 2008 session, the Committee made the following recommendations on the matters that were pending [see 349th Report, paras 98, 99 and 100]:

- with respect to the refusals to grant legal personality to the private security trade unions SITRASSPES and SITISPRI, the Committee recalls that only members of the police and the armed forces can be excluded from the sphere of application of Convention No. 87 and requests the Government to take the necessary measures – including the amendment of the Constitution of the Republic if necessary – to grant legal personality to the trade union organizations SITRASSPES and SITISPRI;
- the Committee requests the Government to inform it about the current status of the process for the registration of the trade union SITRASAIMM;
- the Committee urges the Government to take the necessary measures for the reinstatement of the 34 founders of the STIPES trade union, of Mr Alberto Escobar Orellana at the José Simeón Cañas Central American University, and of the seven trade union leaders at the clothing company CMT SA de CV. The Committee also asks the Government to inform it of the result of the legal proceedings relating to the dismissals of trade unionists at the enterprise Hermosa Manufacturing SA de CV. The Committee once again reminds the Government that ILO technical assistance is at its disposal so as to ensure adequate protection against acts of anti-union discrimination;
- lastly, the Committee invites the complainant organizations to lodge a complaint with the Ministry of Labour concerning the dismissal of the founders of SITRASAIMM, Manuel de Jesús Ramirez and Israel Ernesto Avila, after they had submitted a request for the union to be granted legal personality, so that the Ministry of Labour can carry out an investigation into the matter.

74. In its communication dated 7 May 2008, the Government states once again that SITRASSPES was denied legal personality for the second time on the grounds that article 7(3) of the Constitution of the Republic prohibits the existence of armed groups of a trade union nature and that private security workers hold positions of trust and under the Labour Code may not therefore participate as constituent members of a trade union organization (trusted employees may however join a trade union organization provided that

the general assembly of that union accepts them as such). Legislation provides for other legal mechanisms of appeal against rulings that are considered to be against the claimants. Therefore, the refusal to grant legal personality to this union had a legal basis and is not a violation of freedom of association.

75. The Government recalls that, on 16 October 2007, the Supreme Court of Justice issued a ruling, the text of which literally states: "It is hereby decided in general and binding terms that the expression 'without distinction whatsoever' in Article 2 of the ILO's Freedom of Association and Protection of the Right to Organise Convention is unconstitutional because it contravenes article 47(1) of the Constitution, inasmuch as the wording of the Convention in question extends the right of freedom of association to public employees who are not covered by the constitutional definition of those who enjoy that right".

76. The Government states that it takes note of the Committee's conclusions and of its suggestion with regard to amending article 7(3) of the Constitution of the Republic, which prohibits the existence of armed groups and which was the legal basis for the Ministry of Labour and Social Welfare's refusal to grant legal personality to the unions in question.

77. In its communication dated 4 March 2009, the Government states in relation to the union SITRASAIMM (which is in the process of being established) that, since 28 March 2006 (when the ruling of 4 October 2005, dismissing the appeal against the ruling to deny SITRASAIMM legal personality, was upheld), no applications have been filed with an administrative body to resume the process of granting legal personality to this union.

78. With regard to the union STEES, concerning the dismissal and reinstatement of the worker Mr Alberto Escobar Orellana, the Labour Inspection Directorate sought his immediate reinstatement but as this was not achieved the violations of domestic labour legislation were specified and steps were taken to apply the appropriate penalties and a fine of US$114.28 was imposed for violating article 248 (dismissing a union official) and article 29(2) (owing outstanding pay for reasons attributable to the employer) of the Labour Code. In view of the situation, the worker was recommended to seek recourse through legal channels as well, although this did not mean that he could not continue to use the inspection services to claim outstanding pay for reasons attributable to the employer.

79. With regard to the procedures to impose penalties on the enterprise CMT SA de CV, the Government reports that the appropriate procedures have been carried out and that the following fines have been imposed: (a) a fine of US$114.28 for violating articles 248 and 29(1) and (2) of the Labour Code relating to the de facto dismissal (*despido de hecho*) of union officials and outstanding pay and financial benefits equivalent to pay for reasons attributable to the employer; (b) a fine of US$857.10 for violating articles 248 and 29(1) and (2) of the Labour Code relating to the de facto dismissal of union officials and outstanding pay for reasons attributable to the employer; and (c) a fine of US$45 for violating article 248 of the Labour Code relating to the dismissal of trade union officials. These fines have already been paid. The Government reiterates that it has no knowledge of any legal proceedings initiated by the workers of the enterprise CMT SA de CV and that the authorities of the Ministry of Labour and Social Welfare have not been requested to intervene in any dispute arising subsequent to the reported events.

80. Nevertheless, it is important to mention that, by making use of the legal mechanisms in place, Mr José Amílcar Maldonado Castillo, founding member of the union in question, initiated judicial administrative proceedings before the Supreme Court of Justice against the Ministry of Labour in relation to the abovementioned ruling. These proceedings are currently in the second round of pleadings, which is why a ruling has not yet been handed down, but as soon as the Government is notified in this regard, it will pass this information on to the Committee without delay.

81. With regard to the procedures that are still pending to impose penalties on four enterprises in which the Trade Union of Port Workers of El Salvador (STIPES) operates, the Government indicates that a fine of US$2,149.96 has been imposed on the enterprise Operadora General SA de CV for violating articles 2, 3 and 47(1) of the Constitution; Article 1(b) of ILO Convention No. 111; and articles 30(5), 248, 29(2) and 142(2) of the Labour Code.

82. Furthermore, steps are being taken to impose penalties on two other enterprises where STIPES operates, in connection with violations of articles 248 and 29(2) of the Labour Code for dismissal of union officials and outstanding pay for reasons attributable to the employer; the Committee will be informed as soon as rulings are handed down.

83. With regard to the dismissal of the SITRASSPES union member, Mr Juan Vidal Ponce Peña, the Government indicates that he was reinstated in his post after having reached an agreement with the enterprise (this information was provided by the Government during the previous examination of the case).

84. *The Committee takes note of the Government's statements concerning the grounds for the refusal to grant legal personality to the private security unions SITRASSPES and SITISPRI but observes that such grounds have already been examined by the Committee, which had indicated to the Government that only members of the police and the armed forces may be excluded from the guarantees provided under Convention No. 87. The Committee therefore requests the new Government to take the necessary measures – including the amendment of the Constitution if necessary – to guarantee the right of private security workers to organize and to grant legal personality to SITRASSPES and SITISPRI. The Committee requests the Government to keep it informed in this regard and in this context to guarantee as well the right of public employees to organize, which according to the Government has been declared unconstitutional by the Supreme Court of Justice. Furthermore, the Committee requests the complainant organizations to confirm the Government's claim that no further legal action has been taken to obtain legal personality for the union SITRASAIMM.*

85. *With regard to the dismissal of the 34 founders of the STIPES trade union, of Mr Alberto Escobar Orellana at the José Simeón Cañas Central American University, of the seven trade union leaders at the clothing company CMT SA de CV and, of the trade unionists at the enterprise Hermosa Manufacturing, the Committee takes note of the fines imposed by the Ministry of Labour after finding violations of the legal provisions relating to trade union officials but notes with regret that the amount of the fines imposed in the different cases does not appear to serve as a deterrent against acts of anti-union discrimination. The Committee notes the inefficiency of the system of redress for acts of anti-union discrimination, which moreover is too slow if account is taken of the date of the submission of the complaints, and requests the Government to review the system to make it faster and more effective so as to ensure adequate protection. The Committee also requests the Government to continue to promote the reinstatement of the dismissed trade unionists and to keep it informed in that regard, as well as with regard to the outcome of the application for judicial administrative proceedings filed by Mr José Maldonado Amílcar (enterprise CMT SA de CV) and the pending administrative procedures to impose penalties relating to the dismissal of STIPES members.*

86. *Lastly, the Committee once again invites the complainant organizations to lodge a complaint with the Ministry of Labour concerning the dismissal of the founders of SITRASAIMM, Manuel de Jesús Ramírez and Israel Ernesto Avila, after they had submitted a request for the union to be granted legal personality, so that the Ministry of Labour can carry out an investigation into the matter.*

Case 2502 (Greece)

87. The Committee recalls that this case concerns Act No. 3371/2005 which enables employers/banks to unilaterally denounce collective agreements concerning the supplementary pension funds of bank employees, and then provides that the funds in question will be obligatorily integrated into a single public fund. The Committee last examined this case at its November 2008 meeting [351st Report, approved by the Governing Body at its 303rd Session, paras 73–77]. On that occasion, the Committee noted with regret that the issue had been pending since 2005 and any further delay in issuing a court decision was likely to make the resolution of the matter extremely difficult. Recalling, moreover, that a negotiated solution is always preferable to judicial proceedings or legislative intervention, the Committee once again strongly urged the Government to hold further full and frank consultations on the future of the supplementary pension funds of bank employees and of their assets so that these agreements by which the supplementary pension funds were set up, and to which only they contributed, and to amend Act No. 3371/2005 to reflect the agreement of the parties. The Committee also requested the Government to keep it informed of Decree No. 209/2006 (*Official Gazette* 209A) on "Determination of terms and conditions for the management of and dealing with issues relating to Supplementary Pension Funds of bank employees by the Unified Pension Fund of Bank Employees (ETAT)" and expressed the firm expectation that such decision would be issued without further delay.

88. In a communication dated 20 February 2009, the complainant requests that the case be referred to the Committee of Experts on the Application of Conventions and Recommendations, adding that: (i) proceedings before the Greek Courts, including the Council of State are excessively long and could take up to 13 years, a fact for which Greece has been condemned repeatedly by the European Court of Human Rights; thus, by the time the Council of State may pronounce itself on this case, there is a danger that the assets of the supplementary pension funds will be depleted; (ii) the Supreme Court has found in decision No. 1603/2006, that collective agreements establishing the supplementary pension fund of the employees of Emporiki Bank can only be denounced with the joint agreement of both parties and not unilaterally, unless the parties explicitly allow for this possibility in the collective agreement; (iii) contrary to the Government's assertions, every Court has the right to control the conformity of the laws to the Greek Constitution. All courts, at all levels and branches, are under an obligation, within the limits of their competence, not to apply a statute the content of which is contrary to the Constitution (article 93 paragraph 4 of the Constitution), This was the case with decision No. 116/2008 of the Single-Member Court of First Instance of Athens issued in a lawsuit against the Emporiki Bank. As mentioned in the previous examinations of this case, the Court found on that instance, that the unilateral denunciation of collective agreements was invalid, that the obligatory transfer of assets from a supplementary pension fund to the public funds was contrary to articles 4(1) and (2) and 5(1) of the Constitution and that the legislative intervention into this matter was not justified by reasons of general public or social interest; and (iv) the Government has not proceeded to any negotiations concerning the future of supplementary pension funds of bank employees and their assets, contrary to the Committee's recommendations. On the contrary, it has passed further Acts by which additional supplementary pension funds were integrated into ETEAM and ETAT (3455/2006 (article 26), 3522/2006 (article 38), 3554/2007 (article 9) and 3620/2007 (article 10)). The complainant proposes the hosting by the Government of a high-level meeting, chaired by the Minister of Employment and Social Protection, with the participation of the Presidents or Managing Directors of the banks and representatives of the complainant Federation, so that, following frank and constructive dialogue, an agreement may be concluded on the reform of the legal framework.

89. In a communication dated 4 March 2009, the Government indicates that consultations on the issue were interrupted following the refusal of banks' representatives to participate and the refusal of the complainant federation to send written proposals for the amendment of the regulatory framework, as requested in order to help advance the process. However, the Government intends to invite the parties to a new round of consultation within the framework of the new social security reform process under way. Representatives of the Greek Ministry of Economy and Finance will also be taking part in the new consultations. Furthermore, with respect of the decision to be rendered by the Council of State, the Government indicates that decisions by that Court are issued approximately six months after the completion of the examination of the complaint. Thus, the Government cannot at this stage provide the Committee with relevant information. The Committee will be informed as soon as there is a development.

90. *The Committee notes that the complainant proposes the hosting by the Government of a high-level meeting, chaired by the Minister of Employment and Social Protection, with the participation of the Presidents or Managing Directors of the banks and representatives of the complainant Federation, so that, following frank and constructive dialogue, an agreement may be concluded on the reform of the legal framework. It also notes that the Government has the intention to invite the parties to a new round of consultations within the framework of the new social security reform process under way, with the participation of representatives of the Greek Ministry of Economy and Finance. The Committee expresses the firm hope that this new round of consultations will lead to a frank and constructive dialogue on all outstanding matters and give rise to the attainment of mutually acceptable solutions concerning the supplementary pension funds of bank employees.*

91. *The Committee recalls that, during the previous examination of this case it had referred certain legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations. The Committee takes note of the request by the complainants and accordingly, draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the remaining legislative aspects of this case.*

Case No. 2413 (Guatemala)

92. The Committee last examined this case at its March 2008 session. On that occasion, the Committee made recommendations on the matters still pending [see 349th Report, paras 130–138].

93. As regards the alleged dismissal of two workers belonging to the Trade Union of Workers of the municipality of El Tumbador, San Marcos, in the context of a collective dispute during the negotiation of a collective agreement on working conditions, the Committee had requested the Government to conduct an investigation into the alleged events and to keep it informed in that regard.

94. In its communication of 27 October 2008, the Government provides information on the development of legal proceedings relating to the collective dispute which had been initiated by the union's ad hoc committee in 2003 and indicates that the judicial authority determined that the workers had not exhausted the direct channels available. The appeal that they lodged was declared inadmissible as it had been lodged after the time frame prescribed by law. According to the Government, a new collective dispute against the municipality of El Tumbador is being processed before the judicial authority.

95. *The Committee regrets that the Government's response does not specifically include the information that was requested but rather covers matters that were not mentioned in the*

complaint and requests it once again to conduct an investigation into the dismissal of the two workers belonging to the Trade Union of Workers of the municipality of El Tumbador (San Marcos) and to keep it informed in that regard.

96. The Committee had requested the complainant organization to send the names of the trade union leaders for whom arrest warrants had been issued following the demonstration held on 14 March 2005, so that the Government could provide information on the current status of proceedings against them. *The Committee regrets that the relevant information has not been sent despite having been requested on three occasions and for this reason it will not continue its examination of this allegation.*

97. As regards the allegations concerning the dismissal of 23 workers who attempted to establish a trade union at the finca El Cóbano (it is alleged that court reinstatement orders exist and have been ignored by the enterprise), the Committee had noted the information according to which the dismissed workers initiated 14 reinstatement actions, of which four were successful and the workers involved are awaiting reinstatement, two were dropped, two were closed and six are pending a decision regarding an *amparo* action. *The Committee notes that the Government has still not sent any observations concerning this matter. Under these circumstances, regretting this situation, the Committee once again requests the Government to ensure compliance with any reinstatement orders handed down by the judicial authorities and to keep it informed in this regard.*

98. Lastly, the Committee regrets that the Government has not sent its observations as regards the alleged disrespectful statements by the President of the Republic in the media about trade union leaders and violence against participants in the demonstrations. *The Committee once again requests the Government to launch an investigation and to keep it informed in this regard.*

Case No. 2550 (Guatemala)

99. At its May–June 2008 session, the Committee made the following recommendations on the matters still pending [see 350th Report, para. 884]:

(a) While expressing its concern over the excessive slowness in administering justice, the Committee expects that the legal proceedings concerning the officials José René Veliz (transferred after the establishment of the complainant organization) and Manuel de Jesús Ramírez and César Rolando Alvarez Arana (both transferred and later dismissed after the establishment of the union) will be concluded without delay and requests the Government to keep it informed in this regard and, if the judicial authority confirms the ruling of first instance, to take the necessary measures without delay to reinstate the dismissed and transferred union officials in their posts.

(b) The Committee requests the Government to take measures without delay to promote collective bargaining between the Institute for Criminal Law Legal Aid and the complainant organization, and to keep it informed in this regard.

100. In its communication dated 27 October 2008, the Government reports that José René Veliz reached an agreement on 21 September 2007 with the Institute for Criminal Law Legal Aid as a result of which he was reinstated in his post and dropped the legal proceedings that he had initiated against the Institute. *The Committee notes this information with interest.*

101. With regard to the transfer and subsequent dismissal of union officials Manuel de Jesús Ramírez and César Rolando Alvarez Arana following the establishment of the union, the Government indicates that these workers took legal action alleging that their transfer was an act of reprisal, but the Second Court of Labour and Social Welfare declared the matter inadmissible as it considered that no reprisals had been taken.

102. The Government indicates in this respect that, according to the employer, it was exercising its managerial and administration authority and acting on the basis of the applicable labour rules and internal labour regulations when it conducted a transfer from the place where the workers provided their services, and that these transfers cannot be considered, as is alleged by the complainant, as acts of reprisal for having initiated a collective labour dispute against the Institute, as the transfers were carried out before the introduction of the collective dispute.

103. Furthermore, the employer adds that, by failing to comply with the transfer order, the trade union officials committed an act of misconduct in the terms set out in paragraphs *(f)*, *(h)* and *(m)* of Article 83 of the Internal Labour and Disciplinary Regulations of the Institute for Criminal Law Legal Aid, which led to the initiation of disciplinary proceedings against them for failure to comply with an order, as well as to their subsequent dismissal for failing to turn up at work for two whole working days.

104. According to the provisions of Article 85 of the Internal Labour and Disciplinary Regulations of the Institute for Criminal Law Legal Aid, "a dismissed worker shall remain suspended from his or her duties without pay until the Board of the Institute reaches a decision on the matter". In this regard, in the case of the trade union officials, the applicable procedures were followed, in which their right to defence and the respective constitutional guarantees were upheld, and they even made use of the procedures provided to them by law to appeal before the Board of the Institute. In this respect, it should be stressed that although the disciplinary proceedings against the union officials were purely administrative in nature and related to the act of misconduct, the officials considered themselves to be dismissed and submitted reinstatement requests to the courts, without waiting for the outcome of the administrative proceedings.

105. Accordingly, the Institute for Criminal Law Legal Aid, taking into account their right to defence and their constitutional guarantees in that regard, has taken the relevant legal action to safeguard the principle of legality, which is why these cases have been brought before the courts for consideration and decision, although to date no final decision has been handed down.

106. *The Committee notes this information and requests the Government to inform it of the decision that is handed down in connection with the dismissal of these officials and, given that the complaint dates back to 2007, emphasizes that justice delayed is justice denied, and firmly expects the authority to hand down a decision without delay.*

107. *With regard to the collective labour dispute brought by the union before the judicial authority against the Institute for Criminal Law Legal Aid, according to the Government, the Institute indicates that the dispute does not meet the requirements relating to form and substance that make it a matter for negotiation, which is why legal proceedings have been brought before the administrative and judicial authorities, which are pending a final decision. The Committee takes note of this information and requests the Government to inform it of the outcome of the administrative and judicial proceedings initiated in connection with this dispute and with the claims made by the union in the context of collective bargaining.*

Case No. 2228 (India)

108. The Committee examined this case at its November 2005 meeting [see 338th Report, paras 188–201], and on that occasion it:

(a) regretted that, since the complaint was filed in 2002, the issue of the alleged cases of anti-union discrimination resulting in imposition of fines, dismissals and suspensions

of trade unionists had not been resolved. It requested the Government to take all necessary measures so as to ensure that the alleged cases of anti-union discrimination were examined promptly and, if it was confirmed that the imposition of the dismissals, suspensions and fines were linked with the legitimate trade union activities of the workers, to take measures to ensure that the dismissed workers were reinstated in their jobs without loss of pay and, if reinstatement was not possible and in cases of suspensions and fines, to ensure that adequate compensation, so as to constitute sufficiently dissuasive sanctions, was paid to the workers;

(b) requested the Government to keep it informed of the outcome of the independent and thorough investigation, with the cooperation of the complainant organization, carried out in relation to the allegations concerning the brutal suppression of the strike by workers at Worldwide Diamonds Manufacturing Ltd in January and February of 2002, the detention of hundreds of striking workers and a trade union officer by the police, the prohibition of meetings in the complainant's local office, excessive police violence (caning and chaining of workers), and the visit of police officers to workers' homes in order to threaten them so that they return to work;

(c) requested the Government to provide information on the progress of the pending criminal cases brought by the police against the workers arrested during the strike in January 2002;

(d) requested the Government to provide the minutes of the negotiations which, according to the Government, took place in September 2004 between the affiliate of the Centre of Indian Trade Unions (CITU), Visakhapatnam Export Processing Workers' Union, and the management of Worldwide Diamonds Manufacturers Ltd;

(e) noting the Government's indication that an individual person or body would be entrusted to look after grievances of the workers, requested the Government to keep it informed of the measures taken and the progress made in ensuring that the roles of Grievance Redressal Officer (GRO) and the Deputy Development Commissioner (DDC) in the Visakhapatnam export processing zone (VEPZ) were carried out by different persons or bodies;

(f) in respect of the amendment to the Industrial Disputes Act of 1947, noted that, firstly, the right to approach the court directly, without being referred by the State Government, was not conferred on suspended workers and, secondly, that such right was still not conferred on trade unions, and requested the Government to take all necessary measures, including the amendment of the Industrial Disputes Act of 1947, so as to ensure that suspended workers as well as trade unions could approach the court directly;

(g) requested the Government to conduct an independent inquiry to thoroughly and promptly consider the allegations of dismissals and suspensions at Synergies Dooray Automotive Ltd and, if it appeared that the dismissals and suspensions occurred as a result of involvement by the workers concerned in the activities of a union, to ensure that those workers were reinstated in their jobs without loss of pay. If the independent inquiry found that reinstatement was not possible, the Committee requested the Government to ensure that adequate compensation, so as to constitute sufficiently dissuasive sanctions, was paid to the workers; and

(h) requested the Government to keep it informed of the result of the negotiations held with the workers of the Madras Knitwear (Pvt) Ltd before the Deputy Commissioner of Labour.

109. In its November 2008 communication, the CITU alleges that the Government has failed to take all necessary steps so as to ensure that in the VEPZ the functions of GRO are not performed by the Deputy Development Commissioner (DDC) but by another independent person or body, having the confidence of all parties concerned. Despite prolonged persuasion by the trade union movement in general and the CITU in particular, the Government has not implemented this recommendation, either in the EPZ of Visakhapatnam or in any other EPZ. According to the complainant, some state governments have started introducing the same unjust social practice of vesting the administrative/operational head (as Development Commissioner or DDC for the EPZ) in non-EPZ/special economic zone (SEZ) areas with the power and responsibility of a GRO, and thereby seeking to make it a nationwide practice. The complainant refers to office orders of the government of Uttar Pradesh (Department of Labour) dated September 2008, vesting the power and responsibilities of the Labour Commissioner (Uttar Pradesh) in the Chief Executive Officers of the Noida and Greater Noida regions of Uttar Pradesh. A copy of the orders issued by the government of Uttar Pradesh was attached to the complainant's communication.

110. In the case of governments, whether at the Centre or in the provinces/states, the respective Labour Department/Ministry is the dedicated agency/authority for attending to labour-related disputes, and the respective Labour Commissioner heads the machinery for grievance redressal and dispute settlement and enforcement of labour laws, independent of the other administrative departments/ministries and machinery. Disempowering the Labour Commissioner in the matter of labour-related grievance redressal and dispute settlement, etc., has been effected in the case of Noida and the Greater Noida regions (having a concentration of industrial activities and a large number of worker population) of Uttar Pradesh and has also been long continuing in all the SEZs and EPZs in the country, in arrogant disregard for the Committee's recommendation, and is tantamount to a serious infringement of the trade union rights of Indian workers and of freedom of association principles.

111. In its communication of 25 February 2009, the Government of India forwards the following observations of the government of Andhra Pradesh:

– As regards point (a) above, the government of Andhra Pradesh has stated that 39 cases were filed by the dismissed workers under section 2(A)(2) of the Industrial Disputes Act 1947 before the Industrial Tribunal-cum-Labour Court, Visakhapatnam. So far, 20 cases have been disposed of by the chairperson of the tribunal, while 18 cases are pending for want of evidence by the workers, and one case is posted for the passing of award. The adjudications are carried out by independent Labour Courts-cum-Tribunals.

– As regards point (b), the Government repeats its previous indication that, as per information from the Commission of Police, the allegations/comments regarding brutal suppression of strike by excessive police violence were untrue. The police had to intervene in a timely manner to maintain law and order.

– As regards point (c), the government of Andhra Pradesh has informed that the police authorities of Gajuwaka Police Station, Visakhapatnam City have reported that criminal cases were filed against ten striking workers of M/s Worldwide Diamond Manufacturing Ltd, Visakhapatnam in January 2002. All of the accused, whose names are listed in the Government's communication, were arrested on 11 January 2002 and sent for remand. They were acquitted of the charges on 29 November 2006, in view of which the government of Andhra Pradesh has stated that no independent inquiry is required since the court has already decided the matter. The Government has been further informed that the Visakhapatnam Export Processing Zone Units

Employees' Union filed a writ petition regarding the alleged victimization/dismissals of workers during the strike, and that the writ has been dismissed by the Andhra Pradesh High Court. It has been ascertained from the management of Worldwide Diamond Manufacturing Ltd that no worker was suspended/fined for taking part in union activities. If specific instances and names are provided by the union, these can be verified through the labour inspectorate machinery of the state government.

– As regards point (d), the Government repeats its previous statement that there is no bar in the zone restricting workers from joining a trade union of their choice for the purpose of collective bargaining. M/s Worldwide Diamond Manufacturing Ltd has been directed to allow the trade union to participate in the negotiation process for collective bargaining. The Government refers, as it did previously, to the minutes of a negotiation held on 3 September 2004, a copy of which it states were forwarded to the Committee. (However these have not been received.)

– As regards point (e), the Government states that the matter has been taken up with the state government of Andhra Pradesh, and that further information in this regard would be furnished in due course.

– As regards point (f), the Government states that there is no need to obtain prior permission from the labour authorities for workers to have access to the courts. Workers are free to approach the labour court directly for justice.

– As regards point (g), the Government states that its present position regarding an inquiry into the alleged dismissals and suspensions of workers at M/s Synergies Dooray Automotive Ltd is being ascertained and would be furnished in due course.

– As regards point (h), in respect of the negotiations with worker representatives of M/s Madras Knitwear Pvt Ltd by the management, which took place in the presence of the then-Development Commissioner and Deputy Commissioner of Labour, the Government has been informed that the workers were satisfied with the negotiations. Compensation has already been paid to the workers by the management as per the agreed upon settlement between the parties.

112. *The Committee notes the information provided by the complainant and the Government. As regards the issue of the alleged cases of anti-union discrimination resulting in imposition of fines, dismissals and suspensions of trade unionists, the Committee notes the information that 20 cases have been disposed of by the chairperson of the tribunal, while 18 cases are pending for want of evidence by the workers and one case is posted for the passing of award. Given that the complaint was filed in 2002, the Committee underlines the excessive delay of the authorities, and it requests the Government to send the judicial resolutions in the 20 cases it states have been disposed of and to keep it informed of any further developments in the 18 pending cases.*

113. *In respect of allegations concerning the brutal suppression of a strike by workers at Worldwide Diamonds Manufacturing Ltd in January and February of 2002, the detention of hundreds of striking workers and a trade union officer by the police, the prohibition of meetings in the complainant's local office, excessive police violence (caning and chaining of workers), and the visit of police officers to workers' homes in order to threaten them so that they return to work, the Committee regrets that the Government reiterates that, according to the Commission of Police, the allegations regarding the brutal suppression of the strike by excessive violence were untrue, and that it makes no reference to its previously expressed commitment to initiate an independent and thorough investigation of these allegations in cooperation with the complainant organization. The Committee requests the Government to institute the independent investigation if it has not done so and to keep it informed of the results.*

114. *In respect of the criminal cases brought by the police against the workers arrested during the strike in January 2002, the Committee notes the information submitted by the Government and, in particular, that all of the workers were acquitted of the charges on 29 November 2006. The Committee recalls the principle that the arrest of trade unionists against whom no charge is proved involves restrictions on freedom of association, and governments should adopt measures for issuing appropriate instructions to prevent the danger involved for trade union activities by such arrests.*

115. *As regards the question of restrictions on the right to collective bargaining of workers in the VEPZ and on the right of the Visakhapatnam Export Processing Workers' Union to take part in negotiations with the management of the Worldwide Diamonds Manufacturers Ltd, the Committee notes that the Government repeats its previous statement that there is no bar in the Zone restricting workers from joining a trade union of their choice for the purpose of collective bargaining. M/s Worldwide Diamond Manufacturing Ltd has been directed to allow the trade union to participate in the negotiation process for collective bargaining. The Committee repeats its request that the Government provide a copy of the minutes of the joint meeting held on 3 September 2004 that led to the lifting of the employer's lockout, which the Government indicates it has forwarded to the Committee but which have still not been received. The Committee also requests the Government to provide information on the evolution of collective bargaining and to send any agreement reached by the parties.*

116. *As regards the request that the Government take necessary steps to ensure that in the EPZ of Visakhapatnam the functions of GRO are not performed by the Deputy Development Commissioner (DDC) but by another independent person or body having the confidence of all parties concerned, the Committee notes the Government's indication that the matter has been taken up with the state government of Andhra Pradesh, and that further information in this regard would be furnished in due course. The Committee notes the allegations of the CITU that the Government has failed to implement this recommendation, either in the EPZ of Visakhapatnam or in any other EPZ/SEZ, and that some state governments, particularly the government of Uttar Pradesh, have started introducing the same unjust practice of vesting administrative/operational heads in non-EPZ/SEZ areas with the power and responsibility of a GRO, thereby seeking to make it a national practice. The Committee notes in this regard the office orders of the government of Uttar Pradesh (Department of Labour) dated September 2008, vesting the power and responsibilities of the Labour Commissioner (Uttar Pradesh) in the Chief Executive Officers of the Noida and Greater Noida regions of Uttar Pradesh. Noting also the Government's previous indication that an individual person or body would be entrusted to look after grievances of the workers, the Committee expects the Government to make quick progress on steps taken to ensure that the roles of GRO and DDC are carried out by different persons or bodies, and thereby to promote the settlement of disputes and grievances through inexpensive, expeditious and impartial conciliation procedures. The Committee requests the Government to provide further information in this regard as soon as possible, as well as its observations on the allegations in respect of the state government of Uttar Pradesh.*

117. *As regards the request that the Government take all necessary measures, including amending the Industrial Disputes Act of 1947, so as to ensure that suspended workers as well as trade unions could approach the court directly, without being referred by the state government, the Committee regrets that the Government has provided no new information in this regard. The Committee previously noted that a new subsection (2) was inserted to section 2A of the Industrial Disputes Act 1947, which provides that in disputes relating to discharge, dismissal, retrenchment or otherwise termination of services of an individual worker, such worker may make an application directly to the labour court for adjudication of this dispute. Collective disputes are required to be raised first before a conciliation officer (section 4 of the Industrial Disputes Act) and the appropriate government could*

refer such disputes for adjudication or arbitration under section 10 and 10A of the same Act. Recalling the principle that "workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial" [see ***Digest of decisions and principles of the Freedom of Association Committee****, 5th edition, 2006, para. 820], the Committee repeats its request concerning the need of amending the legislation.*

118. *As regards the Committee's request that the Government conduct an independent inquiry in order to thoroughly and promptly consider the alleged dismissals and suspensions at the Synergies Dooray Automotive Ltd, the Committee notes the Government's indication that its present position regarding such an inquiry was being ascertained and would be furnished in due course. Recalling that cases concerning anti-union discrimination should be examined rapidly so that the necessary remedies can be really effective [see* ***Digest****, op cit., para. 826], the Committee requests the Government to institute expeditiously the inquiry and to keep it informed of the outcome in this regard.*

119. *As regards the Committee's request that the Government keep it informed of the result of the negotiations held with the workers of the Madras Knitwear (Pvt) Ltd before the Deputy Commissioner of Labour, the Committee takes note of the Government's indication that negotiations between worker representatives and the management of Madras took place in the presence of the then-Development Commissioner and Deputy Commissioner of Labour, and that it has been informed that the workers were satisfied with the negotiations. Compensation has already been paid to the workers by the management as per the agreed upon settlement between the parties.*

Case No. 2512 (India)

120. The Committee last examined this case, which concerns alleged acts of anti-union discrimination and interference in trade union affairs through the creation of puppet unions, dismissals, suspensions and transfers of active trade union members, arbitrary reduction of wages, physical violence and lodging of false criminal charges against its members, at its November 2008 meeting [see 351st Report, paras 84–106]. On that occasion:

(a) The Committee welcomed the steps taken by the Tamil Nadu government to implement its recommendations, including the establishment of a committee, with the District Collector as its chairperson, one representative from the office of the Joint Commissioner of Labour and one representative from the office of the Joint Chief Inspector of Factories, to examine the alleged acts of anti-union discrimination and interference in trade union affairs at the Arakonam factory. However, the Committee noted with concern the new allegations of continuing anti-union discrimination and interference, which it expected would also be examined by the committee. The Committee further expected that if the committee concluded that these allegations were substantiated, sufficiently dissuasive sanctions would be imposed so as to ensure that the management refrains from any further such acts and that the complainant organization may carry out its activities freely. The Committee further requested the Government to submit a copy of the committee's report.

(b) The Committee further requested the Government to keep it informed of the outcome of the court cases concerning the dismissed workers.

(c) The Committee noted the explanation provided by the Government with regard to the orders of suspension which, according to the Government, in nine cases were inflicted as punishment and requested the Government to ensure that an independent investigation into those cases was carried out without delay and, if it was found that

the workers were suspended due to their legitimate trade union activities, to fully compensate the workers concerned for the damages suffered.

(d) With regard to the allegation of false criminal charges brought against members and office bearers of the complainant organization, the Committee requested the complainant and the Government to provide information on all pending charges against members and office bearers of the MRF United Workers' Union.

(e) The Committee further requested the Government to keep it informed of the outcome of the case concerning the alleged transfers of trade union members, which had been referred by the Government for adjudication.

(f) The Committee once again requested the Government to provide information on any concrete legislative changes taken or envisaged in order to bring the legislation into full conformity with freedom of association principles.

(g) The Committee also once again requested the Government to take appropriate measures to obtain the employer's recognition of the MRF United Workers' Union for collective bargaining purposes and to keep it informed in this respect.

121. The Committee also noted a communication from the complainant dated 1 October 2008, in which the complainant, MRF United Workers' Union, alleged new acts of victimization and harassment of officials and members of the union. In particular, the allegations related to an incident on 9 July 2008 in which one of the members of the union, who earlier in the day had helped distribute pamphlets outside the factory gate that concerned a hunger strike organized by the complainant union to highlight its demand for implementation of the Committee's recommendations, was assaulted and beaten at his work station within the factory, allegedly with the complicity of the management in the attack. The management placed the assaulted worker and five other union members under suspension, after they had requested that he be authorized to leave the factory in order to obtain medical treatment. The complainant further alleged in connection with the same incident that the Arakonam Police at the behest of MRF management had a false criminal complaint lodged against several members of the union, pursuant to which five members were arrested on 10 July 2008 and taken to jail.

122. The complainant further confirmed that the inquiry by the three-member committee, which was established by the government of Tamil Nadu to examine allegations of anti-union discrimination, was carried out and completed. The inquiry involved an initial sitting on 5 April 2008, followed by a factory visit on 14 May 2008, and the committee submitted its report on the inquiry to the state government on 28 May 2008. The complainant, although it did not receive a copy of the report, understood that one of the committee's conclusions was the following: "Management has not initiated disciplinary cases against the employees on baseless grounds. However, it may be the case that when the worker is belonging to the complainant union, punishment may be more severe".

123. The complainant further referred to the separate previous inquiry into the allegations it raised in connection with the present complaint, which was carried out by Mr Thiru T. Dharmaseelan, a Labour Officer in Vallore, between January and March of 2007 at the direction of the government of Tamil Nadu. A copy of the March 2007 report of that inquiry, which was not previously forwarded to the Committee, was attached to the complainant's communication. The report of the 2007 inquiry contained the findings of the Labour Officer, which included the following:

– "It is evident from the documents produced by the complainant Union, that workers were frequently transferred, demoted, suspended, charge memos and warning notices were issued to the workers after joining the union. On the enquiry it is also noticed that most

of the Office bearers either were dismissed or de-promoted, suspended, or transferred … Although the management stated that the transfers and punishments, etc., were due to various misconducts and administrative reasons, the fact that all these mass activities were taken after starting of the Union, i.e., December 2003. Hence the complaint that the management have indulged in anti-union activities cannot be summarily rejected" (para. 3); and

– "There is no provision for conducting secret ballot election by a neutral body for determining the representational status of the union in the factory as per the Trade Union Act. In the present case the available material evidences clearly shows that the management is projecting a minority union as a majority one. In the above circumstance, it is felt necessary to determine the representative status of the union in the factory in an appropriate manner" (para. 5(g)).

124. The complainant also referred to a writ petition which the MRF United Workers' Union filed in 2008 in the Madras High Court, seeking a court order to implement the Committee's recommendations, and in particular, to compel recognition as a bargaining agent by management of MRF Limited. By order dated 28 July 2008 the High Court issued a two-week interim injunction restraining MRF management from entering into any settlement relating to wages or any other issue with the MRF Arakonam Workers' Welfare Union. A copy of the order was attached to the complainant's communication.

125. In a recent and detailed communication dated 4 February 2009, which will be reproduced in the next examination of the case, the complainant alleges new acts of anti-union discrimination committed by the management against office bearers and members of the MRF United Workers' Union and anti-union practices by the authorities.

126. In its communication dated 30 January 2009, the Government indicates that, on the basis of the reply by the state government of Tamil Nadu, the three-member committee which had been established to examine the allegations of the MRF United Workers' Union had carried out and completed its inquiry. The Government states that, in accordance with the Committee's recommendations that it conduct an inquiry both into alleged acts of anti-union discrimination suffered by the officials and members of the MRF United Workers' Union and into allegations of interference by the factory management in trade union internal affairs at the Arakonam factory, the two issues were considered by the committee. The Government states that it appears from the committee's conclusions that there appears to be no substance to the allegations. The Government indicates that it was informed that the conclusions included the following:

– both the MRF United Workers' Union and the MRF Arakonam Workers' Welfare Union enjoy substantial support of the workers;

– management has not initiated disciplinary cases against the employees on baseless grounds; and

– the very fact that the workers came out in open support of one union or the other in front of top management of the MRF during the plant visit of the committee proves that the workers do not fear the management in the context of participation in trade union activities and have the right to choose their union.

127. The Government states that it has been informed by the Tamil Nadu government that every aspect of the Committee's report has been carefully examined. The Labour Commissioner has been asked to take necessary action on the report of the three-member committee and to monitor the situation at MRF to ensure industrial peace and the early settlement of disputes. All possible steps have been taken in accordance with legislation in force to effectively redress the grievances of the complainant union. The Government further indicates with regard to the additional information in the complainant's communication

dated 1 October 2008, that it has had the matters alleged therein examined by the government of Tamil Nadu.

128. With regard to the recommendation concerning taking appropriate measures to obtain the employer's recognition of the MRF United Workers' Union for collective bargaining purposes, the state government has identified the rule and procedure to be followed, which the Government indicates involves the Code of Discipline that it previously referred to in its communication dated 28 April 2008. The complainant union filed a writ petition with the High Court asking for a declaration that it be declared the sole bargaining agent, pursuant to which the High Court issued an interim injunction restraining MRF management from entering into any settlement with the MRF Workers' Welfare Union. The state government after detailed examination of the documents and inquiry has come to the conclusion that the genesis of the whole matter is inter-union rivalry and the various incidents are related to the granting of recognition. Both unions have every opportunity to prove their strength.

129. *With regard to the Committee's request that the Government conduct an independent inquiry without delay into all alleged acts of anti-union discrimination suffered by the officials and members of the MRF United Workers' Union, as well as all allegations of interference by the factory management into trade union internal affairs, the Committee notes the Government's indication that the three-member committee established for this purpose by the government of Tamil Nadu has carried out and completed its inquiry. The Committee notes the Government's indication that it appears from the committee's conclusions that there does not appear to be any substance to the allegations. The Committee regrets that the Government still has not provided a copy of the committee's report, and it requests once again that it forward the report without delay, so as to enable it to examine these allegations in full knowledge of the facts.*

130. *The Committee notes with deep concern the new allegations of anti-union discrimination by the management of the enterprise to which officers and members of the MRF United Workers' Union have been subjected, and allegations of anti-union practices by the authorities. The Committee requests that the Government provide its observations on these matters. Noting the Government's previous indications that the Labour Commissioner had a meeting with the enterprise management and advised it not to indulge in acts of anti-union discrimination, and that the Labour Commissioner was asked to monitor the situation at the factory to ensure industrial peace and the early settlement of disputes, the Committee requests the Government to provide information about what specific actions the Labour Commissioner is taking in this regard, and in particular, with regard to the complainant's new allegations.*

131. *As regards the Committee's previous request that the Government keep it informed of the outcome of the 26 court cases concerning the dismissed workers, which the Government previously indicated were pending before the Labour Court for adjudication, the Government repeats its previous indication that the government of Tamil Nadu wrote to the High Court on 6 March 2008 requesting the speedy disposition of these cases. The Committee regrets not to have received the information requested and once again demands the Government to inform it of the status of the court cases concerning the dismissed workers.*

132. *With regard to the orders of suspension which, according to the Government, in nine cases were inflicted as punishment, the Committee requests the Government to confirm whether these cases were encompassed by the inquiry of the three-member committee in April and May of 2008 and if so, to provide information on the outcome of that aspect of the inquiry.*

133. *With regard to all pending cases of allegedly false criminal charges brought against members and office bearers of the complainant organization, the Committee regrets that the Government has not provided information in this regard and therefore repeats its request that the Government provide information on all pending charges against members and office bearers of the MRF United Workers' Union and invites it to specify the concrete facts which were at the basis of these charges.*

134. *With regard to the Committee's previous request that the Government keep it informed of the outcome of the case concerning alleged transfers of trade union members because of their membership or union activities, the Committee notes that the Government repeats its indication that the state government referred the issue of transfers for adjudication, and that it also states that the Commissioner of Labour informed both parties of the actions taken by the Government and the existing legal positions. The Committee once again requests the Government to provide information about the status of the transfer cases and about the actions that have been taken by the state government in this regard, as well as the information provided to the parties by the Commissioner of Labour.*

135. *The Committee recalls that it previously requested the Government to take necessary measures so as to bring the legislation in the country into conformity with freedom of association principles. In particular, it requested the Government to actively consider, in full and frank consultations with the social partners:*

– *adoption of the legislative provisions expressly sanctioning violation of trade union rights and providing for sufficiently dissuasive sanctions against acts of anti-union discrimination;*

– *amendment of the relevant provisions of the Industrial Disputes Act so as to ensure that suspended workers and trade unions may approach the court directly, without being referred by the state government; and*

– *laying down objective rules for the designation of the most representative union of collective bargaining purposes, when it is not clear by which union the workers wish to be represented.*

The Committee notes that the Government has provided no new information in this regard, and that it otherwise simply repeats its reference to the procedure laid down under the Code of Discipline, under which the State Evaluation and Implementation Committee makes decisions of a recommendatory nature based on pleas for recognition by petitioner unions. The Committee once again requests the Government to provide information on any concrete envisaged legislative or regulatory changes pursuant to the previous request of the Committee. The Committee expects that the necessary measures will be taken so as to bring the legislation into full conformity with freedom of association principles.

136. *The Committee regrets that the Government has provided no new information about taking appropriate measures to obtain the employer's recognition of the MRF United Workers' Union for collective bargaining purposes. The Committee recalls the finding of the 2007 inquiry by the state labour officer, recorded in paragraph 5(g) of his March 2007 report, that "the available material evidence clearly shows that the management is projecting a minority union as a majority one. In the above circumstance, it is felt necessary to determine the representative status of the union in the factory in an appropriate manner". The Committee repeats its request that the Government take appropriate measures to obtain the employer's recognition of the MRF United Workers' Union for collective bargaining purposes and it asks the Government to keep it informed in this regard. It further requests the Government to keep it informed about the status of the writ petition*

lodged with the High Court by the MRF United Workers' Union seeking a declaration that it be declared the sole bargaining agent.

Case 2139 (Japan)

137. The Committee last examined this case, which concerns allegations of preferential treatment granted to certain workers' organizations in the appointment of nominees to the Central Labour Relations Commission (CRLC) and various Prefectoral Labour Relations Commissions (PLRCs), at its June 2008 meeting. The Committee noted with regret that, in spite of its previous recommendations concerning the composition of the CLRC, yet again no National Confederation of Trade Unions (ZENROREN) nominee had been appointed to the most recent term of the CLRC. Observing that three terms of the CLRC had passed since it first examined this case without the nomination of any ZENROREN nominees to the CLRC, the Committee queried whether the Government had given due consideration to the rationale of its previous recommendation in its 328th Report, that is, the necessity of affording fair and equal treatment to all representative organizations, with a view to restoring the confidence of all workers in the fairness of the composition of labour relations commissions and other similar councils that exercise extremely important functions from a labour relations perspective. The Committee therefore requested the Government to take these principles into consideration when appointing worker members to the next term of the CLRC and those of the Kyoto, Kanagawa and Hyogo PLRCs. Noting further that the complainant had appealed the 5 December 2007 decision of the Tokyo High Court to the Tokyo Supreme Court, the Committee requested the Government to provide the Tokyo Supreme Court with copies of its current and previous examinations of the present case and to transmit a copy of the court's decision once it was handed down [see 350th Report, paras 111–119].

138. In its communication of 25 December 2008, the complainant states that on 16 November 2008 the Government appointed, as worker member for the 30th term of the CLRC, Ms Fusako Yodo (representing Japan Federation of National Public Service Employees' Unions (Kokkororen) and Japan Federation of Medical Workers' Unions (Nihon Iroren)), nominated by the National Council for Democratization of Labour Relations Commission. The complainant explains that this is the first time that a non-RENGO member has been appointed as the worker member to the CLRC and represents an historic step forward in its struggle for democratization of labour relations commissions and other administrative institutions.

139. In addition, the complainant states that on 10 October 2008, a non-RENGO nominee was appointed as worker member of the PLRC in Kyoto, bringing the total number of prefectures in which non-RENGO members are included in the relevant PLRC to nine. In relation to the PLRCs in Kanagawa, Hyogo and Hokkaido, in which cases are still pending in the local courts, no non-RENGO nominee has yet been appointed.

140. The complainant further states that based on this new situation, ZENROREN and other unions decided on 9 December 2008 to withdraw the appeal that they had made to the Supreme Court. On the same day, the Supreme Court dismissed the appeal without examining the judgment handed down by the Tokyo High Court.

141. In its communication of 9 February 2009, the Government confirms that ZENROREN-nominated members have been appointed to the CLRC and the presence of persons recommended by trade unions affiliated to ZENROREN in PLRCs in Myagi, Saitama, Chiba, Tokyo, Nagano, Osaka, Wakayama, Kochi and Kyoto. The Government adds that the ZENROREN appeal to the Supreme Court was dismissed on 9 December 2008.

142. *The Committee notes with satisfaction that a ZENROREN nominee has been appointed to the most recent term of the CLRC and that ZENROREN nominees are now present on nine PLRCs. The Committee expects that each local government will continue to consider the appointment of ZENROREN nominated worker representatives in the remaining three PLRCs.*

Case No. 2455 (Morocco)

143. The Committee last examined this case at its June 2008 meeting [see 350th Report, paras 126–129]. It concerns the refusal of Royal Air Maroc (RAM) to recognize the Moroccan Union of Aviation Technicians (STAM), the refusal to negotiate with STAM and acts of anti-union discrimination against its members. In its last recommendations, the Committee expressed the sincere hope that the Government would take the necessary steps as soon as possible to ensure that RAM recognizes STAM and that it negotiates with its representatives in future in the same way as with the representatives of the other representative trade union federations at the enterprise. The Committee also asked the Government to report in detail on compensation for the engineers and their current situation in relation to the dispute with the management in 2006, and particularly to supply copies of legal decisions ruling on their administrative leave.

144. In a communication dated 17 September 2008, the Government indicates that, according to information from the Ministry of Employment, the trade unionists affiliated to STAM do not suffer any discrimination. Moreover, the request concerning the legal decisions ruling on the engineers' administrative leave in 2006 has been brought before the Department of Justice. Finally, the Government indicates that the RAM management has the right, in accordance with the provisions of the Labour Code, to negotiate with the most representative trade unions at the enterprise. In a communication dated 16 February 2009, the Government reiterates that the dispute has been resolved through negotiation and recourse to the competent courts and declares that consequently there is no longer any need for examination of the present case by the Committee on Freedom of Association.

145. *The Committee notes this general information. Recalling that its previous recommendations were made further to serious allegations by the complainant concerning acts of anti-union discrimination by RAM against members of STAM, the Committee trusts that the negotiations referred to by the Government concerning the dispute in 2006 between RAM and STAM have resulted in full compensation for the engineers and requests the Government to supply information on the current status of STAM within the enterprise.*

Case No. 2338 (Mexico)

146. During its previous examination of the case, the Committee requested the Government to send it the texts of the court rulings relating to the collective dispute that had arisen in the enterprise CONFITALIA in 2003–04 and to the alleged violations of the right to strike [see 349th Report, para. 183].

147. In its communication of 23 February 2009, the Government states that the Conciliation and Arbitration Board of the State of Morales has indicated that it is unable to communicate the court rulings, as only the parties in labour proceedings or persons who may be affected by a decision may intervene in such proceedings. Nevertheless, the abovementioned local Conciliation and Arbitration Board reported on the status of the proceedings. According to this information:

– *Case No. 02/580/01. CONFITALIA SA de CV and others.* On 4 June 2008, an arbitration award was rendered, attributing liability to the enterprise CONFITALIA

SA de CV for the causes of the strike action and ordering the payment of and compliance with the benefits mentioned in the sixth paragraph of the award; Mr Miguel Arroyo Ramírez, in his capacity as appointed liquidator in Case No. 9/2001 concerning the insolvency of the enterprises GRUPPO COVARRA SA de CV; CONFITALIA SA de CV; FODERAMI COVARRA SA de CV; RIVETEX Cashmere Factory SA de CV; and ADOC SA de CV, initiated direct *amparo* proceedings (appeal for the enforcement of constitutional rights) against the award handed down by this authority. On 28 July 2008, the Third Collegiate Court of the Eighteenth Circuit issued a final decision in the direct *amparo* proceedings, in which it endorsed the award rendered by the local Conciliation and Arbitration Board.

– *Case No. 02/480/02. CONFITALIA SA de CV and others.* On 24 August 2007, an arbitration award was rendered, attributing liability to the employer CONFITALIA SA de CV for the causes of the strike action and ordering the defendants to pay and comply with the benefits mentioned in the fifth paragraph; as a result of the award handed down by this authority, Mr Miguel Arroyo Ramírez, in his capacity as appointed liquidator in Case No. 9/2001 concerning the insolvency of the enterprises GRUPPO COVARRA SA de CV; CONFITALIA SA de CV; FODERAMI COVARRA SA de CV; RIVETEX Cashmere Factory SA de CV; and ADOC SA de CV, initiated direct *amparo* proceedings. On 12 June 2008, the Second Collegiate Court of the Eighteenth Circuit issued a final decision in the direct *amparo* proceedings, in which it endorsed the award rendered by the local Conciliation and Arbitration Board.

– *Case No. 02/481/02. ADOC SA de CV and others.* On 24 August 2007, an award was rendered, attributing liability to the enterprise ADOC SA de CV and ordering the payment of and compliance with the mentioned benefits. As a result of the award handed down by this authority, Mr Miguel Arroyo Ramírez, in his capacity as appointed liquidator in Case No. 9/2001 concerning the insolvency of the enterprises GRUPPO COVARRA SA de CV; CONFITALIA SA de CV; FODERAMI COVARRA SA de CV; RIVETEX Cashmere Factory SA de CV; and ADOC SA de CV, initiated direct *amparo* proceedings. On 2 July 2008, the Second Collegiate Court issued a final decision in the direct *amparo* proceedings, in which it endorsed the award rendered by the local Conciliation and Arbitration Board.

148. *The Committee notes this information.*

Case No. 2536 (Mexico)

149. At its March 2008 session, the Committee made the following recommendations [see 349th Report, para. 989]:

(a) The Committee requests the Government to take measures to ensure that the competent local authorities grant without delay the registration of SETEP irrespective of its greater or lesser representativeness, and to amend the legislation of Puebla State such that it does not impose as a condition on state workers the non-existence of a representative trade union in order to be able to register a trade union.

(b) The Committee requests the Government to keep it informed in this respect.

150. In its communication of 1 December 2008, the Government states that the Puebla State Arbitration Court indicated that it was legally impossible to grant trade union registration to the Puebla State Independent Union of Education Workers (SETEP), given that the labour case from which the complaint arose was completely closed and shelved, without any possibility of legal recourse, in accordance with Mexican legislation, and for this reason it is considered to be a matter of res judicata. Notwithstanding the abovementioned

ruling, the trade union is fully entitled to submit a new registration application. With regard to the Committee's request to amend the legislation of Puebla State, in other words to modify the State's labour legislation in articles 58–73 of the State Public Service Workers Act, the Government states that the Puebla State Arbitration Court lacks the authority to carry out such a request, as this lies with the legislative power of the State. This is because the Political Constitution of the United Mexican States enshrines the principle of the separation of powers, which is one of the underpinnings and characteristics of the whole democratic system. This principle seeks to defend human freedoms through the proper distribution of state functions.

151. Accordingly – states the Government – the power of the Federation of Mexico is divided for the purposes of its exercise into the legislative, executive and judicial branches, which, in order to carry out their functions, enjoy full autonomy and independence in their form of organization and action, complementing each other to ensure the proper functioning of the State.

152. *The Committee notes this information and that there is no longer any possibility for legal recourse in this case, as the ruling has acquired the force of res judicata. The Committee regrets that the judicial authority has not taken into account the principles of Convention No. 87 relating to the freedom to establish trade union organizations. The Committee refers to its previous conclusions, which are reproduced below [see 349th Report, para. 987]:*

> *With regard to the substance, the Committee observes that the principal reasons for not granting registration lay in the previous judicial appeals, in application of article 62, paragraph V, of the Puebla State Public Service Workers Act, whereby registration requires having the majority of workers in the state and there not being another trade union organization ("it must be the sole trade union association"). In this respect, observing that the new committee of the complainant trade union continues to seek registration, the Committee wishes to emphasize that this provision is in flagrant violation of Convention No. 87, Article 2 of which enshrines the right of all workers to form such organizations as they deem appropriate. The Committee also recalls that a provision authorizing the refusal of an application for registration if another union, already registered, is sufficiently representative of the interests which the union seeking registration proposes to defend, means that, in certain cases, workers may be denied the right to join the organization of their own choosing, contrary to the principles of freedom of association [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 328].*

153. *The Committee repeats its previous recommendation to amend the legislation of Puebla State such that it does not impose as a condition on state workers the non-existence of a representative trade union in order to be able to register a trade union. The Committee requests the Government to make these conclusions known to the competent authorities on legal matters in the State of Puebla and firmly expects that the legislation will be amended to bring it into line with Convention No. 87.*

Case No. 2268 (Myanmar)

154. The Committee last examined this case at its November 2008 meeting [see 351st Report, paras 1016–1050] and made the following recommendations:

(a) The Committee once again urges the Government in the strongest of terms to enact legislation guaranteeing freedom of association to all workers, including seafarers and employers; to abolish existing legislation, including Orders Nos 2/88 and 6/88 so as not to undermine the guarantees relating to freedom of association and collective bargaining; to explicitly protect workers' and employers' organizations from any interference by the authorities, including the army; and to ensure that any such legislation so adopted is made public and its contents widely diffused. The Committee once again urges the

Government to take advantage in good faith of the technical assistance of the Office so as to remedy the legislative situation and to bring it into line with Convention No. 87 and collective bargaining principles. It requests the Government to keep it informed of all developments in this respect.

(b) The Committee once again urges the Government to issue instructions to its civil and military agents as a matter of urgency so as to ensure that the authorities fully refrain from any act preventing the free operation of all forms of organization of collective representation of workers, freely chosen by them to defend and promote their economic and social interests, including seafarers' organizations and organizations which operate in exile and which cannot be recognized in the prevailing legislative context of Myanmar. It further requests the Government to ensure that all those working for such organizations can exercise trade union activities free from harassment and intimidation. The Committee requests the Government to keep it informed of all measures taken in this regard.

(c) The Committee once again urges the Government to institute an independent inquiry into the alleged murder of Saw Mya Than, to be carried out by a panel of experts considered to be impartial by all the parties concerned. The Committee requests the Government to keep it informed of measures taken in this respect.

(d) The Committee once again deeply deplores the Government's refusal to consider the release of Myo Aung Thant and strongly urges the Government to take the necessary steps to ensure his immediate release from prison and to keep it informed in this respect.

(e) The Committee once again requests the Government to adopt legislative measures which fully guarantee the right of seafarers to establish and join organizations of their own choosing and afford them adequate guarantees against acts of anti-union discrimination. It further requests the Government to issue appropriate instructions without delay so as to ensure that the SECD authorities immediately refrain from all acts of anti-union discrimination against seafarers who engage in trade union action, and immediately revise the text of the model agreement concerning Myanmar seafarers so as to bring it into conformity with Convention No. 87 and collective bargaining principles. The Committee requests the Government to keep it informed of all developments in this respect.

(f) The Committee once again recalls that a disputes resolution process that exists within a system with a total absence of freedom of association in law and practice, cannot possibly fulfil the requirements of Convention No. 87 and urges the Government to take all necessary measures so as to ensure the freely chosen representation of employees and employers in cases conciliated by the various disputes resolution committees operating in the country, and to keep it informed in this respect.

(g) The Committee once again requests the Government to further investigate the dismissals of Min Than Win and Aung Myo Win from the Motorcar Tyre Factory and if it is found that the dismissals were due to legitimate trade union activities, to take the appropriate steps with a view to the workers' reinstatement or, if reinstatement is not possible, the payment of adequate compensation so as to constitute sufficiently dissuasive sanctions. The Committee requests to be kept informed in this respect.

(h) The Committee once again requests the Government to inquire into the specific part of the production of the Unique Garment Factory which was stopped in July 2001 and the exact criteria for the selection of the 77 night shiftworkers who were retrenched; if it is found that the dismissals were due to legitimate trade union activities, the Committee requests the Government to take the appropriate steps with a view to ensuring the payment of adequate compensation so as to constitute sufficiently dissuasive sanctions. The Committee requests to be kept informed in this respect.

(i) The Committee requests the Government to provide full information, including official company documents where available, on the Myanmar Texcamp Industrial Ltd's decision to retain skilled and service workers over unskilled and non-service workers in undertaking its retrenchment of 340 employees.

(j) With regard to the filing of complaints against the Yes Garment Factory on the same day by both Maung Zin Min Thu and Min Min Htwe along with five other workers, the

Committee requests the Government once again to establish an impartial investigation into this matter, in particular as regards the substance of the complaints filed by Maung Zin Min Thu and Min Min Htwe along with five other workers, the substance of the agreement reached on the basis of these complaints, and the specific reasons for which Maung Zin Min Thu was dismissed; if it is found that the dismissal of Maung Zin Min Thu was due to legitimate trade union activities, the Committee requests the Government to take appropriate steps with a view to his reinstatement or, if reinstatement is not possible, the payment of adequate compensation so as to constitute sufficiently dissuasive sanctions. The Committee requests to be kept informed in this respect.

(k) The Committee once again urges the Government in the strongest terms to undertake real and concrete steps towards ensuring respect for freedom of association in law and in practice in Myanmar in the very near future.

(l) The Committee calls the Governing Body's attention to this serious and urgent case.

155. In its communication of 6 March 2009 the Government states, with respect to the Committee's previous recommendation on legislative reform, that the legislation will be brought in line with Convention No. 87 in the very near future and that the concerned ministries were drafting laws in this respect, which would be submitted for approval once the new Constitution is in force. Additionally Chapter VIII, paragraph 354 of the draft State Constitution provides, among other things, for the right of citizens to form associations and unions. As concerns the Committee's previous recommendation for technical assistance in the reform of the legislative framework, the Government indicates that it was closely cooperating with the ILO Liaison Office in order to send a tripartite delegation to the 2009 International Labour Conference.

156. As concerns the Committee's previous recommendation on Myo Aung Thant, the Government reiterates that it is not possible to secure his release.

157. As concerns the Committee's request relating to disputes resolution mechanisms, the Government states that from January to December 2008 there were 38 cases before the Workmen's Compensation Committee, all of which concerned either death or injury, and that the amount of 3,732,330 kyats had been paid to those workers. Additionally in 2007 the Township Workers' Supervisory Committee (TWSC) heard 411 cases from 3,557 workers in 376 factories. In 2008 (up to June of that year) 190 cases had been heard, involving 3,475 workers from 178 factories; the cases concerned matters relating to wages and salaries, overtime, holiday benefits, bonuses, and arrangement of transportation. The remainder of the Government's reply, is a repetition of information previously sent to the Committee.

158. *The Committee recalls that this case concerns the absence of freedom of association both in law and in practice in Myanmar. It includes allegations regarding legislative issues, in particular, the absence of a legislative basis for freedom of association in Myanmar, as well as factual allegations concerning the total absence of recognized workers' organizations, opposition by the authorities to the organized collective representation of seafarers and to the exiled Federation of Trade Unions of Burma (FTUB), the arrest, imprisonment and death of trade unionists, and threats against, and dismissals and arrests of, workers who pursue labour grievances.*

159. *The Committee recalls that for a number of years it has emphasized the need to both elaborate legislation guaranteeing freedom of association, and to ensure that existing legislation which impedes freedom of association would not be applied. It further recalls that considerable concern over the lack of conformity of Myanmar legislation with Convention No. 87 had been expressed, for a number of years, by the Committee of Experts and the Conference Committee on the Application of Standards, and that the right to organize remained subject to severe measures of repression in both law and practice [see, e.g., 350th Report para. 1033]. The Committee therefore deeply regrets that the*

Government, while indicating that the draft Constitution provides for the right of citizens to form associations and unions, once again indicates that new laws on freedom of association would only be submitted once the Constitution entered into force. The Committee is bound to deplore, once again, the fact that despite its previous detailed requests for legislative measures guaranteeing freedom of association to all workers in Myanmar, there has been no progress in this regard. The Committee must also, once again, recall that this persistent failure to take any measures to remedy the legislative situation constitutes a serious and ongoing breach by the Government of its obligations flowing from its voluntary ratification of Convention No. 87. The Committee therefore once again urges the Government in the strongest of terms to enact legislation guaranteeing freedom of association to all workers, including seafarers, and employers; to abolish existing legislation, including Orders Nos 2/88 and 6/88 so as not to undermine the guarantees relating to freedom of association and collective bargaining; to explicitly protect workers' and employers' organizations from any interference by the authorities, including the army; and to ensure that any such legislation so adopted is made public and its contents widely diffused. Furthermore, while noting the Government's statement on cooperation with the ILO Liaison Office in Myanmar, the Committee once again urges the Government to take advantage in good faith of the technical assistance of the Office so as to remedy the legislative situation and to bring it into line with Convention No. 87 and collective bargaining principles. It requests the Government to keep it informed of all developments in this respect.

160. *The Committee recalls that for several years now it has deplored the Government's failure to take steps to ensure the release of Myo Aung Thant, who had allegedly been convicted to a heavy prison sentence for his trade union activities pursuant to a secret trial, without freely chosen representation and confessions obtained under torture [see 340th Report, para. 1092]. In this respect, the Committee is bound to deplore, once again, that the Government limits itself to reiterating that it is not possible to secure his release and strongly urges the Government to take the necessary steps to ensure his immediate release from prison and to keep it informed in this respect.*

161. *With respect to its previous recommendation on dispute settlement mechanisms, the Committee notes the Government's information on the number of cases disposed of by the Workmen's Compensation Committee in 2007 and the TWSC in 2008. It recalls, nevertheless, that a disputes resolution process that exists within a system with a total absence of freedom of association in law and practice, cannot fulfil the requirements of Convention No. 87. It also recalls its previous observation that, while it appears that the various committees referred to by the Government are all involved in some way in the conciliation and negotiation of disputes between employees and employers in Myanmar, their exact interaction and relative jurisdictions are unclear [see 337th Report, para. 1102]. The Committee further notes that, in the absence of relevant information from the Government, the composition of the TWSC, the procedure to be followed should no agreement be reached by the TWSC, and the nature of the representation of employees and employers before the committees remains equally unclear. In these circumstances, the Committee once again requests the Government, pending the adoption in Myanmar of legislation that protects and promotes freedom of association, to take measures to ensure the freely chosen representation of employees and employers in cases conciliated by the various disputes resolution committees operating in the country and to keep it informed of the measures taken in this regard.*

162. *Finally, the Committee deeply regrets that the Government provides no new information respecting its other previous recommendations. It therefore repeats those recommendations, and urges the Government to take all necessary measures to ensure that they are given full effect to:*

– *The Committee once again urges the Government to issue instructions to its civil and military agents as a matter of urgency, so as to ensure that the authorities fully refrain from any act preventing the free operation of all forms of organization of collective representation of workers, freely chosen by them to defend and promote their economic and social interests, including seafarers' organizations and organizations which operate in exile and which cannot be recognized in the prevailing legislative context of Myanmar. It further requests the Government to ensure that all those working for such organizations can exercise trade union activities free from harassment and intimidation. The Committee requests the Government to keep it informed of all measures taken in this regard.*

– *The Committee once again urges the Government to institute an independent inquiry into the alleged murder of Saw Mya Than, to be carried out by a panel of experts considered to be impartial by all the parties concerned. The Committee requests the Government to keep it informed of measures taken in this respect.*

– *The Committee once again requests the Government to adopt legislative measures which fully guarantee the right of seafarers to establish and join organizations of their own choosing and afford them adequate guarantees against acts of anti-union discrimination. It further requests the Government to issue appropriate instructions, without delay, so as to ensure that the SECD authorities immediately refrain from all acts of anti-union discrimination against seafarers who engage in trade union action, and immediately revise the text of the model agreement concerning Myanmar seafarers so as to bring it into conformity with Convention No. 87 and collective bargaining principles. The Committee requests the Government to keep it informed of all developments in this respect.*

– *The Committee once again requests the Government to further investigate the dismissals of Min Than Win and Aung Myo Win from the Motorcar Tyre Factory and if it is found that the dismissals were due to legitimate trade union activities, to take the appropriate steps with a view to the workers' reinstatement or, if reinstatement is not possible, the payment of adequate compensation so as to constitute sufficiently dissuasive sanctions. The Committee requests to be kept informed in this respect.*

– *The Committee once again requests the Government to inquire into the specific part of the production of the Unique Garment Factory which was stopped in July 2001 and the exact criteria for the selection of the 77 night shiftworkers who were retrenched; if it is found that the dismissals were due to legitimate trade union activities, the Committee requests the Government to take the appropriate steps with a view to ensuring the payment of adequate compensation so as to constitute sufficiently dissuasive sanctions. The Committee requests to be kept informed in this respect.*

– *The Committee requests the Government to provide full information, including official company documents, where available, on the Myanmar Texcamp Industrial Ltd's decision to retain skilled and service workers over unskilled and non-service workers in undertaking its retrenchment of 340 employees.*

– *With regard to the filing of complaints against the Yes Garment Factory on the same day by both Maung Zin Min Thu and Min Min Htwe along with five other workers, the Committee requests the Government, once again, to establish an impartial investigation into this matter, in particular as regards the substance of the complaints filed by Maung Zin Min Thu and Min Min Htwe along with five other workers, the substance of the agreement reached on the basis of these complaints, and the specific reasons for which Maung Zin Min Thu was dismissed; if it is found that the dismissal of Maung Zin Min Thu was due to legitimate trade union activities, the Committee*

requests the Government to take appropriate steps with a view to his reinstatement or, if reinstatement is not possible, the payment of adequate compensation so as to constitute sufficiently dissuasive sanctions. The Committee requests to be kept informed in this respect.

163. *The Committee once again urges the Government in the strongest terms to undertake real and concrete steps towards ensuring respect for freedom of association in law and in practice in Myanmar in the very near future.*

Case No. 2591 (Myanmar)

164. The Committee last examined this case at its November 2008 meeting [see 351st Report, paras 144–150], and on that occasion formulated the following recommendations:

- to take the necessary measures to amend the national legislation so as to allow trade unions to operate in conformity with Conventions Nos 87 and 98 and to recognize the Federation of Trade Unions – Burma (FTUB) as a legitimate trade union organization;

- to carry out an independent investigation without delay into the allegation of ill-treatment of the detained persons and, if it is found to be true, to take appropriate measures, including compensation for damages suffered, giving precise instructions and apply effective sanctions so as to ensure that no detainee is subjected to such treatment in the future;

- to release Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min without delay;

- to ensure that no person will be punished for exercising his or her rights to freedom of association, opinion and expression;

- to refrain from any acts preventing the free operation of any form of organization of collective representation of workers, freely chosen by them to defend and promote their economic and social interests, including organizations which operate in exile, such as the FTUB, since they cannot be recognized in the prevailing legislative context of Myanmar; and to issue instructions to that effect to its civil and military agents.

165. In its communication of 25 February 2009 the Government states that, as regards amendments to bring national legislation and practice into conformity with Conventions Nos 87 and 98, its new draft State Constitution of the Republic of the Union of Myanmar is in line with the Conventions and shows the Government's political will to conform to the Conventions. The Government adds that the Ministry of Labour has formed a Labour Law Reviewing Committee, headed by the Minister for Labour and comprising the head of the respective departments, which has started drawing up a new Trade Union Law.

166. In respect of the Committee's previous recommendation on the alleged ill treatment of detainees, the Government indicates that action shall be taken if anyone is found to have breached the relevant provisions of the Myanmar Police Force Maintenance of Discipline Law. Finally, as regards the release of Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min, the Government reiterates that these individuals have been charged with offences under section 124(A) of the Penal Code for inciting hatred or contempt for the government, section 17(1) of the Unlawful Association Act, 1908 for being a member or contacting an unlawful association and section 13(1) of the Immigration (Emergency) Provisions Act, 1947 for illegally leaving and re-entering the

country. The Government adds that the above laws do not impair the obligations laid down in Convention No. 87.

167. *The Committee deeply regrets that the Government's communication essentially repeats previously submitted indications with respect to legislative reform and the six detained trade unionists, while failing to provide any new information or present any evidence that it has taken concrete measures in respect of the serious matters in the present case. In these circumstances, the Committee must once again emphasize that it is a fundamental obligation of a member State to respect human and trade union rights, and stresses, in particular, that when a State decides to become a Member of the Organization, it accepts the fundamental principles embodied in the Constitution and the Declaration of Philadelphia, including the principles of freedom of association [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 15], which it should observe in law and in practice. The Committee expresses its deep concern at the extreme gravity of the issues raised in this case and at the ongoing violation of fundamental human rights and freedom of association principles in law and in practice. The Committee deplores that the Government has failed to implement its recommendations. It therefore refers to its previous examination of this case and once again urges the Government:*

– *to take the necessary measures to amend the national legislation so as to allow trade unions to operate in conformity with Conventions Nos 87 and 98 and to recognize the FTUB as a legitimate trade union organization;*

– *to carry out an independent investigation without delay into the allegation of ill-treatment of the detained persons and, if it is found to be true, to take appropriate measures, including compensation for damages suffered, giving precise instructions and apply effective sanctions so as to ensure that no detainee is subjected to such treatment in the future;*

– *to release Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min without delay;*

– *to ensure that no person will be punished for exercising his or her rights to freedom of association, opinion and expression; and*

– *to refrain from any acts preventing the free operation of any form of organization of collective representation of workers, freely chosen by them to defend and promote their economic and social interests, including organizations which operate in exile, such as the FTUB, since they cannot be recognized in the prevailing legislative context of Myanmar and to issue instructions to that effect to its civil and military agents.*

168. *The Committee expects that all of the above recommendations will be fully implemented as a matter of urgency and requests the Government to keep it informed in this respect.*

Case No. 2354 (Nicaragua)

169. The Committee last examined this case at its March 2008 session, and on that occasion hoped that the Managua Appeals Court would hand down a decision in relation to the dismissal of the teachers and trade union leaders, Norlan José Toruño Araúz and José Ismael Rodríguez Soto, and recalled that justice delayed is justice denied [see 349th Report, paras 194–196].

170. In a communication of 22 December 2008, the Government recalls that the teachers in question lodged an appeal against the ruling in the first instance in relation to the dismissal proceedings and indicates that, according to the Ministry of Education, in a decision of 12 December 2007, the Labour Chamber of the Court of Appeals of Managua rejected the appeal and upheld the ruling of the court of the first instance, which did not accept the petition for reinstatement.

171. *The Committee notes this information. The Committee recalls that, according to the Government, in its communication of 3 September 2007 (communication considered by the Committee in its previous examination of the case), the court of the first instance did not accept the petition for reinstatement but ordered that the officials in question be paid the social benefits provided by law, such as a Christmas bonus and proportionate holidays. In these circumstances, the Committee requests the Government to ensure that the payments of such benefits are made.*

Case No. 2229 (Pakistan)

172. The Committee last examined this case at its March 2008 meeting [see 349th Report, paras 200–203]. On that occasion, it took note of the information provided by the Government in respect of the legislative amendments and urged it to amend the 2002 Industrial Relations Ordinance (IRO) as soon as possible so as to bring it into full conformity with Conventions Nos 87 and 98, ratified by Pakistan. It requested the Government to inform the Committee of Experts on the Application of Conventions and Recommendations, to which it refers the legislative aspects of this case, of the developments in this regard. The Committee regretted that the Government had failed to provide its observations on the alleged acts of anti-union discrimination against trade union officers of the Employees' Old-Age Benefits Institution (EOBI) Employees' Federation of Pakistan and on the measures taken to conduct an independent investigation in this respect. The Committee reiterated its previous request and strongly urged the Government to be more cooperative in the future.

173. In its communications dated 1 November 2008 and 16 April 2009, the Government provides a copy of the Industrial Relations Act (IRA) 2008, repealing the Industrial Relations Ordinance (IRO) 2002. The Government indicates that the exemption under section 1(4)(f) of IRO 2002 has been withdrawn and therefore requests that this case be closed.

174. *The Committee notes the IRA 2008 and that it is an interim law, which will lapse on 30 April 2010 if not repealed sooner. During this period, a tripartite conference will be held to discuss the IRA 2008 in consultation with all stakeholders, and the IRA will be amended or new legislation drafted on the basis of the recommendations of that conference.*

175. *The Committee further takes note of the following amendments to the IRO 2002 as embodied in the IRA 2008.*

176. *The Committee notes with interest that:*

– *section 3(1)(d) of the IRO (requirement to affiliate with a federation at the national level registered with the National Industrial Relations Commission within two months after it is certified as a collective bargaining agent or after the promulgation of the IRO) has been replaced by a provision in the IRA that: "Workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the*

right to affiliate with international organizations and confederations of workers' and employers' organizations" (section 3(d));

– *the minimum requirement for establishment of a national federation has been reduced to two registered trade unions under section 23(1) of the IRA;*

– *section 20(11) of the IRO, under which no application for determination of the collective bargaining agent at the same establishment may be made for a period of three years once a registered trade union has been certified as a collective bargaining agent, has been amended by shortening the required interval from three years to two years, under corresponding section 25(11) of the IRA;*

– *as to the Committee's request to amend the IRO so as to allow workers to seek legal remedies against the acts of anti-union discrimination at any time, and not only during an industrial dispute, the proviso of section 49(4)(e) of the IRO, which prohibited the NIRC from granting interim relief except during pendency of an industrial dispute, has been removed in the corresponding section 26(8)(f) of the IRA; and*

– *as to the Committee's request to engage in full consultations with the social partners on the possible amendment of the IRO in order to resolve issues concerning the functioning of the labour judiciary system, the IRA retains the National Industrial Relations Commission, while at section 56 the Labour Appellate Tribunals are resurrected to replace the High Court as the organ and venue for appeals in labour cases. The purpose of this amendment is explicitly stated in the "Statement of objects and reasons" of the IRA: "to revive the Labour Appellate Tribunals on persistent demand of trade unions/federations, in order to ensure speedy disposal of labour disputes".*

177. *The Committee further notes, however, that:*

– *section 1(4) of the IRO has been amended in the IRA by the removal from the excluded categories of workers only those employed on Ministry of Defence railway lines, by the Pakistan Mint, and by institutions established for payment of employees' old-age pensions or for workers' welfare. The Committee therefore requests the Government to take the necessary measures in consultation with the social partners to amend its labour legislation so as to ensure that workers of Bata Shoes company; Pakistan Security Printing Corporation; Pakistan Security Papers Ltd; establishments or institutions maintained for the treatment and care of sick, infirm, destitute and mentally unfit persons; members of Watch and Ward; security and fire services staff of an oil refinery; or establishments engaged in the production, transmission or distribution of natural gas or liquefied petroleum gas or petroleum products, or of a seaport and airport; and administration of the State, enjoy the right to establish and join organizations of their own choosing;*

– *as concerns the Committee's request to repeal section 19(1) of the IRO, which imposed measures of administrative control over trade union assets, section 19(1) of the IRO has been removed under section 24 "Returns" of the IRA; however, under section 16(1)(d) of the IRA the Registrar of trade unions has the power to inspect the accounts and records of registered trade unions or investigate or hold inquiries as he or she deems fit. Recalling that measures of administrative control over trade union assets, such as financial audits, should be applied only in exceptional cases, the Committee requests the Government to take necessary measures to amend or repeal section 16(1)(d) of the IRA; and*

– *section 65(5) of the IRO, which stipulated the disqualification of a trade union officer from holding any trade union office for the following term for committing an unfair labour practice and which covered a wide range of conduct not necessarily making it inappropriate to hold a position of trust, has been retained under section 73(5) of the IRA. The Committee therefore reiterates its previous request to amend this provision.*

178. *The Committee expects that the labour legislation as finally amended will retain the amendments in the IRA 2008 insofar as they reflect the changes previously requested by the Committee in relation to the IRO 2002, and that the Government will otherwise take measures to fully comply with the Committee's other previous requests, so as to ensure that its labour legislation is brought into full conformity with freedom of association principles. The Committee further expects that such measures will be taken in full and frank consultation with the social partners on any questions or proposed legislation affecting trade union rights and to the satisfaction of all parties concerned. The Committee requests the Government to inform the Committee of Experts on the Application of Conventions and Recommendations, to which it refers the legislative aspects of this case, of the developments in this regard.*

179. *Regarding the alleged acts of anti-union discrimination against trade union officers of the EOBI Employees' Federation of Pakistan, which date back to August 2003, the Committee deeply regrets that once again the Government has failed to provide its observations thereon as well as on the measures taken to conduct an independent investigation in this respect. The Committee once again recalls that the Government is responsible for preventing all acts of anti-union discrimination and it must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties concerned [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 817]. The Committee therefore urges the Government to institute an independent inquiry to investigate the allegations of anti-union discrimination at the EOBI, and if the allegations are proven to be true to take the necessary measures to fully redress the acts of anti-union discrimination. The Committee requests the Government to keep it informed of the outcome of this investigation.*

Case No. 2086 (Paraguay)

180. The Committee last examined this case, relating to the trial and sentencing in the first instance for "breach of trust" of the three presidents of the trade union confederations, the United Confederation of Workers (CUT), the Paraguayan Confederation of Workers (CPT) and the Trade Union Confederation of State Employees of Paraguay (CESITEP), Alan Flores, Jerónimo López and Barreto Medina, at its November 2007 session [see 348th Report, paras 142–144]. On that occasion, the Committee regretted the significant amount of time that had elapsed since the initiation of legal proceedings (almost ten years), expressed the hope that the proceedings would be concluded in the near future and requested the Government to inform it of the final ruling handed down in relation to the trade union officials in question.

181. In a communication of 28 May 2008, CESITEP indicates that it lodged an appeal requesting the admission of new facts, which was rejected by the Supreme Court of Justice, and that a motion was filed to terminate the criminal proceedings based on the provisions of the Pact of San José de Costa Rica on the grounds of the duration of the proceedings, which was also rejected. In a communication of 28 August 2008, CESITEP recalls that: (1) the criminal proceedings were initiated 12 years ago; (2) although the ILO recommended the Government to take measures to declare the legal proceedings null and void on the grounds that serious irregularities had been found in those proceedings, the judicial authority has not handed down a decision; and (3) no settlement of the case, which

is currently in the second instance, is in sight, undermining the human rights of the officials and notwithstanding the fact that the State Attorney-General's Office has stated that the proceedings are already time-barred (according to the Attorney-General's Office, the five-year period provided for in law has already expired). In a communication of 15 September 2008, CESITEP alleges that the Chamber of Appeals ordered that a single decision should be handed down incorporating the motion on time limitation and the final judgement and that this constitutes a serious injustice for the union officials by creating an impediment to the legitimate right to know the court's decision regarding the motion to terminate the proceedings, denying the right to lodge an appeal against the decision that is handed down, and ultimately denying the right to legal defence.

182. *The Committee regrets that the Government has not sent its observations in relation to the communications of CESITEP that date back to 2008. The Committee deeply deplores the significant amount of time that has elapsed since the initiation of legal proceedings (more than 12 years). The Committee urges the Government to take all the necessary measures to ensure that the legal proceedings will be concluded in the very near future and requests it to ensure that the guarantees of due process are respected. The Committee requests the Government to keep it informed of the final ruling that is handed down in this case.*

Case No. 2624 (Peru)

183. The Committee last examined this case concerning allegations of the dismissal of 226 workers following the setting up of a trade union at its March 2009 meeting [see 353rd Report, paras 1232 –1243]. On that occasion, the Committee noted that workers whose contracts were not renewed have received the statutory benefits deriving from the termination of their employment and that the Government has ordered an inspection in the municipality of Miraflores following the presentation of the complaint to the ILO. The Committee requested the Government to keep it informed of the outcome of the labour inspection that was ordered following the presentation of this complaint.

184. In a communication of 16 January 2009, the Government reports that on 9 June 2008 the Regional Directorate of Labour and Employment Promotion of Lima-Callao, in communication No. 1874-2008-MTPE/2/12.1 indicated, with reference to communication No. 457-2008-MTPE/9.1 (requesting the labour inspectorate to undertake an inspection of the municipality of Miraflores with a view to investigating the matters covered by this complaint), that the Single Union of Workers of the Municipality of Miraflores (SUTRAOCMUN) reported acts of harassment and the failure to comply with labour provisions, as well as the violation of the collective rights of the members of the union. In this context, the Directorate of Labour Inspection of Lima, under the terms of inspection order No. 1731-2008-MTPE/2/12.3 of 31 January 2008, undertook an inspection relating to the matters denounced by the union, the findings of which are set out in notice of infraction No. 1045-2008-MTPE/2/12.3 of 14 March 2008 which: (i) indicates that the employer failed to assist in the inspection procedure, which is a very serious violation of the function of inspection, taking into account the fact that the entity to be inspected was duly notified by the labour inspector, Ms Rosario Guerrero Altamirano, for which the penalty is set at 81 per cent of 11 tax units (UITs), amounting to the sum of 31,185 new soles; and (ii) reports the finding of the inspection that the employer had committed acts infringing the freedom of association of the 226 workers dismissed by the Municipality of Miraflores, with the recommendation of the application of the penalty of 81 per cent of 11 UITs, amounting to the sum of 31,185 new soles.

185. Subsequently, taking into account the notice of contravention referred to above, the first subdirectorate of labour inspection of the Ministry of Labour and Employment Promotion issued resolution No. 1130-2008-MTPE/2/12.310 of 26 August 2008 under the terms of which:

- firstly, in relation to the anti-union acts against the 226 workers concerned, the administrative labour authority refuses to rule on the matter as it is subject to judicial proceedings since, in view of the requirement set out in the consolidated text (TUO) of the Organic Act on the Judiciary, where proceedings are pending before the judicial authorities, the labour authorities shall refrain from issuing an opinion on the matter, as to do otherwise would mean that any officials who did not comply with this provision might be held liable;

- secondly, with regard to the employer's failure to assist in the inspection procedure, it should be noted that the administrative labour authority decided to apply the penalty proposed in the notice of infraction, that is 81 per cent of 11 UITs, amounting to the sum of 31,185 new soles.

186. The Government emphasizes that the administrative labour authority carried out its functions in compliance with the labour legislation, opting for the action established by the law for such cases. Moreover, in relation to the issue that is before the courts, the judicial authorities have been requested to provide information on the current situation of the proceedings relating to the complaint (which will be transmitted to the ILO in due course), in order to ensure that the State in its legal action is scrupulously in compliance with the labour provisions that are in force at the national and international levels, with the objective of preventing any act that is in violation of and/or detrimental to the exercise of any of the rights set out in collective labour legislation or the Conventions of the International Labour Organization respecting those rights.

187. *The Committee notes this information. It requests the Government to keep it informed of the progress of the legal proceedings relating to the anti-union acts against the 226 dismissed workers.*

Case No. 2249 (Bolivarian Republic of Venezuela)

188. At its March 2008 session, the Committee regretted that, despite the seriousness of the case, the Government had not sent information relating to the recommendations that it had made at its March 2007 session and which it therefore reiterated. Those recommendations are set out below [see 349th Report, para. 298]:

- bearing in mind the importance of due process of law being respected, the Committee trusts that the trade union leader, Carlos Ortega, will be released without delay and requests the Government to send it the decision handed down by the authority hearing the appeal. The Committee also requests the Government to send it a copy of the sentence handed down by the court of first instance (with all the reasons and conclusions therefor) in respect of the trade union leader Carlos Ortega (the Venezuelan Workers' Confederation (CTV) has only sent a copy of the record of the public hearing at which the decision of the court and the sentence were made public);

- the Committee requests the Government to recognize FEDEUNEP and to take steps to ensure that it is not the object of discrimination in social dialogue and in collective bargaining, particularly in the light of the fact that it is affiliated to the CTV – another organization that has encountered problems of recognition which the Committee has already examined in the context of this case. The Committee requests the Government to keep it informed of any invitation it sends to FEDEUNEP in the context of social dialogue. The Committee recalls the principle that both the government authorities and employers should refrain from any discrimination between trade union organizations, especially as regards recognition of their leaders who seek to perform legitimate trade union activities [see *Digest of decisions and principles of the Freedom of Association Committee*, fourth edition, 1996, para. 307];

– with regard to the dismissal of over 23,000 workers from the PDVSA and its subsidiaries in 2003 for having taken part in a strike during the national civic work stoppage, the Committee notes the Government's statements, and specifically that only 10 per cent of the appeals lodged with the labour inspectorate and other judicial authority have not yet been ruled upon. The Committee deeply regrets that the Government has disregarded its recommendation that it enter into negotiations with the most representative workers' federations in order to find a solution to the dismissals at the PDVSA and its subsidiaries as a result of the organization of or participation in a strike during the national civic work stoppage. The Committee reiterates this recommendation;

– the Committee calls on the Government to take steps to vacate the detention orders against the officials and members of the National Union of Oil, Gas, Petrochemical and Refinery Workers (UNAPETROL), Horacio Medina, Edgar Quijano, Iván Fernández, Mireya Repanti, Gonzalo Feijoo, Juan Luis Santana and Lino Castillo, and to keep it informed in this respect;

– the Committee considers that the founders and members of UNAPETROL should be reinstated in their jobs since, in addition to the fact that they were participating in a civic work stoppage, they were dismissed while they were undergoing training;

– with regard to the alleged acts of violence, arrests and torture by the military on 17 January 2003 against a group of workers from the PDVSA enterprise – leaders of the Beverage Industry Union of the State of Carabobo – who were protesting against the raiding of the enterprise and the confiscation of its assets, which was a threat to their source of work, the Committee notes that the complaints submitted by José Gallardo, Jhonathan Rivas, Juan Carlos Zavala and Ramón Díaz are currently under investigation and stresses that the allegations refer to the detention and torture of these workers, as well as of Faustino Villamediana. While regretting that the proceedings currently pending at the Office of the Attorney-General with respect to four workers have not been concluded despite the fact that the events go back to December 2002 or January 2003, the Committee firmly hopes that the authorities will rapidly conclude the investigations and requests the Government to keep it informed of any decision that is taken;

– the Committee requests the Government to send it the decision adopted by the labour inspectorate regarding the reassessment of the dismissal of trade unionist Gustavo Silva and draws attention to the delays in the conduct of these proceedings;

– with regard to the dismissal of FEDEUNEP trade unionist Cecilia Palma, the Committee requests the Government to inform it whether she has appealed against the ruling of 1 September 2003 and, if so, to keep it informed of the outcome of her appeal; and

– in general, the Committee deeply regrets the excessive delay in the administration of justice with regard to several aspects of this case and emphasizes that justice delayed is justice denied and that this situation prevents the trade unions and their members from exercising their rights effectively.

189. Furthermore, at its March 2008 session, the Committee urged the Government to send the requested information urgently and without delay, and to give effect to those recommendations [see 349th Report, para. 299].

190. Furthermore, the Committee requested the Government to respond specifically to the following allegations by UNAPETROL, which were submitted in its communications of 2 March and 27 September 2007. The complainant organization UNAPETROL indicated

that the auditing body of the PDVSA summoned around 200 dismissed workers – including union officials – who participated in the 2002–03 work stoppage in the petroleum sector as part of investigations into the losses of millions of dollars incurred during the stoppage. According to UNAPETROL, these were undefined and vague accusations, which lacked proof, and were another example of anti-union persecution.

191. UNAPETROL added that the public summons issued by the enterprise put forward conclusions relating to the national civic work stoppage which were not within its remit, when stating that "an analysis of the information contained in the written and audiovisual mass media showed that the prerequisites for workers to initiate strike procedures were not met …".

192. The complainant organization noted furthermore that there was a substantial amount of proof, which was duly presented to the Attorney-General's Office – as well as records of public statements made by UNAPETROL spokespersons and public hearings in which they participated – relating to inappropriate operational procedures, acts of negligence, incompetence and the use of physical violence at various operational sites of the enterprise just after the dismissals had taken place and once members of the national armed forces had taken control of the facilities, and that this proof attests to the absolute innocence of all the dismissed workers. The evidence has been completely overlooked and ignored by the Tax Auditor's Office, the PDVSA Operational Audit Unit and even the Attorney-General's Office. In this connection, UNAPETROL enclosed the following:

– copies of the document presented by a group of lawyers and representatives of these workers to the Attorney-General's Office in April 2003, containing certificates of safe transfer for installations that were later found to be damaged, once officials of the regime had taken control of operations; and

– documents presented to the Tax Auditor's Office and the PDVSA Operational Audit Unit by Víctor Ramos and Horacio Medina, the internal control secretary and the president of UNAPETROL, who were summoned to meetings on 16 and 22 December 2006, respectively. According to UNAPETROL, the documents demonstrate how these workers were subjected to an act of persecution and retaliation while they were totally defenceless. Furthermore, union officials Edgar Quijano and Rodolfo Moreno, the labour assistance secretary and the vice-president of the disciplinary tribunal of UNAPETROL, were publicly summoned to meetings on 12 April and 28 June 2007; Horacio Medina, president of UNAPETROL, was also summoned.

193. In its communication dated 7 October 2008, the Government reiterates the content of the communications that it has submitted to the Committee on Freedom of Association on previous occasions – since 20 February 2003 – especially Communication No. 361/2007, dated 24 October 2007, in which it requested that the case be closed, as it considered that the statements and arguments it had provided in response to the Committee's requests were not only sufficient, relevant and sound but also demonstrated that those of the complainants were groundless. Lastly, the Government reiterates its request with regard to the appraisal of the allegations put forward by the parties in this case and the consideration and fair assessment of the information provided by the Government.

194. *The Committee regrets that the Government has not provided the specific information that it requested in the recommendations that it made in March 2007 and March 2008, which it therefore reiterates. Furthermore, the Committee once again requests the Government to respond specifically to the allegations by UNAPETROL, which were submitted in its communications of 2 March and 27 September 2007, given that it has merely reiterated information that has already been examined. Given the seriousness of the pending issues,*

the Committee ultimately trusts that the Government will fully cooperate with the procedure and will respond in detail to the questions that have been asked.

195. *Lastly, given the time that has elapsed since the presentation of the complaints and the Government's failure to communicate the requested information, the Committee invites the complainant organizations to communicate any relevant information on the matters that are pending.*

Case No. 2428 (Bolivarian Republic of Venezuela)

196. In its previous examination of the case, the Committee made the following recommendations [see 340th Report, paras 1401–1441, approved by the Governing Body at its 295th Session (March 2006)]:

(a) The Committee requests the Government to take measures without delay, after full, frank and free consultations with the social partners, to amend the Practice of Medicine Act and to eliminate the discrepancies with Conventions Nos 87 and 98, which have been recognized by the Government, and also to avoid gaps in professional relations and reminds the Government that ILO technical assistance is at its disposal.

(b) The Committee requests the Government in the meantime, until such time as it amends the Practice of Medicine Act, to promote collective bargaining between the FMV and the colleges of doctors with the employing bodies in the medical sector, including the MDSD, the IVSS and the IPASME.

(c) The Committee requests the Government to keep it informed in this respect.

197. With regard to the first of these matters, the Committee reached the following conclusions [see 340th Report, paras 1438 and 1439]:

– The Committee shares the Government's view that the Practice of Medicine Act of 23 August 1982 contains provisions incompatible with the provisions of Conventions Nos 87 and 98 and should be amended since, on the one hand, it establishes compulsory affiliation of doctors on pain of sanctions, as well as a single medical federation which includes colleges of doctors, workers and employers and/or owners of medical establishments and, on the other, endows the Federation and colleges of doctors with the exclusive right of representation for the purposes of collective bargaining, whether or not there are other trade union organizations, and makes agreements concluded at local level by colleges of doctors subject to approval by the FMV (the corresponding provisions are reproduced in the annexes and/or the Government's reply).

– The Committee recalls, however, that the responsibility for aligning legislation with ratified Conventions belongs to the Government. The Committee observes that the FMV is a group of colleges of doctors for which affiliation is compulsory, which as professional bodies would to some extent fall outside the scope of Conventions Nos 87 and 98 although not in other aspects since the legislation grants these bodies the rights of trade unions including their right to collective bargaining. In these circumstances, the Committee points out that in 2000 and 2002 the FMV had signed collective agreements and that the Government had not denied the failure of the Inspectorate of Labour to convene the employers' side nor that discussions of future collective agreements had never begun. The Committee finds that in the circumstances described above (inconsistent with and in violation of Conventions Nos 87 and 98), the FMV has been representing and represents all doctors in the country. The Committee regrets that the Government has simply chosen to change its previous practice in relation to collective bargaining with the FMV apparently without informing the Federation of its new approach and without taking measures to correct the provisions in the legislation in a way which would fully assure the guarantees of freedom of association for the medical sector while promoting an effective collective bargaining mechanism. For all these reasons, it seems that the medical sector has been forced, for lack of action by the Government, to go several years without a collective agreement governing its conditions of employment.

198. In its communications dated 20 April and 2 June 2008, the Venezuelan Medical Federation (FMV) claims that, further to the Committee's recommendations, it contacted the Ministry of Labour requesting the commencement of discussions on the collective agreements with the employing bodies in the Government (Ministry of Health and Social Development (MSDS), Venezuelan Social Security Institute (IVSS) and Ministry of Education Staff Pensions and Welfare Institute (IPASME)) and the appropriate authorities, but it received no reply. The FMV indicates that the draft collective agreements had been introduced in 2003 and that, in October 2005, the Labour Inspectorate had invoked "overdue elections" (of the FMV's executive committee) to prevent negotiation; however, the FMV renewed the membership of its executive committee in accordance with its rules and those of the National Electoral Council, even though the Council has not yet authorized the election process. Furthermore, the Government is using the claim of "overdue elections" to suspend the trade union leave of FMV officials.

199. In its communication dated 25 February 2009, the Government states that this complaint has not been changed and that no new arguments have been put forward by the complainants that merit any kind of response; nevertheless, and with the greatest will and eagerness to cooperate, the Government reiterates the points made in the communications sent on 15 August and 25 October 2005 and informs this international body that, since the date mentioned above, no applications or new arguments have been presented that require the Government's attention.

200. The Government adds that, already aware of the opinions and conclusions of the Committee on Freedom of Association in similar cases, in the name of the Government of the Bolivarian Republic of Venezuela, it considers that the complaint made by the FMV must be dismissed as it is entirely unfounded in the light of the provisions of Conventions Nos 87 and 98; therefore, it reiterates the request for this case to be closed, given the incompatibility between the rules mentioned in the complaint and the Conventions mentioned in the responses duly provided on behalf of the Government.

201. *The Committee notes the new information from the FMV and the comments of the Government. The Committee notes that the Government merely reiterates its earlier responses to the Committee, and invokes the incompatibility of the national rules governing the FMV and Conventions Nos 87 and 98. The Committee notes with regret that the Government has ignored its recommendations in which it specifically requested the amendment of the Practice of Medicine Act and the promotion of collective bargaining between the authorities in the health sector and the FMV. The Committee therefore reiterates its previous recommendations and requests the Government to supply information in this regard. The Committee also requests the Government to indicate why the National Electoral Council has not authorized the elections of the executive committee of the FMV and to provide the text of the decisions adopted in this regard. The Committee also requests the Government to respond to the allegation concerning the suspension of the trade union leave of FMV officials.*

* * *

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

Case	Last examination on the merits	Last follow-up examination
1865 (Republic of Korea)	March 2009	–
1914 (Philippines)	May–June 1998	March 2009
2006 (Pakistan)	November 2000	March 2009
2169 (Pakistan)	May–June 2003	March 2009

Case	Last examination on the merits	Last follow-up examination
2171 (Sweden)	March 2003	March 2009
2227 (United States)	November 2003	March 2009
2236 (Indonesia)	November 2004	March 2009
2286 (Peru)	May–June 2005	March 2009
2291 (Poland)	March 2004	March 2009
2292 (United States)	November 2006	November 2008
2301 (Malaysia)	March 2004	March 2009
2302 (Argentina)	November 2005	March 2009
2304 (Japan)	November 2004	November 2008
2317 (Republic of Moldova)	June 2008	March 2009
2336 (Indonesia)	March 2005	March 2009
2371 (Bangladesh)	May–June 2005	March 2009
2373 (Argentina)	March 2007	March 2009
2380 (Sri Lanka)	March 2006	March 2009
2386 (Peru)	November 2005	March 2009
2390 (Guatemala)	June 2006	November 2008
2394 (Nicaragua)	March 2006	March 2009
2395 (Poland)	May–June 2005	March 2009
2399 (Pakistan)	November 2005	March 2009
2400 (Peru)	November 2007	March 2009
2430 (Canada)	November 2006	March 2009
2441 (Indonesia)	June 2006	March 2009
2447 (Malta)	June 2006	November 2008
2448 (Colombia)	March 2007	March 2008
2460 (United States)	March 2007	November 2008
2466 (Thailand)	March 2007	March 2009
2470 (Brazil)	March 2009	–
2474 (Poland)	March 2007	March 2009
2488 (Philippines)	June 2007	March 2009
2489 (Colombia)	March 2008	November 2008
2525 (Montenegro)	June 2007	November 2008
2527 (Peru)	November 2007	March 2009
2532 (Peru)	March 2008	November 2008
2537 (Turkey)	June 2007	March 2009
2539 (Peru)	March 2009	–
2540 (Guatemala)	November 2008	–
2546 (Philippines)	March 2008	March 2009
2552 (Bahrain)	March 2008	March 2009
2561 (Argentina)	March 2008	November 2008
2566 (Islamic Republic of Iran)	November 2008	–
2569 (Republic of Korea)	November 2008	–

Case	Last examination on the merits	Last follow-up examination
2575 (Mauritius)	March 2008	November 2008
2582 (Bolivia)	November 2008	–
2583 (Colombia)	June 2008	–
2589 (Indonesia)	June 2008	March 2009
2590 (Nicaragua)	March 2008	March 2009
2598 (Togo)	November 2008	–
2603 (Argentina)	November 2008	–
2607 (Democratic Republic of the Congo)	November 2008	–
2611 (Romania)	November 2008	–
2616 (Mauritius)	November 2008	–
2618 (Rwanda)	November 2008	–
2619 (Comoros)	March 2009	–
2622 (Cape Verde)	November 2008	–
2624 (Peru)	March 2009	–
2625 (Ecuador)	March 2009	–
2629 (El Salvador)	March 2009	–
2632 (Romania)	November 2008	–
2634 (Thailand)	March 2009	–
2636 (Brazil)	March 2009	–
2637 (Malaysia)	March 2009	–

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

204. In addition, the Committee has just received information concerning the follow-up of Cases Nos 2046 (Colombia), 2096 (Pakistan), 2153 (Algeria), 2160 (Bolivarian Republic of Venezuela), 2214 (El Salvador), 2257 (Canada), 2273 (Pakistan), 2295 (Guatemala), 2383 (United Kingdom), 2390 (Guatemala), 2396 (El Salvador), 2434 (Colombia), 2439 (Cameroon), 2481 (Colombia), 2490 (Costa Rica), 2497 (Colombia), 2498 (Colombia), 2500 (Botswana), 2506 (Greece), 2511 (Costa Rica), 2520 (Pakistan), 2553 (Peru), 2554 (Colombia), 2556 (Colombia), 2568 (Guatemala), 2572 (El Salvador), 2573 (Colombia), 2579 (Bolivarian Republic of Venezuela), 2592 (Tunisia), 2597 (Peru), 2599 (Colombia), 2604 (Costa Rica), 2605 (Ukraine) and 2627 (Peru), which it will examine at its next meeting.

CASE NO. 2641

DEFINITIVE REPORT

Complaint against the Government of Argentina presented by the Association of Custom Brokers (AEDA)

Allegations: The complainant organization challenges the administrative decision whereby the Ministry of Labour declared a trade union assembly null and void at the request of 12 union members

205. The complaint is contained in a communication from the Association of Customs Brokers (AEDA) dated April 2008. Subsequently, the AEDA sent further information in communications dated June 2008 and 26 February 2009.

206. The Government sent its observations in communications dated 18 February and 22 May 2009.

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

A. The complainant's allegations

208. In its communication dated April 2008, the AEDA states that the purpose of its complaint is to request the Government of Argentina to overturn Ministry of Labour, Employment and Social Security (Ministry of Labour) Decision No. 191/2008 of 12 March 2008 because of violations of ILO Conventions Nos 87 and 98. The AEDA considers that the Government, by issuing the administrative act in national law, is violating the ILO Constitution, Conventions Nos 87 and 98 and the recommendations and standards of the Committee on Freedom of Association. The AEDA claims that its right to freedom of association has been damaged, restricted, distorted and hindered, preventing it from adequately exercising its union autonomy and resulting in unauthorized interference in its internal affairs.

209. The AEDA alleges that the Ministry of Labour declared null and void, without any legal grounds for doing so, the assembly of union members held on 26 April 2007 which duly approved by a large majority the report, balance sheet and other account statements of the union relating to the financial year ending 31 December 2006.

210. The complainant indicates that the administrative proceedings brought before the Ministry of Labour, which issued the decision under challenge, are the subject of file No. 1.213.048/07. The file was opened with the formal communication from the trade union informing the administrative labour authority that the ordinary general assembly was held on 26 April 2007. At this assembly the members considered, inter alia, the report, balance sheet, inventory, statement of expenditure and results, and the audit committee's report for the financial year ending 31 December 2006, which was approved by a large majority.

211. A group comprising just 12 members of the union, which comprises more than 2,100 Argentine customs brokers, filed a challenge at the assembly in an unsigned note and then left the meeting room. This is recorded in the minutes of the ordinary general assembly of 26 April 2007. The persons concerned presented their challenge to the Ministry of Labour and requested the declaration of nullity, stating as grounds for the challenge that they had not been provided with the supporting documentation for the meeting with due notice or been presented with the balance sheet for examination. They did not allege or give evidence of any specific irregularity; the points raised in their challenge were clearly general and abstract issues of principle.

212. The AEDA rejected the challenge as invalid since no irregularity had occurred. The complainant states that it proved that: (1) the supporting documentation was available to the members at its headquarters at Av. Callao 220, 6th floor, Buenos Aires, as from 9 March 2007, thereby meeting the deadlines laid down by the statutes and by law, and (2) the balance sheet was drawn up and signed on 8 March 2007 and was available as from 9 March 2007.

213. The letter sent by the AEDA to the representative of the group of contestants, which clearly stated that "… the report, balance sheet, inventory, statements of expenditure and other instruments have been authorized and are available to the members" (letter No. 841460357, received by the contestants on 20 March 2007), never received a reply. The AEDA considers that the presumptions arising from Argentine national law apply, which provide that silence is construed as consent (according to section 919 of the Civil Code and section 57 of the Employment Contracts Act). The AEDA considers that its reasoning in its response to the challenge showed that the contestants' arguments were absolutely groundless, since they did not allege that any specific irregularity had occurred, and demonstrated that the latter merely sought to use the administrative appeal machinery for political ends, in blatant abuse of their rights and for the sole purpose of damaging the image of the executive committee before the whole membership, seeking to put themselves forward as a new grouping for the next union elections.

214. On 17 July 2007 a hearing was held before the National Directorate of Trade Unions, under the aegis of the Ministry of Labour, at which the contestants and the AEDA both maintained their previous positions. The contesting party – who requested a declaration of nullity and auditing from the Ministry of Labour – stated: (1) that the report and balance sheet were not made available within the deadline, since the requisite notice of 30 working days was not given, and (2) that for the purposes of an examination of the balance sheet the supporting documentation was not made available at any time, and hence it was clearly impossible to discuss the approval of the balance sheet at the assembly.

215. The AEDA rejected the claim made, stating that "… the contestants fail to furnish any proof which justifies the position adopted … none of the contestants appeared at the AEDA headquarters at any time to certify the documentation made available in due form and time in accordance with section No. 45 of the statutes". In order to settle the challenge, the proceedings were transferred to the Department of Trade Union Administration, which rejected the challenge on the grounds that (page 53, third paragraph) "… as regards the competence of this department, it should be pointed out that for a review audit to be undertaken, the accreditation of any administrative irregularities is required. Furthermore, on page 7/23 there is a summary of the report and balance sheet as at 31 December 2006 approved at the challenged assembly, in accordance with the regulations in force".

216. The National Directorate of Trade Unions – a department of the Ministry of Labour itself – following the criteria referred to above, dismissed the challenge by means of an administrative act of 1 November 2007, on the basis of the following main arguments: "The challenge to the ordinary assembly refers solely to the availability of the report and

balance sheet in due time and form, no objection having been lodged regarding the legality of the convocation of the assembly, its Constitution or any lack of quorum for holding it." "It can therefore only be concluded that the assembly is the highest entity of the trade union, in which all members participate directly, and as the decision-making body it is the guarantor of the obligation to produce accounts." "… since the assembly was legitimately constituted, without any objection in this regard, and the report and balance sheet were examined and the accounts for the year were approved, the question raised becomes abstract. What was questioned was whether the report and balance sheet were made available for consideration in due time and form …" "… it endorses the considerations expressed in the report of the Department of Trade Union Administration inasmuch as the accounts for the year comply with the regulations in force".

217. The AEDA states that the contestants lodged an administrative appeal with the Ministry of Labour, and this was settled in their favour through the decision under challenge. The essence of the contestants' argument is that at the assembly the trade union supposedly committed serious irregularities undermining the members' freedom of association and the right to information.

218. AEDA indicates that Decision No. 191 of 12 March 2008 contains the following findings and conclusions:

> Article 1. The hierarchical appeal filed on a subsidiary basis by Messrs Marcelo Alejandro Gijena, Marcial Perez, Hernan Craia, Jorge Biancotto, Norberto Polio – and others, making a total of 12 persons – in their capacity as members of the Association of Customs Brokers (AEDA) is accepted; point (1) of the resolution issued by the National Directorate of Trade Unions on 1 November 2007 is therefore revoked; and the decisions issued by the ordinary general assembly of 26 April 2007 of the Association of Customs Brokers (AEDA) with respect to item (2) of the agenda (consideration of report, balance sheet, inventory, statement of income and expenditure, and report of the audit committee for the financial year ending 31 December 2006) are declared null and void …
>
> Article 4. [The present decision] shall be registered, communicated and filed.

219. The AEDA considers that there has been undue interference in freedom of association, since the union assembly is the supreme decision-making body which approved the union's accounts, a decision which cannot be disregarded or modified by the administrative labour authority. The decision implies clear and blatant interference by the State in the union's internal autonomy, inasmuch as it granted primacy to the "will" of a minority political group. According to the provisions of ILO Conventions Nos 87 and 98, the Ministry of Labour cannot interfere in the running of the trade union, since the union assembly is the competent body for deciding whether or not all requirements have been met with regard to the submission of documentation and the intrinsic validity of the report, balance sheet and other account statements for the financial year ending 31 December 2006.

220. According to sections 5 and 20 of Act No. 23551 on trade unions, "the assembly has competence (…) to approve and amend the statutes, reports and balance sheets", in the context of the "Trade union action programme". In view of the decisions taken by the highest decision-making body of the union, namely the assembly of members, which approved the account statements by a large majority, the AEDA understands that the Ministry had no competence in this respect, and therefore the ministerial decision implies a clear abuse of administrative power, which violates not only the principle of coherence but also the autonomy of the union.

221. In considering that the union assembly and its approval of the account statements for the 2006 financial year were invalid, the Government has deprived the union's work and internal affairs of all value, with clear transgression of the union's autonomy and its right

to manage its own affairs "without interference by the public authorities". The Ministry should take no part in internal political disputes relating to the union, remaining fully impartial towards the various groups competing for leadership. The AEDA advises that it has lodged a formal judicial complaint, requesting the National Labour Appeals Chamber to declare the administrative act null and unconstitutional which has given rise to the present complaint.

222. In its communication of June 2008, the AEDA states that further to the complaint brought before the Committee, the labour administration sought to prevent the consideration of the account statements for the 2007 financial year. Specifically, it declares that further to the presentation of the complaint, the Ministry of Labour sought to interfere with the autonomy and freedom of association of the organization with regard to the 2007 financial year, which was prevented by the National Judicial Authority, since the National Labour Justice Department accepted the appeal for *amparo* (protection of constitutional rights) brought by the union by means of an injunction dated 28 April 2008, which remains valid and was not appealed against by the Government.

223. The AEDA indicates that it convened the general assembly of members for 29 April 2008, in order to deal with the account statements for the 2007 financial year, complying with all the formal requirements imposed by national law. On 24 April 2008, the day after the presentation of the complaint, the National Directorate of Trade Unions (DNAS), under the aegis of the Ministry of Labour, sought to suspend the aforementioned assembly of members by means of notification No. 769/2008 contained in file No. 1.266.136/2008. The National Directorate of Trade Unions, in compliance with the political decision of the higher administrative authority and disregarding the judicial appeal brought before division IV of the National Labour Appeals Chamber, which was formally allowed by the court in Buenos Aires, sought to suspend, prevent and obstruct the ordinary assembly scheduled for 29 April 2008.

224. The decision to suspend the new assembly was absolute, in view of the fact that the DNAS had issued an official decision to the effect that Decision No. 191/2008, which had been appealed against, was fully applicable, and this was clearly illegal and arbitrary. Indeed, the illegality of such action was quite clear since the administrative labour authority disregarded the fact that Decision No. 191/2008 had been appealed against by the AEDA, with suspensory effect, in the National Labour Appeals Chamber and had given rise to a complaint before the ILO, with both proceedings in progress at the time of a further attempt to crush the union's autonomy and examine the account statements for the 2007 financial year.

225. The AEDA points out that requesting judicial protection of its union rights was legitimate since the administrative authority had no right to seek to impede the union's access to legal action, undermining its defence against illegal Decision No. 191/2008 and interfering in its autonomy, with the sole purpose of benefiting the political interests of Mr Gijena and his group of 12 opposing members. The damage to the trade union was clear in that without *amparo* proceedings AEDA could neither examine nor approve the account statements for the 2007 financial year before the expiry of the deadline set by the Argentine tax authority – the Federal Public Revenue Administration – for the presentation of the account statements; that being 13 May 2008, with the consequent possibility of losing the exemption on income tax and serious damage occurring to the union's assets, which required protection as quickly as possible.

226. Consequently, on 25 April 2008, the AEDA instituted formal *amparo* proceedings at the National Labour Justice Department in Buenos Aires. The case – Association of Customs Brokers (AEDA) v. National Executive Authority – Ministry of Labour, Employment and Social Security – *amparo* proceedings (file No. 9.603/08) – was heard by National Labour

Court of First Instance No. 4. The *amparo* proceedings were settled in favour of the AEDA on 28 April 2008. According to the AEDA, the judicial authority decided: "to allow the requested injunction and instruct the Ministry of Labour – as a preventive measure – to refrain from suspending, preventing or obstructing the ordinary general assembly of the AEDA convened for 29 April 2008, 7pm, and to designate the National Directorate of Trade Unions as the supervisory body for inspection of the proceeding, without prejudice to the interested parties' rights of appeal". This ruling was implemented and the account statements for the 2007 financial year were dealt with in the assembly and approved unanimously, as shown in the attached record of proceedings.

227. In its communication of 26 February 2009, the AEDA states that the National Labour Appeals Chamber decided to revoke Ministry of Labour Decision No. 191 of 12 March 2008. AEDA also states that although the judicial authority has declared the administrative decision null and void, it is still very interested in the examination of the substance of the complaint by the Committee.

B. The Government's reply

228. In its communications of 18 February and 22 May 2009, the Government states that the purpose of the ILO supervisory apparatus is to determine whether the State has violated any of the provisions of the international instruments which protect the principles of freedom of association. Its conduct is examined in terms of both law and practice. In formal terms, section 2 of Act No. 23551, which comes under the preliminary title concerning protection of freedom of association, states that workers have the right to participate in the internal affairs of the union. This concept is also upheld by Convention No. 87.

229. Freedom of association – whether individual, as in this case, or collective – constitutes an essential human right and therefore the workers' capacity to take part in the internal affairs of the union must be guaranteed by the State. This capacity must be preserved irrespective of the number of persons who allege that a right has been violated. Hence the issue of numbers cannot be used as grounds for invalidating the submission made by the State, as claimed by the complainant organization. It would be contrary to the protection of freedom of association if the State had failed to exercise its jurisdiction supposedly for the reasons put forward by the complainant.

230. The Government asserts that the Ministry acted in response to a complaint from a union member who appeared to have been denied the possibility of exercising his right inasmuch as he had not been provided in due time and form with the requisite material for doing so. The Ministry acted in accordance with section 58 of Act No. 23551. According to the Government, the present case involves a complaint regarding the exclusion of 12 union members who were denied the possibility of examining the report and balance sheet, and this justified the intervention of the State in protecting this guaranteed workers' right which was violated in a democratic State. The Government points out that in the present case there was no violation of the provisions of ILO Conventions Nos 87 and 98. The State's action was directed at defending a fundamental right, namely worker action within the trade union.

231. The Government underlines the fact that when a complaint is presented under section 62 of Act No. 23551, all that the Ministry of Labour can do is refer the matter to the [Appeals] Chamber. In other words, in the context of the judicial oversight of action taken by the administration, the Ministry is prohibited from making any pronouncement on any aspect thereof, as acknowledged by the complainant. Even though the State is informed of the appeal, it must await the ruling of the division of the Chamber in which the appeal has been brought to decide on its course of action. Section 62 of the aforementioned Act says

nothing about the effects of the appeal being filed, i.e. whether the State's activity is suspended or not. The continuity of the State's administrative activity is legitimate, as long as no contrary judicial ruling has been issued in human rights matters, as is the case here, because States have a primary duty to protect these guarantees.

232. The Government adds that this situation is recognized in the submission to the Appeals Chamber, where the complainant expressly called for a ruling from the Chamber granting suspensory effect to the appeal. The complainant organization instituted the *amparo* proceedings, which gave rise to the injunction. This judicial ruling, issued in the context of the judicial oversight of action taken by the administration, was fully complied with by the State, in accordance with constitutional guarantees and Convention No. 87.

233. The Government asserts that it is untrue that the administration cannot exercise administrative control inasmuch as a complaint of irregularity is provided for by section 58 of Act No. 23551, which states that control of trade unions, even if they have obtained legal personality under the provisions of common law, shall be solely the responsibility of the Ministry of Labour. Since such powers are subject in turn to the appropriate judicial controls, the administration accepted the *amparo* action in accordance with the decision referred to above by the other party.

234. The Government states that the arguments connected with the specific dispute are not an issue for international control. All arguments regarding whether the documentation had been presented in due time and form or if it was sufficient to justify the accounts on the balance sheet should be a matter for national judicial evaluation since they refer to individual conduct which must be dealt with by judicial means. This submission denotes precisely the "light" use of the ILO supervisory apparatus given that there is no reason to justify it. Consequently, there are no grounds for calling on the Committee to declare Ministry of Labour Decision No. 191/2008 of 12 March 2008 null and void.

235. The Ministry of Labour is competent to intervene with regard to a basic principle of administrative organization, in accordance with section 58 of Act No. 23551 – to which no objection was ever raised – which states that control of the functioning of trade unions shall be the responsibility of the Ministry of Labour, and this obviously includes any complaints made by union members. Naturally its actions, being subject to judicial control, are consistent with the principles of freedom of association.

236. Finally, the Government emphasizes that it acted in the context of the international principles which protect freedom of association. Its intervention was based on a possible violation thereof, and when the judicial ruling containing the injunction was issued, the intervention of the Ministry of Labour ceased. The action taken by the administration was appropriate in the context of its administrative powers according to sections 58 and 62 of Act No. 23551. Since the judicial phase following the *amparo* appeal filed by the complainant – which gave rise to the preventive suspension of the challenged decision and this was complied with by the administration – is in full progress, dealing with the matter in the Committee is a purely abstract exercise.

C. The Committee's conclusions

237. *In the present case, the AEDA challenges Ministry of Labour, Employment and Social Security (Ministry of Labour) Decision No. 191/2008 of 12 March 2008 which, at the request of 12 union members (according to the AEDA, the union has a membership of 2,100 employees), declared null and void the decisions taken by the AEDA ordinary general assembly of 26 April 2007, with regard to item 2 of the agenda (consideration of the report, balance sheet, inventory, statements of income and expenditure, and the report of the audit committee for the financial year ending 31 December 2006). (Decision*

No. 191 was revoked by the National Appeals Chamber on 30 December 2008). The AEDA also alleges that after it brought the complaint before the Committee, the National Directorate of Trade Unions, under the aegis of the Ministry of Labour, sought to suspend the members' assembly scheduled for 29 April 2008, for dealing with the account statements for the 2007 financial year (the complainant states that the administrative authority was instructed by a judicial decision to refrain from suspending, preventing or obstructing the AEDA ordinary general assembly and that this ruling was complied with, so this matter has been settled).

238. *In this regard, the Committee notes the Government's statement that: (1) according to the provisions of Act No. 23551, section 2, which comes under the preliminary heading concerning the protection of freedom of association, workers have the right to participate in the internal affairs of their union, freedom of association – whether individual, as in this case, or collective – constitutes a fundamental human right, and hence the exercise of the workers' right to intervene in internal union affairs must be guaranteed by the State; (2) that capacity must be preserved irrespective of the number of persons who allege that a right has been violated. Hence, the issue of numbers cannot be used as grounds for invalidating the submission made by the State; (3) the Ministry acted in response to a complaint from a union member who appeared to have been denied the possibility of exercising his right inasmuch as he had not been provided in due time and form with the requisite material for doing so; (4) the Ministry acted in accordance with section 58 of Act No. 23551. A complaint was brought regarding the exclusion of 12 union members who were denied the possibility of examining the report and balance sheet, and this justified the intervention of the State in protecting this guaranteed workers' right which was violated in a democratic State; (5) there was no violation of the provisions of ILO Conventions Nos 87 and 98. The State's action was directed at defending a fundamental right, namely worker action within the trade union; (6) when a complaint is presented under section 62 of Act No. 23551, all that the Ministry of Labour can do is refer the matter to the [Appeals] Chamber. In other words, in the context of the judicial oversight of action taken by the administration, the Ministry is prohibited from making any pronouncement on any aspect thereof. The State must await the ruling of the division of the Chamber in which the appeal has been brought before deciding on its course of action; (7) the continuity of the State's administrative activity is legitimate, as long as no contrary judicial ruling has been issued in human rights matters, as is the case here, because States have a primary duty to protect these guarantees; (8) the State complied with the injunction issued by the judiciary; (9) it is untrue that the administration cannot exercise administrative control inasmuch as a complaint of irregularity is provided for by section 85 of Act No. 23551, which states that control of trade unions, even if they have obtained legal personality under the provisions of common law, shall be solely the responsibility of the Ministry of Labour. Such powers are subject in turn to the appropriate judicial controls; and (10) since the judicial phase following the* amparo *appeal filed by the complainant – which gave rise to the preventive suspension of the challenged decision and this was complied with by the administration – is in full progress, dealing with the matter in the Committee is a purely abstract exercise.*

239. *The Committee observes firstly that, according to the statements made by the complainant organization in its communication of February 2009 further to the Government's reply, the judicial authority ordered the revocation of the decision challenged in the present complaint. The Committee observes that the issue raised by the complainant in the present complaint has been settled but that an examination of its substance would still be of great interest to the complainant.*

240. *With regard to the Government's arguments justifying its intervention in order to declare the AEDA general assembly null and void on the basis of a complaint from 12 union members and section 58 of Act No. 23551 concerning trade unions, which states that control of trade unions shall be solely the responsibility of the Ministry of Labour, the*

Committee recalls that it has emphasized in this regard that "there should be outside control only in exceptional cases, when there are serious circumstances justifying such action, since otherwise there would be a risk of limiting the right that workers' organizations have, by virtue of Article 3 of Convention No. 87, to organize their administration and activities without interference by the public authorities which would restrict this right or impede its lawful exercise. The Committee has considered that a law which confers the power to intervene on an official of the judiciary, against whose decisions an appeal may be made to the Supreme Court, and which lays down that a request for intervention must be supported by a substantial number of those in the occupational category in question, does not violate these principles" [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 465]*

241. *In this regard, the Committee considers that 12 workers, representing 0.6 per cent of the 2,100 members of the trade union, do not constitute a substantial number of those in the occupational category in question such as to permit the administrative authority to restrict the activities of a trade union and disturb its normal functioning, especially where such administrative action is taken, as in the present case, without clear evidence or proof as expressly referred to by the ruling of the judicial authority (the complainant sent a copy of the ruling). The Committee therefore expects the Government to ensure that in the future the administrative authority refrains from intervening in trade union activities, for example by declaring a union assembly null and void, except in serious cases and at the request of a significant proportion of the members of the organization in question, or when intervention has been ordered by the judicial authority in conformity with the principles of freedom of association.*

The Committee's recommendation

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

The Committee, recalling Article 3 of Convention No. 87, expects the Government to ensure that in the future the administrative authority refrains from intervening in trade union activities, for example by declaring a union assembly null and void, except in serious cases and at the request of a significant proportion of the members of the organization in question, or when intervention has been ordered by the judicial authority in conformity with the principles of freedom of association.

CASE NO. 2656

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

Complaint against the Government of Brazil presented by the Union of Workers in the Petro-Chemical Industries of the State of Paraná (SINDIQUIMICA-PR) supported by the Single Confederation of Workers (CUT)

Allegations: The complainant organization's allegations concern acts of anti-union discrimination (refusal to allow union officials access to the workplace, discrimination in personal appraisals, dismissal of a worker, retention of workers as a result of a strike)

243. The present complaint is contained in communications from the Union of Workers in the Petro-Chemical Industries of the State of Paraná (SINDIQUIMICA-PR), dated 14 April and 20 June 2008. In a communication of 17 June 2008, the Single Confederation of Workers (CUT) supported the complaint. The complainant organization SINDIQUIMICA-PR sent additional information in a communication of 29 July 2008.

244. The Government sent its observations in a communication of 24 December 2008.

245. 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).

A. The complainant's allegations

246. In its communications of June 2008, the SINDIQUIMICA-PR makes allegations concerning violations of trade union rights and in particular anti-union acts in the enterprise Fosfértil/Ultrafértil, which is engaged in fertilizer-related activities. Specifically, the complainant organization alleges that the enterprise: (1) prohibits the entry of union officials who wish to talk with the workers (it refers by way of example to the case of Mr Otemio García de Lima); (2) discriminated against union officials Mr Ubirajara de Carvalho and Mr Albino Filla Filho in their personal appraisals; (3) dismissed worker Mr Anselmo Sukewski without cause, because of his friendship with union officials, and (4) harassed union official Mr Luiz Castellano. The complainant organization adds that, in view of the growing instability of working conditions and the lack of respect for workers, a strike was called in January 2008, involving the participation of 95 per cent of workers, during which the right to work of non-strikers was respected. However, the complainant organization alleges that the enterprise engaged in acts of coercion and intimidation and detained workers for 70 hours, forcing them to sleep at the workplace, which led to legal action and the imposition of administrative fines.

247. In its communication of 29 July 2008, the complainant organization alleges that the enterprise has committed further acts of anti-union discrimination since the presentation of the complaint. Specifically, it indicates that, three days after a public hearing was held over

the illegal acts committed by the enterprise, a demonstration was held outside the factory on 15 May 2008, organized by various civil society organizations. Days later, the enterprise reported union official Mr Paulo Roberto Fier to the police, holding him responsible for the demonstration and for having threatened the workers who wanted to enter the factory. According to the complainant organization, this was an unjustified act of intimidation, given that the demonstration had been organized by a group of 20 organizations that comprise the committee for the defence of farmers and workers of Fosfértil/Ultrafértil. The complainant organization also alleges that, on 12 June 2008, civil society organizations held another demonstration outside the factory and that, in an attempt to intimidate the workers, the enterprise issued a warning to the unionists Mr Paulo Roberto Fier and Mr Sergio Luiz Monteiro because they did not come in to work on time. The complainant organization states that no workers came in for the morning shift because of the demonstration and because the enterprise had closed its points of entry. Nevertheless, the warning was issued only to workers who had been members of the union's executive committee.

B. The Government's reply

248. In its communications dated 24 December 2008, the Government sent the observations of the enterprise in relation to the case, as well as a written undertaking entered into by the enterprise Fosfértil/Ultrafértil and the Office of the Public Prosecutor for Labour on 19 November 2008.

249. In its communication, the enterprise refers to its history, its integration into the domestic market and its human resources policy in terms of development, pay, benefits and quality of life. Likewise, the enterprise indicates with regard to its policy on trade union relations that it: (1) has a perfect understanding of the duality of the relationship between labour and capital and the importance of maintaining an ongoing high-level dialogue with the trade unions; (2) respects the dignity of its workers, the social values of work and the exercise of free enterprise; (3) has favoured a policy that recognizes the importance of unions and their officials; (4) has reached three collective agreements over the years, and in 16 years of intense relations with the union there have been no disputes that have required recourse to justice; (5) proportionately, probably has the highest rate of affiliation in Brazil; and (6) has respected and recognized the legitimacy of unions, their officials and members and there has been a union official on the board of the enterprise since 1993.

250. As to the allegations presented in this case, the enterprise indicates that: (1) it did not refuse the union officials entry to the industrial estate, as is demonstrated by the log book recording the entry of union officials to the industrial estate, and the enterprise made a proposal to the Office of the Public Prosecutor for Labour to enter into an agreement on conduct in this regard, before it knew about the complaint; (2) it never acted in a discriminatory way with regard to the appraisal of trade union officials. Although one of the enterprise's supervisors incorrectly conducted five performance appraisals, the employees were informed in writing that these appraisals would not be taken into account and the supervisor had been sent on a retraining course; (3) no punitive measures are taken against union officials for exercising trade union activities. The significant number of unionized workers and union officials is proof of this. There has only been one case where, during a dismissal interview, a supervisor indicated that the employee was a trade union activist. The supervisor was issued with a warning by the enterprise and no further cases of this kind have been recorded; (4) no acts of intimidation have been carried out against a union official. For medical reasons, it was recommended that the person in question should leave the areas that were at risk – this had nothing to do with trade union politics; and (5) striking workers were never held. The enterprise had planned to carry out some general maintenance work in January 2008 and had therefore called on workers from other plants and had put them up in hotels in the city of Araucaria. These workers were used to meet

emergency service requirements and they were never shut in. The complainant organization knew that the maintenance work would be carried out, but it still called the strike. The enterprise recognizes the right to strike, but requires the presence of a skeleton staff to ensure the safety of workers and the community. The enterprise states that it has not violated any international Conventions and that respect is shown for environmental and occupational health issues.

251. Finally, the enterprise reports that, before submitting the complaint to the Committee, the complainant organization lodged a similar complaint with the Office of the Public Prosecutor for Labour, which led to Investigation No. 560/2006. Within the context of this procedure, the enterprise signed a written undertaking (mentioned above) in which it made a public commitment to refrain from any anti-union acts.

252. In the written undertaking, the enterprise makes a commitment among other things: (1) to handle all complaints using the existing institutional mechanisms (ethics committee and union representation together with the Board of Directors), take decisions regarding the prevention and/or elimination of harassment, and handle complaints discreetly, ensuring that the complainant and witnesses are not subjected to acts of repression as a result of the claim; (2) to ensure that information is made widely available within the enterprise, by putting notices on the walls, on the mechanisms that are in place to receive complaints of harassment; (3) to refrain from any discriminatory conduct that violates the right to equality, prohibiting the consideration of whether or not a worker is a member of a union or has links with a union as a factor in the evaluation or promotion of employees, or as a justification for dismissal; (4) to refrain from relocating/transferring employees, even within the same establishment, under the pretext of punishment or isolation; (5) to refrain from carrying out acts that constitute coercion or the curtailment of freedom of association, allowing union officials access to the enterprise at least once a week, by agreement with the union, and adhering to occupational safety rules; (6) to refrain from asking that a specific reason be provided for the union visits, taking into account that the union may simply be interested in contacting the workers without a prior specific reason; (7) to allow dialogue between the workers and union officials to take place without a representative of the enterprise being present, in communal areas on the premises but away from the areas in which the work is carried out, in order to avoid occupational safety hazards; (8) the signature of the agreement does not imply any acknowledgement with regard to the complaints that have been filed; (9) for breach of the obligations provided for in the undertaking, the enterprise must pay a fine of 20,000 Brazilian reais, duly adjusted; and (10) the undertaking is subject to inspection by the regional labour inspectorate and/or the Office of the Public Prosecutor for Labour.

C. The Committee's conclusions

253. *The Committee observes that, in the present case, the complainant organization alleges that various violations of trade union rights took place in the enterprise Fosfértil/Ultrafértil, and in particular that the enterprise: (1) prohibits the entry of union officials who wish to talk with the workers (it refers by way of example to the case of Mr Otemio García de Lima); (2) discriminated against union officials Mr Ubirajara de Carvalho and Mr Albino Filla Filho in their personal appraisals; (3) dismissed worker Mr Anselmo Sukewski without cause, because of his friendship with union officials; and (4) harassed union official Mr Luiz Castellano; (5) during a strike in January 2008, held workers for 70 hours, forcing them to sleep at the workplace, which led to legal action and the imposition of administrative fines; and (6) reported union official Mr Paulo Roberto Fier to the police, holding him responsible for a demonstration on 15 May 2008 and for having threatened the workers who wanted to enter the factory, and issued a warning to the unionists Paulo Roberto Fier and Sergio Luiz Monteiro because they did not come in to*

work on time because of a demonstration that was held on 12 June 2008, during which the enterprise had closed its points of entry.

254. *The Committee notes that the Government sent a detailed communication from the enterprise indicating in relation to the allegations that: (1) it did not refuse the union officials entry to the industrial estate, as is demonstrated by the log book recording the entry of union officials to the industrial estate, and the enterprise made a proposal to the Office of the Public Prosecutor for Labour to enter into an agreement on conduct in this regard, before it knew about the complaint; (2) it never acted in a discriminatory way with regard to the appraisal of trade union officials. Although one of the enterprise's supervisors incorrectly conducted five performance appraisals, the employees were informed in writing that these appraisals would not be taken into account and the supervisor has been sent on a retraining course; (3) no punitive measures are taken against union officials for exercising trade union activities. The significant number of unionized workers and union officials is proof of this. There has only been one case where, during a dismissal interview, a supervisor indicated that the employee was a trade union activist. The supervisor was issued with a warning by the enterprise and no further cases of this kind have been recorded; (4) no acts of intimidation have been carried out against a union official (allegations of the harassment of Mr Luiz Castellano). For medical reasons, it was recommended that the person in question should leave the areas that were at risk – this had nothing to do with trade union politics; and (5) striking workers were never detained. The enterprise had planned to carry out some general maintenance work in January 2008 and had therefore called on workers from other plants and had put them up in hotels in the city of Araucaria. These workers were used to meet emergency service requirements and they were never shut in. The complainant organization knew that the maintenance work would be carried out but still called the strike.*

255. *In this regard, the Committee notes that, according to the Government, on 19 November 2008, the enterprise and the Office of the Public Prosecutor for Labour signed a written undertaking in which the enterprise made a commitment among other things: (1) to handle all complaints using the existing institutional mechanisms (ethics committee and union representation together with the Board of Directors), take decisions regarding the prevention and/or elimination of harassment, and handle complaints discreetly, ensuring that the complainant and witnesses are not subjected to acts of repression as a result of the claim; (2) to ensure that information is made widely available within the enterprise, by putting notices on the walls, on the mechanisms that are in place to receive complaints of harassment; (3) to refrain from any discriminatory conduct that violates the right to equality, prohibiting the consideration of whether or not a worker is a member of a union or has links with a union as a factor in the evaluation or promotion of employees, or as a justification for dismissal; (4) to refrain from relocating/transferring employees, even within the same establishment, under the pretext of punishment or isolation; (5) to refrain from carrying out acts that constitute coercion or the curtailment of freedom of association, allowing union officials access to the enterprise at least once a week, by agreement with the union, and adhering to occupational safety rules; (6) to refrain from asking that a specific reason be provided for the union visits, taking into account that the union may simply be interested in contacting the workers without a prior specific reason; (7) to allow dialogue between the workers and union officials to take place without a representative of the enterprise being present, in communal areas on the premises but away from the areas in which the work is carried out, in order to avoid occupational safety hazards; (8) the signature of the agreement does not imply any acknowledgement with regard to the complaints that have been filed; (9) for breach of the obligations provided for in the undertaking, the enterprise must pay a fine of 20,000 Brazilian reais, duly adjusted; and (10) the undertaking is subject to inspection by the regional labour inspectorate and/or the Office of the Public Prosecutor for Labour.*

256. *The Committee understands that the written undertaking has brought an end to the dispute. Finally, the Committee notes that no information has been supplied in relation to the allegation that union official Mr Paulo Roberto Fier was reported to the police as he was considered to be responsible for a demonstration outside the factory on 15 May 2008 and for having threatened the workers who wanted to enter the factory. The Committee cannot determine whether the provisions of paragraph 1 of the written undertaking have led to the withdrawal of the complaint and requests the Government to inform it in that regard. Should the complaint not have been withdrawn, the Committee requests the Government to keep it informed about the status of the complaint and about whether legal proceedings have been initiated.*

The Committee's recommendations

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

(a) The Committee takes note of the agreement between the enterprise mentioned in paragraph 253 and the Office of the Public Prosecutor for Labour bringing an end to the dispute which gave rise to the present complaint.

(b) The Committee requests the Government to keep it informed of whether the complaint made to the police against union leader Mr Paulo Roberto Fier has been withdrawn under the written undertaking that the company, as mentioned in paragraph 253, signed with the Office of the Public Prosecutor for Labour and, if not, to keep it informed about the status of the complaint and about whether legal proceedings have been initiated.

CASE NO. 2318

INTERIM REPORT

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

Allegations: The murder of three trade union leaders; the continuing repression of trade unionists in Cambodia

258. The Committee has already examined the substance of this case on four occasions, most recently at its November 2008 session where it issued an interim report, approved by the Governing Body at its 303rd Session [see 351st Report, paras 242–254].

259. The Government provided its observations in a communication dated 8 January 2009.

260. Cambodia 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). It has not ratified the Workers' Representatives Convention, 1971 (No. 135).

A. Previous examination of the case

261. In its previous examination of the case, the Committee made the following recommendations [see 351st Report, para. 254]:

(a) The Committee emphasizes, once again, the seriousness of the allegations pending, which refer, inter alia, to the murder of trade union leaders Chea Vichea, Ros Sovannareth and Hy Vuthy. The Committee deeply deplores these events and once again draws the Government's attention to the fact that such a climate of violence leading to the death of trade union leaders is a serious obstacle to the exercise of trade union rights.

(b) The Committee urges the Government to take the necessary steps to ensure the independence and effectiveness of the judicial system, including through capacity-building measures and the institution of safeguards against corruption. It suggests that the Government has recourse to the technical cooperation facilities of the Office in this regard, notably in the area of reinforcing institutional capacity, and requests the Government to keep it informed of developments in this respect.

(c) The Committee once again strongly urges the Government to reopen the investigations into the murders of Chea Vichea and Ros Sovannareth and to ensure that Born Samnang, Sok Sam Oeun and Thach Saveth may exercise, as soon as possible, their right to a full appeal before an impartial and independent judicial authority. The Committee also urges the Government to immediately institute an independent inquiry into the murder of Hy Vuthy.

(d) The Committee strongly urges the Government to institute without delay independent judicial inquiries into the assaults on trade unionists Lay Sophead, Pul Sopheak, Lay Chhamroeun, Chi Samon, Yeng Vann Nuth, Out Nun, Top Savy, Lem Samrith, Chey Rithy, Choy Chin, Lach Sambo, Yeon Khum and Sal Koem San, and to keep it informed of developments in this respect.

(e) The Committee requests the Government to take the necessary steps to prevent the blacklisting of trade unionists.

(f) The Committee requests the Government to transmit its observations respecting the dismissal of Lach Sambo, Yeom Khun and Sal Koem San following strike action at the Genuine garment factory.

(g) The Committee once again urges the Government to take measures to ensure that the trade union rights of workers in Cambodia are fully respected and that trade unionists are able to exercise their activities in a climate free of intimidation and risk to their personal security and their lives.

(h) The Committee once again expresses its deep concern with the extreme seriousness of the case and the absence of any significant efforts on the part of the Government to thoroughly investigate all of the above matters in a transparent, independent and impartial manner. It calls the Governing Body's special attention to the situation.

B. The Government's reply

262. In its communication of 8 January 2009, the Government indicates that on 31 December 2008 the Supreme Court ordered the release of Born Samnang and Sok Sam Oeun pending the re-hearing of their case for the murder of trade union leader Chea Vichea by the Appeal Court. An extract of the Supreme Court's judgement, in Khmer, is attached to the communication. According to the 5 January 2009 edition of the Cambodia Daily, Interior Ministry spokesman Lieutenant General Khieu Sopheak stated that, in accordance with the Supreme Court's order, the police had reopened the investigations into Chea Vichea's murder; he also stated that the police were still investigating the murders of Ros Sovannareth and Hy Vuthy.

C. The Committee's conclusions

263. *The Committee recalls that in previous examinations of this case it had repeatedly emphasized the seriousness of the allegations pending, which refer, inter alia, to the murder of trade union leaders Chea Vichea, Ros Sovannareth and Hy Vuthy. On those occasions, emphasizing the fact that a climate of violence leading to the death of trade union leaders and a prevailing situation of impunity pose a serious obstacle to the exercise of trade union rights, the Committee had urged the Government to reopen the investigations into the murders of Chea Vichea, Ros Sovannareth and Hy Vuthy, as well as to ensure that Born Samnang, Sok Sam Oeun and Thach Saveth may exercise, as soon as possible, their right to a full appeal before an impartial and independent judicial authority. In this respect, the Committee welcomes the decision of the Supreme Court on 31 December 2008 ordering the release of Born Samnang and Sok Sam Oeun, pending the re-hearing of their case by the Appeal Court. Noting that the Supreme Court had also ordered the reopening of the investigation into Chea Vichea's murder, the Committee urges the Government to ensure that the investigation is prompt, independent and expeditiously carried out, so as to ensure that all available information is brought before the courts with a view to determining the actual murderers and the instigators of the assassination of this trade union leader, punishing the guilty parties and thus bringing to an end the prevailing situation of impunity as regards violence against trade union leaders. The Committee requests the Government to keep it informed.*

264. *The positive developments with respect to Born Samnang and Sok Sam Oeun notwithstanding, the Committee deeply regrets that the Government has yet again failed to provide any information regarding the other aspects of the case. As a general matter, the Committee once again strongly urges the Government to take measures to ensure that the trade union rights of workers in Cambodia are fully respected and that trade unionists are able to exercise their activities in a climate free of intimidation and risk to their personal security and their lives and that of their families. In respect of Thach Saveth, who the Committee recalls was sentenced to 15 years in prison for the murder of Ros Sovannareth, in a trial that lasted one hour and was characterized by breaches of procedural rules and the absence of full guarantees of due process of law, the Committee once again urges the Government to ensure that he may exercise his right to a full appeal as soon as possible, before an impartial and independent judicial authority. Furthermore, and emphasizing once again that the killing, disappearance or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the greatest extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events [see* ***Digest of decisions and principles of the Freedom of Association Committee,*** *fifth edition, 2006, para. 48], the Committee strongly urges that a full and independent investigation into the circumstances of the murder of Ros Sovannareth is finally carried out so as to bring all relevant information before the courts. The Committee requests the Government to keep it informed.*

265. *As regards the murder of Hy Vuthy, the Committee observes that no information has been provided as to any progress made in investigating the circumstances of this murder or the determination of any guilty parties. The Committee strongly urges the Government to immediately institute or reactivate a full and independent inquiry in this regard and to keep it informed of all progress made.*

266. *The Committee once again urges the Government to provide information on the steps taken to implement the rest of its recommendations. In particular, it insists that the Government indicate the steps taken for capacity building and the institution of safeguards against corruption necessary for the independence and effectiveness of the judicial system.*

267. *Furthermore, recalling the allegations concerning acts of violence committed against several trade unionists, it strongly urges the Government once again to institute without delay independent judicial inquiries into the assaults on trade unionists Lay Sophead, Pul Sopheak, Lay Chhamroeun, Chi Samon, Yeng Vann Nuth, Out Nun, Top Savy, Lem Samrith, Chey Rithy, Choy Chin, Lach Sambo, Yeon Khum and Sal Koem San, and to keep it informed of the results of these inquiries.*

268. *The Committee, recalling its previous recommendation, strongly requests the Government to indicate the steps taken to prevent the blacklisting of trade unionists.*

269. *Finally, the Committee recalls the allegations concerning trade unionists Lach Sambo, Yeom Khun and Sal Koem San, who were dismissed following their June 2006 conviction for having illegally detained workers during a strike at the Genuine garment factory, and despite having appealed their convictions. Regretting the absence of a reply from the Government regarding this matter despite its repeated requests, the Committee urges the Government to inform it of the status of the appeal proceedings and, if their convictions have been overturned, to indicate their current employment status.*

270. *The Committee continues to express its profound concern with the extreme seriousness of the case and the repeated absence of information on the steps taken to investigate the above matters in a transparent, independent and impartial manner, a necessary prerequisite to creating a climate free from violence and intimidation necessary for the full development of the trade union movement in Cambodia. After careful consideration of all the circumstances, the Committee calls the Governing Body's special attention to the situation.*

The Committee's recommendations

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

(a) As a general matter regarding all the subsequent issues, the Committee once again strongly urges the Government to take measures to ensure that the trade union rights of all workers in Cambodia are fully respected and that trade unionists are able to exercise their activities in a climate free of intimidation and risk to their personal security and their lives, and that of their families.

(b) The Committee urges the Government to ensure that the investigation into the murder of Chea Vichea is prompt, independent, and expeditiously carried out, so as to ensure that all available information is brought before the courts with a view to determining the actual murderers and the instigators of the assassination of this trade union leader, punishing the guilty parties and thus bringing to an end the prevailing situation of impunity as regards violence against trade union leaders. The Committee requests to be kept informed of developments in this respect.

(c) The Committee once again strongly urges the Government to ensure that a full and independent investigation into the circumstances of trade union leader Ros Sovannareth's murder is finally carried out so as to bring all relevant information before the courts. It also urges the Government to ensure that Thach Saveth may exercise his right to a full appeal as soon as

possible, before an impartial and independent judicial authority, and requests to be kept informed of developments in this respect.

(d) As concerns trade union leader Hy Vuthy, the Committee strongly urges the Government to immediately institute or reactivate a full and independent inquiry into his murder and to keep it informed of all progress made in this regard.

(e) The Committee insists that the Government indicate the steps taken for capacity building and the institution of safeguards against corruption necessary for the independence and effectiveness of the judicial system.

(f) The Committee strongly urges the Government, once again, to institute without delay independent judicial inquiries into the assaults on trade unionists Lay Sophead, Pul Sopheak, Lay Chhamroeun, Chi Samon, Yeng Vann Nuth, Out Nun, Top Savy, Lem Samrith, Chey Rithy, Choy Chin, Lach Sambo, Yeon Khum and Sal Koem San, and to keep it informed of the results of these inquiries.

(g) The Committee strongly requests the Government to indicate the steps taken to prevent the blacklisting of trade unionists.

(h) With regard to the dismissals of Lach Sambo, Yeom Khun and Sal Koem San following their convictions for acts undertaken in connection with a strike at the Genuine garment factory, the Committee requests the Government to inform it of the status of their appeals proceedings and, if their convictions have been overturned, to indicate their current employment status.

(i) The Committee continues to express its profound concern with the extreme seriousness of the case and the repeated absence of information on the steps taken to investigate the above matters in a transparent, independent and impartial manner, a necessary prerequisite to creating a climate free from violence and intimidation necessary for the full development of the trade union movement in Cambodia.

(j) The Committee, after careful consideration of all the circumstances, calls the Governing Body's special attention to the situation.

CASE NO. 2476

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

Complaint against the Government of Cameroon presented by the Cameroon Confederation of Free Trade Unions (USLC)

Allegations: The complainant alleges that the authorities are interfering in its trade union

affairs and showing favouritism towards certain individuals and factions within the USLC, inter alia, by appointing trade union representatives to attend national and international conferences without consulting the highest level organizations

272. The Committee last examined this case at its June 2008 meeting, when it presented an interim report to the Governing Body [see 350th Report, paras 297–315, approved by the Governing Body at its 302nd Session].

273. The complainant organization sent new allegations in a communication dated 17 September 2008.

274. The Government sent its observations in communications dated 30 October, and 12 and 29 December 2008.

275. Cameroon 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

276. During its previous examination of the case, in June 2008, the Committee made the following recommendations [see 350th Report, para. 315]:

(a) The Committee requests the Government to ensure that the legal proceedings under way do not, in practice, hinder the functioning of the USLC and its activities.

(b) The Committee expects that a final ruling will be handed down very soon concerning the legality of the USLC extraordinary congress of 25, 26 and 27 August 2005 and the accusations of embezzlement made against the Confederation's President, and expects that the Government will keep it informed in this regard and of any further developments.

(c) Once again, the Committee requests the Government to provide detailed observations on the alleged closure of the USLC's trade union premises by the Deputy Prefect of the First District of Yaoundé, accompanied by police officers, and expects that it will take the necessary measures to prevent the repetition of such acts.

(d) The Committee requests the Government to promote dialogue and consultation on matters of mutual concern to the public authorities and the most representative professional organizations at industrial and national levels, particularly by ensuring regular consultations with the whole trade union movement, including the USLC.

(e) Because of the contradictory information provided by the complainant and the Government, and in view of the fact that nearly three years have passed since the legality of the USLC extraordinary congress was questioned, without a final ruling being handed down, the Committee urges the Government to accept a direct contacts mission in order to clarify the situation.

B. The complainant's new allegations

277. In a communication dated 17 September 2008, the complainant organization, through its General Secretary, Mr Mbom Mefe, alleges that an attempt was made to misinform the Committee via a communication presented by a group of individuals claiming to be representatives of an umbrella organization, the Union of Trade Union Confederations of

Cameroon (*Union des Confédérations syndicales du Cameroun*) (UCSC), which is allegedly manipulated by the Government.

C. The Government's reply

278. The Government presented a communication dated 30 October 2008 following up on the Committee's recommendations. With regard to recommendations (a) and (b) on the legal proceedings concerning the legality of the extraordinary congress of 25, 26 and 27 August 2005 and accusations of embezzlement made against the Confederation's President, the Government points out that the principle of separation of powers prevents it from interfering in these matters, but that it does not appear to be hindering the functioning of the USLC, which continues to carry out its activities. Concerning recommendation (c) on the closure of the USLC's premises by the Deputy Prefect of the First District of Yaoundé and police officers, the Government states that the aim of this operation was in fact to remove from the premises individuals who held no office or authority within the USLC. With regard to the replacement of Mr Mbom Mefe in the National Human Rights and Freedoms Committee, pursuant to a decree which is the subject of recommendation (d), the Government states that this resulted from the extraordinary congress of 27 August 2005, at which Mr Mbom Mefe lost his position as General Secretary, and that he was replaced at the request of the USLC. Lastly, with regard to recommendation (e), the Government has agreed to a direct contacts mission to clarify the situation.

279. In a communication dated 12 December 2008, in response to the statements made in a communication of 3 September 2008, by Mr André Jules Mousseni, the declared General Secretary of the USLC, in opposition to the complainant organization, the Government states that it adheres to the principle of non-interference in the internal affairs of trade unions. Referring to that communication, which describes the circumstances in which the extraordinary congress of August 2005 was held, the Government draws the Committee's attention to the fact that Mr Mbom Mefe acted on his own behalf and not on behalf of the USLC, in which he no longer held office, according to the Government and the faction opposed to the complainant organization.

280. In its communication dated 29 December 2008, the Government denies any involvement in the establishment of the UCSC, which was alluded to in the complainant's communication of 17 September 2008, and states that it is not for the Government to comment on the authority of trade union leaders. The Government expresses its intention to continue collaborating with all trade union organizations for the sake of promoting freedom of association.

D. The Committee's conclusions

281. *The Committee recalls that the present case principally concerns alleged interference by the public authorities in trade union activities, to the advantage of certain individuals and factions within the Cameroon Confederation of Free Trade Unions (USLC). The Committee takes note of the new information provided by the complainant organization, as well as the Government's replies.*

282. *With regard to the disputes within the USLC, the Committee had already recalled in the present case that it is not competent to make recommendations on internal dissensions within a trade union organization, so long as the Government does not intervene in a manner which might affect the exercise of trade union rights and the normal functioning of an organization, and that judicial intervention would permit a clarification of the situation from the legal point of view for the purpose of settling the question of the leadership and representation of the organization concerned [see* ***Digest of decisions and principles of***

***the Freedom of Association Committee**, fifth edition, 2006, paras 1114 and 1116]. The Committee had expected that a final ruling would be handed down very soon on the legality of the extraordinary congress of 25, 26 and 27 August 2005. On that occasion, the Committee had noted that nearly three years had elapsed since that issue had been raised, without any final ruling having been handed down.*

283. *The Committee noted the Government's assurances of neutrality in this matter. The Committee recalls, however, that in its previous examination of this case, it noted the Government's statement that it considered the August 2005 meeting, which is contested by the complainant, during which the Director-General of the USLC was dismissed and replaced as head of the organization, to be legitimate. The Committee recalls, furthermore, that it previously noted the dismissal of Mr Mbom Mefe from his functions in several national consultative bodies, notably the National Human Rights Committee (CNDH), as well as a protest statement from the Concerted Multiple Actor Programme (PCPA), requesting his reinstatement. The Committee notes that, according to the Government, the dismissal is a consequence of the August 2005 meeting during which Mr Mbom Mefe ceased to be Director-General and his replacement was undertaken at the USLC's request. In light of the facts recalled above, the Committee is led to observe that, despite the legal proceedings which still appear to be pending concerning the legality of the extraordinary congress, which resulted in the election of a new executive committee of the confederation, the Government does not seem to have taken a completely neutral stance, given that it has granted the requests of one of the factions of the USLC in its decision concerning the representation of the trade union within national consultative bodies while the matter is still pending before the courts. The Committee urges the Government to ensure a completely neutral stance in this matter.*

284. *Recalling once again that in cases where the results of trade union elections are challenged, such questions should be referred to the judicial authorities in order to guarantee an impartial, objective and expeditious procedure, and that justice delayed is justice denied [see **Digest**, op. cit., paras 442 and 105], the Committee notes with deep regret that nearly four years have elapsed since the legality of the USLC executive committee and extraordinary congress was first challenged, without a final ruling having been handed down. The Committee expects that a final ruling will be handed down quickly in the legal proceedings concerning the legality of the USLC executive committee and extraordinary congress of August 2005 and the accusations of embezzlement made against the Confederation's President. It requests the Government and the complainant organization to keep it informed in this regard and to report any further developments.*

285. *With regard to the alleged closure of the USLC's premises by the Deputy Prefect of the First District of Yaoundé, accompanied by police officers, the Committee notes that the Government endorses the explanations provided by the opposite faction of the USLC, according to which, after a new executive committee had been elected in August 2005, Mr Mbom Mefe and a group of dissidents barred the newly elected committee from access to the trade union premises, the local administrative authority was called after access had been blocked for several months, and it ordered the police to vacate the premises.*

286. *Mindful that internal disputes arising in a trade union organization should be resolved by the persons concerned, by appointing an independent mediator with the agreement of the parties, or by intervention of the judicial authorities, the Committee recalls that the inviolability of trade union premises is a civil liberty which is essential to the exercise of trade union rights. The inviolability of the premises of organizations of workers and employers necessarily implies that the public authorities may not insist on entering such premises without prior authorization or without having obtained a legal warrant to do so [see **Digest**, op. cit., paras 178 and 180]. The Committee requests the Government to indicate whether the entry of the Deputy Prefect of the First District of Yaoundé and the*

police into the USLC's premises was carried out under a warrant from the judicial authority and if so, on what grounds.

287. *The Committee notes the complainant's allegation, through its General Secretary Mr Mbom Mefe, that an attempt was made to misinform the Committee via a communication presented by a group of individuals claiming to be representatives of an umbrella organization, the UCSC, which is allegedly manipulated by the Government. The Committee also notes the Government's reply in which it denies any involvement in the establishment of the UCSC. The Committee notes that the complainant encloses with its communication a copy of a letter addressed to the Committee on Freedom of Association, signed by trade union organizations affiliated to the UCSC. The Committee notes, however, that the UCSC is not a complainant in the present case and that it did not bring the abovementioned document to the Committee's attention. In these circumstances, the Committee will not pursue its examination of the issues raised in regard to this organization.*

288. *The Committee welcomes the Government's consent to a direct contacts mission to clarify the situation, in view of the contradictory information received. The Committee invites the Government and the Office to make the necessary arrangements for a mission to be carried out in the near future.*

The Committee's recommendations

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

(a) The Committee urges the Government to ensure a completely neutral stance in this matter.

(b) The Committee expects that a final ruling will be handed down quickly in the legal proceedings concerning the legality of the USLC executive committee and extraordinary congress of August 2005 and the accusations of embezzlement made against the Confederation's President. It requests the Government and the complainant organization to keep it informed in this regard and to report any further developments.

(c) Recalling that the inviolability of trade union premises is essential to the exercise of trade union rights, the Committee requests the Government to indicate whether the entry of the Deputy Prefect of the First District of Yaoundé and the police into the USLC's premises was carried out under a warrant from the judicial authority and, if so, on what grounds.

(d) The Committee welcomes the Government's consent to a direct contacts mission to clarify the situation, in view of the contradictory information received. The Committee invites the Government and the Office to make the necessary arrangements for a mission to be carried out in the near future.

CASE NO. 2465

DEFINITIVE REPORT

Complaint against the Government of Chile presented by the United Federation of Workers (FUT)

Allegations: Use of police to prevent strikers from demonstrating and arrest of trade unionists; establishment of an employer-controlled trade union; anti-union dismissals

290. This case was last examined by the Committee at its June 2008 meeting and on that occasion it presented an interim report to the Governing Body [see 350th Report, paras 341–349].

291. The Government sent partial observations in a communication dated 23 January 2009.

292. Chile 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

293. In its previous examination of the case, the Committee made the following recommendations [see 350th Report, para. 349]:

(a) The Committee urges the Government to send its observations without delay on the alleged repeated interventions of the police in the demonstration and march held by the strikers on 28 November 2005.

(b) The Committee urges the Government to send, without delay, its observations on the alleged anti-trade union dismissals at the enterprise Interparking Ltda. and the alleged establishment of an employer-controlled trade union organization financed by the company, to carry out an inquiry into these matters, if this has not yet been done, and to send detailed information as to the outcome.

B. The Government's reply

294. In its communication dated 23 January 2009, the Government states in regard to recommendation (a) made by the Committee at its June 2008 meeting, that in report No. 283, the Undersecretariat of the Chilean Police *(Carabineros de Chile)*, states that the subordinate officer in charge at the scene spoke with the group's spokesperson, who was leading the demonstration. The latter produced a document from the metropolitan administration of Santiago "Approval No. 1275 dated 29 November 2005", which authorized the demonstration, and also a written undertaking stating that the participants undertook to take all necessary measures to ensure the normal and peaceful conduct of the demonstration and to avoid any acts damaging public or private property or seriously disturbing the peace, as well as to assume responsibility for any damage caused and to provide any assistance that might be required by courts of law. The police withdrew from the scene as soon as they had checked the above documents and verified that the situation was calm.

295. The police Communications Centre subsequently informed the same official that individuals participating in the demonstration had entered the central office of the Interparking Ltda. enterprise and had locked themselves inside office No. 312 at 520, avenida Manquehue. These workers were removed by the police by order of the Public Prosecutor on duty (penal proceedings were instituted against some of the workers who had occupied the office, but were subsequently shelved; these allegations have already been examined by the Committee).

296. With regard to subparagraph (b) of the Committee's recommendations, the enterprise Interparking Ltda. indicates that it decided to terminate the employment contracts of Mr Claudio Elgueta Valenzuela and Mr Juan Manuel Valenzuela Navarro "because they had seriously and consistently breached and failed to carry out their employment obligations"; they "had previously been issued repeated written warnings to improve their conduct, but had disregarded them". The company points out that "when these workers were dismissed, a labour inspector came to the company and ordered their reinstatement on the grounds that they were protected by alleged trade union immunity. When the company informed the inspector that it was not aware of this, he produced a communication, signed by Mr Juan Ortiz Arcos, in which the National Inter-Enterprise Union of Metallurgy, Communications, Energy and Allied Workers (SME), states that "Mr Juan Valenzuela Navarro has been elected as a representative of our trade union in the Interparking Ltda. enterprise". According to the company, this communication is not binding. It considers that this inter-enterprise trade union does not have the statutory power to appoint a trade union representative in their company or any other company as it sees fit. This power is conferred by law on the workers of a company who are members of an inter-enterprise trade union, provided that none of them has been elected as an officer of that union. However, this does not mean that this inter-enterprise trade union can impose a representative on the company if that representative has not been democratically elected; the representative can only be elected by workers of the company where he or she works as an employee (section 229 of the Labour Code). In line with the above, the company states that when the workers were asked whether they had held an election, they said that they had not. The company states that, despite this situation, the workers were reinstated. The reinstatement of Mr Claudio Elgueta Valenzuela was ordered by the Labour Directorate, but the Seventh Labour Court of Santiago ordered the dismissal of this worker covered by trade union immunity in a ruling handed down on 22 June 2006. His dismissal was ordered on the grounds of serious misconduct on the part of this worker, who was convicted of fraud by the Fourth Santiago Guarantees Court.

297. Following a consultation of the Regional Labour Directorate in a communication of April 2008, the Directorate reported acts of harassment against trade union representatives Mr Claudio Elgueta Valenzuela and Mr Juan Manuel Valenzuela Navarro; it also stated that workers had been pressured into agreeing to a modification of their individual contracts in regard to their working hours, which were divided into shifts. An agreement on overtime was reached, a draft collective agreement mentioning the subject having been presented on the day before these incidents took place by workers who were members of the trade union. As regards these accusations, the responsible labour inspectorate noted the acts at issue in inspection report No. 13.00.2005.331, dated 16 November 2005, and a complaint of anti-union practices was accordingly filed with the court under Case No. 17442006. On 30 September 2006, the Court upheld the complaint and imposed a fine of 100 monthly tax units on the company. Notwithstanding the above, there is no mention of records of anti-union dismissals in the Regional Directorate report.

298. The company states that the allegations concerning the establishment of an employer-controlled trade union organization financed by the company are completely untrue, without providing any further information on the matter. There are no judicial or other records substantiating this claim.

C. The Committee's conclusions

299. *The Committee recalls that when it examined this case in June 2008 it requested the Government: (a) to send its observations without delay on the alleged repeated interventions of the police in the demonstration and march held by the strikers on 28 November 2005; and (b) to send, without delay, its observations on the alleged anti-trade union dismissals at the enterprise Interparking Ltda. and the alleged establishment of an employer-controlled trade union organization financed by the company, to carry out an inquiry into these matters, if this has not yet been done, and to send detailed information as to the outcome.*

300. *With regard to the alleged repeated interventions of the police in the demonstration and march held by the strikers on 28 November 2005, the Committee notes that the Government declares that the Undersecretariat of the Chilean police* (Carabineros de Chile) *reported that: (1) the subordinate officer in charge at the scene spoke with the group's spokesperson, who was leading the demonstration. The latter produced a document from the metropolitan administration of Santiago authorizing the demonstration, and also a written undertaking stating that the participants undertook to take all necessary measures to ensure the normal and peaceful conduct of the demonstration and to avoid any acts damaging public or private property or seriously disturbing the peace, as well as to assume responsibility for any damage caused and to provide any assistance that might be required by courts of law; and (2) the police withdrew from the scene as soon as they had checked the above documents and verified that the situation was calm. In the light of this information, the Committee will not pursue its examination of these allegations.*

301. *With regard to the anti-union dismissals, the Committee notes that the Government indicates that the company in question reports that: (1) the enterprise decided to terminate the employment contracts of Mr Claudio Elgueta Valenzuela and Mr Juan Manuel Valenzuela Navarro because they had seriously and consistently breached and failed to carry out their employment obligations, and had previously been issued repeated written warnings to improve their conduct, but had disregarded them; (2) when these workers were dismissed, a labour inspector came to the company and ordered their reinstatement, on the grounds that they were protected by alleged trade union immunity; (3) when the company informed the inspector that it was not aware of this, he produced a communication in which the National Inter-Enterprise Union of Metallurgy, Communications, Energy and Allied Workers (SME) states that "Mr Juan Valenzuela Navarro has been elected as a representative of our trade union in the Interparking Ltda. enterprise"; (4) given that, according to the company, this communication is not binding, it considers that this inter-enterprise trade union does not have the statutory power to appoint a trade union representative in their company or any other company as it sees fit; (5) when the workers were asked whether they had held an election, they said that they had not; (6) despite this situation, the workers were reinstated; and (7) the reinstatement of Mr Claudio Elgueta Valenzuela was ordered by the Labour Directorate, but the Seventh Labour Court of Santiago ordered the dismissal of this worker covered by trade union immunity in a ruling handed down on 22 June 2006. His dismissal was ordered on the grounds of serious misconduct on the part of this worker, who was convicted of fraud by the Fourth Santiago Guarantees Court. The Committee also notes that the Government reports that the Regional Labour Directorate reported acts of harassment (a modification of working hours after a draft collective agreement was presented) against trade union representatives Mr Claudio Elgueta Valenzuela and Mr Juan Manuel Valenzuela Navarro, that a complaint was filed with the court for anti-union practices and a fine was imposed on the company.*

302. *With regard to the dismissal of Mr Claudio Elgueta Valenzuela after he was convicted of fraud, the Committee recalls that Convention No. 87 does not protect against abuses*

involving criminal activity while exercising trade union rights. However, the Committee notes with interest the reinstatement of trade union representative Mr Juan Manuel Valenzuela Navarro and requests that the Government ensure that he was paid his wages due and benefits not received during the period following his dismissal.

303. *With regard to the alleged establishment of an employer-controlled trade union financed by the company, the Committee notes that the Government indicates that the company reports that these allegations are completely untrue, and that there are no judicial or other records substantiating this claim. In these circumstances, the Committee will not pursue its examination of these allegations, unless the complainant organization provides further information on the matter.*

The Committee's recommendation

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

The Committee requests the Government to ensure that the reinstated trade union representative Mr Juan Manuel Valenzuela Navarro was paid his wages due and benefits not received during the period following his dismissal.

CASE NO. 2626

INTERIM REPORT

Complaint against the Government of Chile presented by – the Confederation of Copper Workers (CTC) and – the Single Central Organization of Workers (CUT)

Allegations: The complainants allege restrictions on the right to strike, repression and arrests of demonstrators by the forces of law and order, refusing union leaders access to their workplaces, anti-union dismissals and failure to comply with the Framework Agreement that had put an end to the dispute

305. The complaint is contained in a communication from the Confederation of Copper Workers (CTC) and the Single Central Organization of Workers (CUT) of November 2007. The CTC subsequently sent new allegations in a communication of November 2008.

306. The Government sent its observations in communications of January and February 2009.

307. Chile has ratified the Freedom of Association and Protection of the Right to Organise 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

308. In their communication of November 2007, the CTC and the CUT state that workers belonging to the CTC are those workers in a subordinate and dependent relationship with the state enterprise CODELCO, which originated from the promulgation of the constitutional reform nationalizing copper in July 1971. The National Copper Corporation of Chile, as it is now known, was established by a decree of 1 April 1976 and is the largest state enterprise in Chile. Approximately 400 contracting enterprises subcontract some 30,000 workers who fulfil permanent and temporary roles for the main enterprise, CODELCO Chile.

309. The CTC is a properly constituted trade union organization that has enjoyed legal personality since its by-laws were deposited with the Labour Inspectorate. It is composed of trade union organizations such as federations and primary organizations, all of which freely adopt their own by-laws and proceed to elect trade union leaders. The CTC maintained that it was necessary for CODELCO to listen and respond to workers' labour complaints, but its efforts proved useless. The workers it represents therefore voted on and approved legal strike action on 25 June 2007, which was extended until 1 August 2007. During the strike, the State took severe action against freedom of association.

310. The complainants state that during collective bargaining, actions were identified on the part of the state enterprise CODELCO and the State of Chile itself, through its agents, that constituted anti-union or unfair practices. Illegal arrests, detention, excessive use of public force, trespass, breach of private communications and, in general, infringement of fundamental rights, both labour-related and general, all occurred. The state apparatus behaved excessively throughout towards workers who were struggling to improve their working conditions.

311. The CTC denounced the Chilean national police for the excessive force used in suppressing demonstrations by workers outside the Office of the Public Prosecutor for Los Andes. To date, however, no reply has been received, no investigation is under way, no legal proceedings have been brought, and no one has been charged, despite the following serious complaints having been made: (1) house searches on the verbal orders of a supervisory judge. A group of police officers entered the home of a worker belonging to the CTC and proceeded to use unnecessary force to break furniture and other items in the worker's home, remaining there for more than an hour; and (2) complaints that workers belonging to the CTC who were legitimately exercising their rights, as guaranteed in the Constitution and in law, were suppressed by the national police, who used force in an unnecessary manner in suppressing the workers, despite the fact that they were withdrawing peacefully from the area.

312. During this suppression of workers, some 40 workers were detained. The local Office of the Public Prosecutor later released all the workers because it considered that there were no grounds for bringing them before the Supervisory Court. In addition, three workers were injured. They were taken to the local hospital, where the injuries suffered were identified as direct consequences of the illegal action of the national police on the day of the events.

313. The state enterprise made use of the measures granted to it by the State itself to break up the movement, for example by falsely making it seem as if the dispute had been concluded, when in fact it had simply invented pseudo-negotiations with another group of subcontracted workers, with whom it was alleged to have reached an agreement. The complainants state that that group of workers never negotiated with the state enterprise, nor did they ever declare or take strike action or join the CTC's strike. This amounted to an act of bad faith that substantially influenced the course of negotiations taking place at the time and made it seem, including to workers, that the dispute was over. The media immediately

broadcast that fact, generating confusion within and outside the CTC. It has been established in national judicial jurisprudence that the spreading of untruthful information during the collective bargaining process that influences the outcome of collective bargaining constitutes an act of bad faith that obstructs collective bargaining.

314. The complainants allege that workers, especially trade union directors from the confederation, federations and primary unions affiliated to the CTC, have been directly and indirectly prevented from entering their workplaces. Direct prevention has occurred through the dismissal of workers who exercised their right to strike. Threats of dismissal were also made against all workers who had participated in collective bargaining.

315. Indirect prevention was undertaken through the agents of the State, i.e. the police, criminal prosecutors and the criminal courts, which acted together, even violating fundamental rights such as honour, privacy and the inviolability of private communications, with the intention of criminalizing the strike and its leaders. Repressive state apparatus, such as the national police, actually entered members' homes and, furthermore, with authorization from the criminal courts, proceeded to search homes, persecute workers and union leaders and intercept calls on mobile and fixed telephone lines in criminal cases which the Public Ministry itself later decided not to pursue. This is of vital importance as it illustrates that the actions of these bodies were not motivated by legal proceedings but, quite the contrary, were intended solely to intimidate workers and leaders and to break up the trade union organization. The complainants state that a specific example of this occurred in the Los Andes Division, where the Criminal Supervisory Court, at the request of the Public Ministry, gave a verbal authorization to the police to search the home of one member, where picketers were supposed to be in hiding. On that occasion, the national police entered and remained in the dwelling for more than two hours, destroying everything in their path, arresting two workers on the evidence of three stones which were meant to have been found in the house they searched and which the Public Ministry subsequently used to charge the workers with offences dreamt up by the prosecutor. The Supervisory Court, presided over by the same judge who had issued the verbal instruction, and based solely on the evidence of the "three stones", requested immediate proceedings for public disorder against one of the workers arrested at the house, but, when the time came for the hearing, the proceedings were dropped, which demonstrates that the sole purpose was to intimidate workers so that they would stop pursuing their legitimate demands.

316. The State of Chile has behaved in a manner which threatens freedom of association. The Government stated, after scant consideration and decision-making, that the dispute should be resolved by the subcontracting enterprises with those workers who belong to the CTC and that the state enterprise CODELCO is autonomous in its decision-making.

317. The complainants report that the state enterprise and the contracting and subcontracting enterprises are organized through a conglomerate, holding or economic unit which, in accordance with the provisions of section 3 of the Labour Code, constitutes an enterprise for employment purposes. This is the case for several reasons: (a) the state enterprise CODELCO occupies a dominant position over the contracting and subcontracting enterprises, to the point that it constitutes a monopoly position that cannot be reversed by the contracting and subcontracting enterprises; and (b) formally subcontracted workers fulfil the same roles as workers contracted directly by CODELCO.

318. The subcontracted workers fulfil permanent roles in the main enterprise and it is the main enterprise that issues orders, meaning that the subordinate and dependent relationship is definitely with the state enterprise and not with the contracting or subcontracting enterprises. These enterprises would hardly be able to impose their decisions on the management of workers and their enterprises if they were in fact puppet enterprises controlled by the state enterprise. By simulating contracting, the existence of an economic

unit can be observed. It is the state enterprise itself that appoints contracting and subcontracting enterprises to contract workers and make them available to the state enterprise to fulfil their respective functions.

319. On 1 August 2007, the state enterprise CODELCO and the subcontracting enterprises signed the Framework Agreement between CODELCO Chile, contracting enterprises and the CTC. This instrument sets out a series of obligations on the state enterprise, among which are: payment of a bonus equivalent to US$450,000 to the benefit of all contracting workers working for CODELCO Chile; payment of eight days' wages for the days of the strike, an amount of US$50,000 for the remaining days and the provision of wage advances to cover the remaining strike days; the reinstatement of workers dismissed for having participated in the legal strike; and a commitment to refrain from dismissals in reprisal for the strike. The complainants state that the state enterprise has not fully complied with these obligations. Even after the strike, the state enterprise has continued to behave in a manner that constitutes anti-union practice, specifically:

– contracting workers are excluded from the benefits obtained, which contradicts the letter and spirit of the Agreement, which was negotiated at all times on behalf of all contracting workers;

– economic benefits have been paid first to workers not participating in the strike and payments to workers currently on strike have been delayed without cause. This was intended to encourage workers to leave the CTC;

– at present there are a significant number of workers who have not received any economic benefit. These workers mostly belong to highly mobilized groups, which clearly constitutes an act of reprisal against them;

– the wage benefits intended to cover the unpaid strike days have not been paid. This again applies to the most active workers, given that the rest have been paid all their wages, without such discrimination having any just cause;

– the reinstatement of a significant number of workers, those who were most active in the strike, has not taken place;

– with the aim of avoiding intervention by the Labour Directorate under the Subcontracting Act, once the strike had finished and the workers returned to work, their duties were changed on the pretext of complying with the law.

320. Lastly, the complainants allege that the State has also failed to take charge of the labour dispute, which it could and should do through the National Labour Directorate in the following manner: (1) the labour inspectorate has the legal obligation to report any actions that constitute anti-union practices to the labour courts. Actions constituting anti-union practices have been described but, nevertheless, the labour inspectorate has not reported them; (2) the Labour Directorate offers a mediation system that aims to promote the resolution of collective labour disputes. In the dispute described, there was never the definite possibility of an offer of mediation by the Labour Directorate; and (3) violations of the Subcontracting Act No. 20123 have been reported but to date no information has been received of any investigation reports.

321. According to the complainants, there has been a violation of the 1980 Constitution, which stipulates that all workers may declare a strike with the exception of civil servants employed by the state or municipalities, together with any persons employed in corporations or enterprises, whatever their nature, purpose or function, that provide public utility services or services whose stoppage would cause serious damage to health, the

country's economy, public supply or national security. In addition, there have been violations of ILO Conventions Nos 87 and 98 and the Labour Code.

322. In its communication of November 2008, the CTC states that, once the Framework Agreement reached between CODELCO Chile, its contracting enterprises and the CTC had been signed, another series of anti-union practices began against the confederation, which took the form of persecution and harassment against union leaders and failure to pay the benefits set out in the Framework Agreement. This compliance failure was used by CODELCO Chile as a mechanism to destroy the confederation, based on the fact that it maintained in public that it had fully complied with its obligations, but in practice none of them were undertaken. CODELCO thus attempted to undermine relations with the primary organizations, who could not understand how the state enterprise could be broadcasting the fact that it was fully complying with the Framework Agreement while at the same time they were not receiving the benefits provided for therein.

323. The CTC alleges that the contracting enterprises, threatened with losing their contracts with the state enterprise, took coordinated action to discredit and persecute the CTC. So, there was a resurgence in blacklisting, which was intended to impede the recruitment of workers linked to the confederation and, furthermore, to provoke the dismissal of those who still had contracts in force with any of these contracting enterprises. This was basically carried out by bringing legal actions to impede the functioning of the Confederation and to secure the removal of its various leaders.

324. The CTC also alleges that requests for removals were made. CODELCO Chile coordinated with its contracting enterprises in order to request the removal of certain union leaders representing various divisions, with the aim of undermining representation at primary level. In this regard, requests were made to remove Mr Emilio Zárate Otárola, Mr Patricio Rocco Bucarey, the national director of the confederation, Mr Luis Garrido Garrido, Mr Patricio Alejandro García Barahona, Mr Ramón Segundo Salazar Vergara, Ms Viviana Andrea Abud Flores and Mr Juan Francisco González Bugueño.

325. The CTC alleges that blacklisting is being used to impede access to workplaces by some leaders (as in the case of Mr Andrés Leal Alavarado, national director of the CTC, and Mr Alvaro Guajardo in the holding division of CODELCO) and that there is a prohibition on giving work to others (as in the case of Mr Cristian Cuevas Zambrano, national president of the confederation, who has been obstructed and denied access to work since 2004, and Mr Jorge Peña Maturana, national director of the CTC, who has been obstructed and denied access to work since 2003).

326. In addition to the above, the state enterprise has introduced an entire procedure designed to avoid applying the Subcontracting Act.

B. The Government's reply

327. In its communication of January 2009, the Government states that it has consulted CODELCO, the National Labour Directorate, the national police and the Office of the Public Prosecutor. The Government recalls the complainants' statement that, given that CODELCO had not heeded the labour demands of the CTC, a strike was approved and took place. During the strike, according to the complainants, the state authorities are supposed to have carried out repressive actions in the form of illegal arrests, detention, excessive use of force and, in general, deprivation of fundamental rights, both general and labour-related. In this context, when the Secretariat-General of the national police was consulted by letter No. 737 of May 2008, it stated, in a report dated 26 May 2008, that, according to information obtained by the National Directorate for Security and Public Order of the National Police, no police procedures were identified which would have

involved officers of the national police entering and searching trade union premises. For their part, on 4 July 2007, with prior verbal authorization from the supervisory judge for Los Andes, institutional personnel entered and searched the property belonging to Mr Cristian Patricio Cabezas Carrasco, with the intention of arresting suspects Mr Juan Carlos Miranda Zamora and Mr Francisco Javier Díaz Herrera, both accused by witnesses of committing the offence of attacking a moving vehicle, resulting in damage, as provided for in section 196(h) of Traffic Act No. 18290, in respect of bus PP-YU-4589, driven by Mr Rodrigo Antonio Pereira Lazcano, who was transporting workers who were on the way to pursue their usual duties at the mining site, the facts of which were communicated to the local Office of the Public Prosecutor for Los Andes in report No. 2343 of 4 July 2008.

328. The Government states that, during collective bargaining and work stoppages, it is public knowledge that, in certain areas of the country, serious disruption of public order and damage to public and private property have been seen. These unlawful acts have prompted intervention by officers of the national police, with the aim of restoring the rule of law, leading to the arrests of some workers and union leaders. Individual reports of these events were produced describing actions that obstructed the normal ingress of workers and vehicles, stone throwing that resulted in injuries, cuts in the electricity supply, attacks on items belonging to fire-fighters that resulted in damage, threats against contracting workers who wanted to go about their normal duties and countless other actions which, given their severity and magnitude, warranted the intervention of officers of the national police.

329. The Political Constitution of the Republic of Chile gives constitutional rank to the Armed Forces of Order and Security. Article 90 thereof states that "they consist solely of the national police and investigations police. They represent public force and they exist to enforce the law and guarantee public order and domestic public security, in the manner determined by their respective organic laws. The national police shall also form part of the armed forces, with the mission of guaranteeing institutional order in the Republic". Furthermore, article 19, paragraph 26 of the Fundamental Charter guarantees "the assurance that the legal precepts which, mandated by the Constitution, regulate or complement the guarantees it provides, or limits them in those cases which authorized therein, shall not affect the essence of those rights, nor impose conditions, taxes or requirements that impede the free exercise thereof".

330. Furthermore, fundamental labour rights, respect for and exercise of which are guaranteed by the Chilean Constitution, as well as by international treaties ratified by Chile and incorporated into domestic legislation, must exist in harmony with other fundamental rights, which justifies the intervention by the national police. This intervention was not in any way intended to repress or affect the essence of the fundamental rights of the organization but, on the contrary, to guarantee fuller exercise of the rights of workers in all spheres, with full respect for the other guarantees enshrined in Chile's Fundamental Charter.

331. As regards the allegation concerning the "obstruction of collective bargaining" by simulating pseudo-negotiations, CODELCO, in a report requested by the Ministry of Labour and Social Security, states that "with respect to the accusation of bad faith, it should be noted that, despite there existing no employment relationship at all between the subcontracting workers and CODELCO, for which reason the enterprise is under no obligation whatsoever to negotiate with them, the Government of Chile and CODELCO, having respect for freedom of association, facilitated meetings between the parties, using dialogue, cooperation, good faith and equity as problem-solving tools". Similarly, the Republic of Chile's domestic labour legislation does not in any way contravene international labour standards, nor the spirit thereof.

332. With regard to the allegation that workers were directly prevented from entering their workplaces by means of their dismissal, CODELCO states that it had no opportunity or authority to undertake any of the actions described in the complaint, as it neither had nor has such powers. For its part, the National Labour Directorate has reported that the demonstrations were not carried out within the framework of collective bargaining under the country's Labour Code, and it was therefore not its responsibility to assume any of the roles it plays in such processes.

333. Concerning the alleged indirect prevention or omissions by the State and its representatives, it should be noted that domestic legislation, by virtue of section 476 of the Labour Code, stipulates that overseeing the application of labour legislation is the responsibility of the Labour Directorate and states that "it is a decentralized public service, with legal personality and private property, which is subject to the supervision of the President of the Republic through the Ministry of Labour and Social Security" (Decree with Force of Law No. 2 of 1967, Organic Law on the Labour Directorate). Bearing in mind the above, and in compliance with current legal standards in the field of labour, legislation calls on the Labour Directorate to intervene in such circumstances. The active intervention of the Directorate in question is outlined in report No. 4368 of 2008.

334. Furthermore, it should be pointed out that the State of Chile has legislation on collective bargaining and freedom of association, the fruit of arduous legislative work over many years, which contains a series of reforms designed to strengthen freedom of association and the exercise of the right to strike, an effort which the Government of Chile has pursued since the early 1990s. Act No. 19759 of 2001 definitively abolished those collective agreements that could be imposed by an employer, such that, in Chile, collective agreements can only be reached by a trade union or with a group of workers having a minimum level of organization. Certainly the regulations could be perfected, the more so if there remains a need for improvements stemming from recommendations made by the ILO supervisory bodies regarding certain important areas. In this regard, there is a presidential commitment to table a draft Act on improving the process of collective bargaining, taking into account the recommendations made by the ILO.

335. With regard to "mediation systems", the Labour Directorate, in a report requested on the subject, clarifies that it has formal mediation facilities, staffed by professionals dedicated exclusively to the service, which can be initiated at the request of parties and which are essentially voluntary. In this case, no requests to this effect were received.

336. In its communication of February 2009, the Government states that, taking fully into consideration the additions to the complaint made by the CTC and the accompanying observations from CODELCO, requested by the Government of Chile in letter No. 0017 of 20 January 2009, it has the following observations to make.

337. With regard to the alleged contravention of the signed "Framework Agreement", it must be clarified that, without prejudice to the statements made by the CTC in its written submission adding to its complaint, CODELCO, in a report requested on the issue, declares that "the contractors have complied with this manual of good practice in a full and satisfactory manner".

338. Given that contradictory statements have been made by CODELCO and workers for the contracting enterprises concerning the status of compliance with this Framework Agreement, and in the event that the declarations made by the complainant on this point are true, it does not follow that CODELCO should be accused of anti-union practices, as the employer, because it is not the employer of the complainant workers. In fact, work under a subcontracting arrangement is "that carried out under a contract of employment by a worker for an employer, termed the contractor or subcontractor, when, as a result of a

contractual agreement, it undertakes to provide labour or services, on its own account, at its own risk and with workers dependent upon it, for a third natural or legal person directing the work, enterprise or service".

339. As can be seen from the above provision, an employment relationship in the legal arrangement of subcontracting exists only between a worker and the contracting or subcontracting employer. In this case, CODELCO has the status of "main enterprise" or "third natural or legal person directing the work, enterprise or service", as stated in the last part of section 183-A, second paragraph, of the Chilean Labour Code, for which reason CODELCO does not have any legal employment relationship with workers in the respective contracting and subcontracting enterprises, but only a civil relationship arising from a "contractual agreement".

340. This does not prevent CODELCO, as a party to and important component of the production process carried out jointly by CODELCO, its contractors and subcontractors, from promoting and monitoring the status of the manual of good practice (Framework Agreement) mentioned above, bearing in mind the civil relationship that exists with the contracting and subcontracting enterprises. This is precisely what happened in the signing of the so-called "Framework Agreement". CODELCO, in the hope of contributing to the resolution of the dispute affecting its contracting enterprises and their workers, signed the document, which clearly sets out guidelines of a general nature for these enterprises. CODELCO, despite having an interest in the issue, is subject to obvious limitations as regards interfering in the definitions used in the human resources policies of contracting enterprises.

341. With respect to the situation described in the complaint regarding the alleged resurgence of blacklisting at CODELCO, which prevents access to workplaces by some union leaders and also prohibits work from being given to others, the Government shares the view of the Committee on Freedom of Association that "all practices involving the blacklisting of trade union officials constitute a serious threat to the free exercise of trade union rights, and, in general, governments should take stringent measures to combat such practices". That notwithstanding, there is no evidence to prove that such practices have been introduced by CODELCO. Furthermore, the accusations in question do not correspond with reality, as CODELCO is noted nationally for having almost universal unionization rates among its workers and supervisors.

342. With regard to the alleged refusal by CODELCO to grant persons access to workplaces, it should be stated that, according to a report on the issue by the enterprise, "workers with a contract in force with subcontracting enterprises who are working in industrial areas in the enterprise's various divisions can enter without restriction in order to fulfil their agreed duties, under the responsibility and oversight of their respective employers". However, although no employment relationship exists, CODELCO, "in order to safeguard the health and integrity of persons and the security of its facilities, authorizes access to workplaces provided that the corresponding permits are requested from the administration at the appropriate time and with proper grounds".

343. As will be appreciated, the complainant workers, as workers for subcontracting enterprises, would not have free access to the corporation's facilities but conditional access to the workplace entrusted to their employer. These measures to restrict access are implemented for the safety and physical integrity of people in mining installations, and in order to comply with regulations on mining safety (Supreme Decree No. 72 of 2004) and Supreme Decree No. 594 of 1999, which approved basic sanitary and environmental conditions for workplaces that apply to the whole of the country's mining industry and whose aim, naturally, is to prevent risks in mining installations.

344. With regard to requests for removal of union leaders, the procedure has been defined as such by the contracting enterprises for which the individuals concerned work. This procedure is, in essence, a mechanism to protect the worker against possible acts of discrimination by the employer and, as such, is a means of guaranteeing protection of the right to organize. This guarantee arises from section 174 of the Labour Code, which states that "in the case of workers subject to immunity from dismissal, the employer may not terminate a contract without prior authorization from a competent judge, who may allow it in the case of the reasons indicated in paragraphs 4 and 5 of section 159 and those in section 160".

345. It is for this reason, and with a view to safeguarding the employment stability of this group of workers, for example by preventing the use of anti-union practices through the discriminatory dismissal of workers, that a prior decision must be made by the courts of law, whose independence and impartiality are beyond doubt. Taking such action does not constitute an anti-union act; quite the contrary, it demonstrates a decision to proceed in obtaining prior validating authorization from a competent judge before dismissing a union leader, and the decision will therefore be taken after "due process" in which the parties, on an equal footing, can present their arguments, with the final decision resting in the hands of the judicial authorities. Of course, the legitimate party to initiate removal proceedings is the employer, in this case the contracting enterprises.

346. Consequently, CODELCO cannot be considered to have engaged in anti-union practices in this sense given that, on the one hand, the removal process had been validated with regard to its legal efficiency and effectiveness by the ILO and, on the other hand, this process must be directed by the direct employer in respect of its own workers with immunity, which means that CODELCO, as the main enterprise, is also not responsible for removal actions against workers belonging to the CTC.

347. With regard to CODELCO's invocation of the resources of protection and *amparo* (protection of constitutional rights) against the CTC, it should be clarified that the intervention of the judicial authorities in this specific case was considered indispensable by the enterprise in order to ensure guarantees of fair legal proceedings, bearing in mind that the proceedings, in accordance with the principle of interdependence of powers, are required to guarantee respect for, and compliance with, domestic law and international treaties incorporated into legislation, which includes Conventions Nos 87 and 98. This simply reflects the provisions of the Chilean Fundamental Charter, article 76 of which establishes that "the authority to hear civil, criminal and labour cases and to enforce judgements in such cases is vested exclusively in the courts established by law. Neither the President of the Republic nor Congress may exercise judicial functions, express an opinion on matters that are still pending, review the grounds or content of court rulings or reopen lawsuits that have been settled".

348. Regarding the facts and the case for *amparo* and protection brought against the CTC, CODELCO states that "as the main enterprise, it was obliged to ensure the safety and physical and psychological integrity of all those working in its installations, whatever their principal employer, and, in consequence of this duty of care, it was obliged to take the appropriate actions as allowed by law and use various means of protection in order to put an end to the illegal and violent strike pursued by the CTC". The demonstrations in question, which prompted recourse to the courts and whose nature and effects have already been described in the observations previously made by the Government, caused a disturbance and threatened the legitimate exercise of the rights of workers at CODELCO and other enterprises not involved in the dispute. Of course, the operations put at risk by the actions of the CTC are highly complex and require safeguards for security procedures.

349. With regard to the rulings handed down by the higher courts of justice in relation to the simulation of a subcontracting arrangement and the alleged introduction of an entire procedure designed to avoid applying the Subcontracting Act, it should be stated that these rulings were given in the context of the protection proceedings brought by CODELCO against the Labour Directorate which, using its supervisory powers, officially warned the enterprise to directly contract a significant number of workers from contracting enterprises. Section 183.2 of the Subcontracting Act, No. 20123, states, with the aim of avoiding possible acts of simulation by employing enterprises, that "if the services provided are undertaken without being subjected to the requirements set out in the previous paragraph or are solely limited to the subcontracting of workers at a workplace, the employer shall be understood to be the entity in charge of the workers, enterprise or workplace, without prejudice to the appropriate sanctions arising from application of section 478". This provision, aimed at protecting workers, allocates the burden of proof in the worker's favour, establishing a legal premise that the employer against which a complaint has been made must provide evidence to the contrary.

350. In this regard, the Labour Directorate ruled that CODELCO should directly contract a specific number of workers from contracting enterprises. CODELCO, questioning the alleged facts as determined by the supervisory body, decided to begin legal proceedings to restrict the actions of the Labour Director. The case brought by CODELCO eventually came before Chile's Supreme Court, as part of proceedings in which the CTC participated.

351. With regard to the court's jurisprudence, it should be clarified that Chilean legislation does not accord binding force to rulings given in other cases, so the situation referred to by the complainant in its written complaint, whereby criteria have varied and prior jurisprudence has not been followed, does not constitute any kind of irregularity. It is not true, however, that the Supreme Court has varied its judicial view with regard to the supervisory powers of the labour inspectorate, given that, since 1991, the Supreme Tribunal has stated in some of its rulings that "the power of oversight and the task of determining the sense and scope of legislation only permit ... the observation and rectification of objective and evident violations of labour and provision legislation and must be restricted to making the relevant complaint, because the legal classification of facts is a matter of definite jurisdiction that falls within the sphere of the courts of law". Labour inspectors are competent to take decisions only where there exists an immediate correspondence between legal provisions and the facts.

352. In conclusion, Chilean labour legislation, with a view to protecting trade union rights and, in conjunction, penalizing any practice that goes against the principles of freedom of association, sets out in section 289 of the Labour Code a specific chapter in this respect, entitled "On unfair and anti-union practices and penalties for such practices". This stipulates, in section 292.3, that "examining and resolving violations involving unfair or anti-union practices shall be the responsibility of labour law judges". This is confirmed by the administrative jurisprudence of the National Labour Directorate, which states that "examining and resolving violations involving unfair or anti-union practices shall be the responsibility of labour courts". In connection with the information presented in this complaint, it should be mentioned that it is the courts of law that are charged with examining such matters and which, in view of their independence and impartiality, can guarantee protection for and restoration of labour rights when those rights have been violated or contravened. In this case, it does not appear that any complaint was registered with the courts of law in this respect.

353. The Government states that, considering the necessity of ensuring that controversies such as those which have given rise to a dispute in this case should be subject to institutional proceedings that are most efficient and appropriate to the belligerence or impatience of the parties, it does not discount the possibility of improving its legislation on the issue of

determining the status of the employer in cases where there are disagreements between the parties. From an employment perspective, it is necessary to ensure proper compliance with legislation and, in the context of the Subcontracting Act, which recognizes certain forms of outsourcing work and services, particularly through regulating work by subcontracting and recognizing situations in which personnel are supplied, a series of institutional weaknesses have become clear in terms of resolving problems that may arise in the application of new regulations, and in general with respect to legislation that penalizes employers who hide their status as such in relation to one or more employers.

354. The Government states, lastly, that determining the status of an employer is the starting point for the labour protection regime maintained by labour legislation, such that determining that status cannot be left to the workers affected but requires coordinated institutional action. As a result, consideration is being given to the need to draft legislation granting the Labour Directorate the authority to bring cases before the courts if it finds that an employer's status has been concealed, given that, if responsibility for bringing a case resides solely with the worker, in practice a large part of labour legislation and, in particular, one of the aspects of the Subcontracting Act will lose their effectiveness.

C. The Committee's conclusions

355. *The Committee notes that in this case the complainants allege that, in the context of the legal strike carried out by the CTC, which comprises workers in a subordinate and dependent relationship with contracting enterprises of the state enterprise CODELCO, between 25 June and 1 August 2007, the forces of law and order used force in an unnecessary manner, repressed workers, carried out illegal arrests and searched the house of a member in order to temporarily detain two workers (who in the end were not charged) and that, during collective bargaining, anti-union acts occurred and workers participating in the strike were dismissed. The Committee also notes the complainants' allegations that although CODELCO, the contracting enterprises and the CTC concluded the Framework Agreement on 1 August 2007 that put an end to the dispute and, among other things, provided for payment of wages not received during the days of the strike and the reinstatement of those dismissed, the Agreement, according to the complainants, has not been fully implemented and, furthermore, according to the complainants' allegations: (1) the removal was requested of union leaders Mr Emilio Zárate Otárola, Mr Patricio Rocco Bucarey, Mr Luis Garrido Garrido, Mr Patricio Alejandro García Barahona, Mr Ramón Segundo Salazar Vergara, Ms Viviana Andrea Abud Flores and Mr Juan Francisco González Bugueño; and (2) blacklisting has been introduced preventing trade union leaders Mr Andrés Leal Alvarado, Mr Alvaro Guajardo, Mr Cristian Cuevas Zambrano and Mr Jorge Peña Maturana from gaining access to their workplaces. The Committee further notes that the trade union organizations object to the fact that the Labour Directorate has not promoted resolution of the dispute through the mediation system.*

356. *With regard to the complainants' allegations that, during the strike called by the CTC in 2007, the forces of order used force in an unnecessary manner, repressed workers, carried out illegal arrests and searched the home of a member, the Committee takes note of the Government's statement that: (1) when the Secretariat-General of the national police was consulted, it stated, in a report dated 26 May 2008, that, according to information obtained by the National Directorate for Security and Public Order of the National Police, no police procedures were identified which would have involved officers of the national police entering and searching trade union premises; (2) for their part, on 4 July 2007, with prior verbal authorization from the supervisory judge for Los Andes, institutional personnel entered and searched the property belonging to Mr Cristian Patricio Cabezas Carrasco, with the intention of arresting suspects Mr Juan Carlos Miranda Zamora and Mr Francisco Javier Díaz Herrera (who, according to the complainants were not*

charged), both accused by witnesses of committing the offence of attacking a moving vehicle, resulting in damage, as provided for in section 196(h) of Traffic Act No. 18290, in respect of bus PP-YU-4589, which was transporting workers who were on the way to pursue their usual duties at the mining site, the facts of which were communicated to the local Office of the Public Prosecutor for Los Andes in report No. 2343 of 4 July 2008; (3) during collective bargaining and work stoppages, it is public knowledge that, in certain areas of the country, serious disruption of public order and damage to public and private property have been seen. These unlawful acts have prompted intervention by officers of the national police, with the aim of restoring the rule of law, leading to the arrests of some workers and union leaders; (4) individual reports of these events were produced describing actions that obstructed the normal ingress of workers and vehicles, stone throwing that resulted in injuries, cuts in the electricity supply, attacks on items belonging to fire-fighters that resulted in damage, threats against contracting workers who wanted to go about their normal duties and countless other actions which, given their severity and magnitude, warranted the intervention of officers of the national police; (5) fundamental labour rights, respect for and exercise of which are guaranteed by the Chilean Constitution, as well as by international treaties ratified by Chile and incorporated into domestic legislation, must exist in harmony with other fundamental rights, which justifies the intervention by the national police; and (6) this intervention was not in any way intended to repress or affect the essence of the fundamental rights of the organization but, on the contrary, to guarantee fuller exercise of the rights of workers in all spheres, with full respect for the other guarantees enshrined in the Fundamental Charter.

357. *The Committee takes note of the contradictory versions given by the complainants and the Government of the violent events that occurred during the strike. In these circumstances, the Committee requests the Government to provide information on any proceedings against the two workers arrested during the search, sanctioned by judicial order, of the home of a member of the union, Mr Juan Carlos Miranda Zamora and Mr Francisco Javier Díaz Herrera (who, according to the complainants, were not charged) and whether other union leaders or members have been arrested and charged, and, if so, that it provide information on the charges brought and the current status of any legal proceedings. Furthermore, the Committee requests the Government to provide information on whether any legal action has been brought in respect of these events.*

358. *With regard to the alleged failure to comply with the Framework Agreement concluded on 1 August 2007 between CODELCO (according to the complainants, the enterprise occupies a dominant position with respect to the contracting and subcontracting enterprises), the subcontracting enterprises and the CTC, putting an end to the dispute, the Committee takes note of the Government's statement that CODELCO has reported that the contractors have complied with the manual of good practice in a full and satisfactory manner. Furthermore, the Committee takes note of the Government's statements that: (1) it does not follow that CODELCO should be accused of anti-union practices, as the employer, because it is not the employer of the complainant workers and it has the status of "main enterprise", for which reason it does not have a legal employment relationship with workers in the respective contracting and subcontracting enterprises, but only a civil relationship arising from a "contractual agreement"; (2) CODELCO, as a party to and important component of the production process carried out jointly by CODELCO, its contractors and subcontractors, promotes and monitors the status of the manual of good practice and, in the hope of contributing to the resolution of the dispute affecting its contracting enterprises and their workers, signed the Agreement, which clearly sets out guidelines of a general nature for these enterprises; and (3) despite having an interest in the issue, CODELCO is subject to obvious limitations as regards interfering in the definitions used in the human resources policies of contracting enterprises. The Committee recalls in this respect that it has on numerous occasions underlined that "agreements should be binding on the parties" [see* ***Digest of decisions and principles of the***

***Committee on Freedom of Association**, fifth edition, 2006, para. 939]. In these circumstances, observing that the Government recognizes that CODELCO is a signatory party, together with the subcontracting enterprises, to the Framework Agreement concluded on 1 August 2007 with the CTC, the Committee requests the Government to ensure compliance with the agreement in question. The Committee requests the Government to keep it informed in this regard.*

359. *With regard to the alleged request for removal of union leaders Mr Emilio Zárate Otárola, Mr Patricio Rocco Bucarey, Mr Luis Garrido Garrido, Mr Patricio Alejandro García Barahona, Mr Ramón Segundo Salazar Vergara, Ms Viviana Andrea Abud Flores and Mr Juan Francisco González Bugueño, the Committee takes note of the Government's statements that: (1) the procedure has been defined as such by the contracting enterprises for which the individuals concerned work; (2) this procedure is a mechanism to protect the worker against possible acts of discrimination by the employer and, as such, is a means of guaranteeing protection of the right to organize; (3) this guarantee arises from section 174 of the Labour Code, which states that in the case of workers subject to immunity from dismissal, the employer may not terminate a contract without prior authorization from a competent judge; (4) with a view to safeguarding employment stability, a prior decision must be made by the courts of law, whose independence and impartiality are beyond doubt; (5) taking such action does not constitute an anti-union act; quite the contrary, it is a decision to proceed in obtaining prior authorization from a competent judge before dismissing a union leader, and the decision will be taken after "due process"; (6) the legitimate party to initiate removal proceedings is the employer (in this case the contracting enterprises); and (7) CODELCO cannot be considered to have engaged in anti-union practices itself, nor is it responsible for removal actions against workers belonging to the CTC. In these circumstances, and observing that the removal requests for the union leaders were made simultaneously, including for the national director of the CTC, the Committee requests the Government to provide information on the specific facts of the cases and the reasons given for beginning proceedings to remove the union leaders mentioned, and on the outcome of these proceedings.*

360. *With regard to the allegation that blacklisting is being used to prevent access to workplaces and contact with workers by union leaders Mr Andrés Leal Alvarado, Mr Alvaro Guajardo, Mr Cristian Cuevas Zambrano and Mr Jorge Peña Maturana, the Committee takes note of the Government's statement that the enterprise has reported that: (1) workers with a contract in force with subcontracting enterprises who are working in industrial areas in the enterprise's various divisions can enter without restriction in order to fulfil their agreed duties, under the responsibility and oversight of their respective employers; and (2) if no employment relationship exists, in order to safeguard the health and integrity of persons and the security of facilities, access to workplaces is authorized provided that the corresponding permits are requested from the administration at the appropriate time and with proper grounds. The Committee takes note of the Government's statements that: (i) these measures to restrict access are implemented for the safety and physical integrity of people in mining installations and in order to comply with regulations on mining safety, the aim of which is to prevent risks in mining installations; and (ii) there is no evidence to prove that such practices have been introduced by CODELCO. Although it takes note of the particular characteristics of the mining industry, which could complicate the granting of access to workers from outside an enterprise, the Committee recalls that on numerous occasions it has underlined that "governments should guarantee the access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization" [see **Digest**, op. cit., para. 1103]. In these circumstances, the Committee requests the Government to take all necessary measures to promote an agreement between CODELCO and the CTC so that the CTC's representatives can gain access to workplaces to pursue their union activities,*

without compromising the functioning of the enterprise. Furthermore, the Committee requests the Government to investigate the allegation that the union leaders mentioned above have been refused work and to keep it informed in this regard.

361. *With regard to the allegation that the Labour Directorate did not promote resolution of the dispute through the mediation system, the Committee takes note of the Government's statement that the Directorate has formal mediation facilities, staffed by professionals dedicated exclusively to the service, but that the service is initiated at the request of parties and that in this case no requests to this effect were received. In these circumstances, observing that the parties in the dispute have arrived at an agreement with regard to the dispute, the Committee will not proceed with examination of this allegation.*

362. *Lastly, the Committee observes that the complainants have stated that the enterprise introduced a procedure designed to avoid application of the Subcontracting Act and that the Government has not sent a reply in this regard. Nevertheless, the Committee will not proceed with examination of this allegation as it is not connected with alleged violations of trade union rights.*

The Committee's recommendations

363. ***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 provide information on any proceedings against the two workers arrested during the search, sanctioned by judicial order, of the home of a member of the union, Mr Juan Carlos Miranda Zamora and Mr Francisco Javier Díaz Herrera (who, according to the complainants, were not charged) and whether other union leaders or members have been arrested and charged in relation to the strike carried out by the CTC between 25 June and 1 August 2007, and, if so, that it provide information on the charges brought and the current status of any legal proceedings. Furthermore, the Committee requests the Government to provide information on whether any legal action has been brought in respect of these violent events.

(b) The Committee requests the Government to ensure compliance with the agreement concluded on 1 August 2007 between CODELCO, the subcontracting enterprises and the CTC. The Committee requests the Government to keep it informed in this regard.

(c) The Committee requests the Government to provide information on the specific facts of the cases and the reasons given for beginning proceedings to remove the union leaders Mr Emilio Zárate Otárola, Mr Patricio Rocco Bucarey, Mr Luis Garrido Garrido, Mr Patricio Alejandro García Barahona, Mr Ramón Segundo Salazar Vergara, Ms Viviana Andrea Abud Flores and Mr Juan Francisco González Bugueño, and on the outcome of these proceedings.

(d) The Committee requests the Government to take all necessary measures to promote an agreement between CODELCO and the CTC so that the CTC's representatives can gain access to workplaces to pursue their union activities, without compromising the functioning of the enterprise.

Furthermore, the Committee requests the Government to investigate the allegation that the union leaders mentioned in the complaint have been refused work and to keep it informed in this regard.

CASE NO. 2649

DEFINITIVE REPORT

Complaint against the Government of Chile presented by the National Federation of Sanitation Workers (FENATRAOS)

Allegations: The complainant organization challenges a ruling issued by the office of the Comptroller-General of the Republic which finds a government decision exempting sanitation company workers from the prohibition on strikes to be illegal

364. The complaint is contained in a communication dated 23 May 2008 from the National Federation of Sanitation Workers (FENATRAOS).

365. The Government sent its observations in a communication dated 5 January 2009.

366. Chile 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

367. In its communication dated 23 May 2008, FENATRAOS states that it is composed of 39 primary-level trade unions comprising 3,300 members across the country. It adds that in 2006, by means of Decision No. 35 of the Ministries of Defence, Economic Affairs, and Labour and Social Security and in response to the review called for by the Committee on Freedom of Association in its 326th Report, Case No. 2135, the Government exempted sanitation company workers from the prohibition of the right to strike which had been in force until then. That position was upheld by the Government in 2007, by means of Decision No. 30 of the same ministries.

368. In accordance with this new position based on the guidelines of ILO Conventions Nos 87 and 98, the Government agreed with the unions that there was no obstacle to calling a strike in enterprises in the sector. The Government's considerations included the following factors: (a) a large proportion of workers in sanitation companies are not engaged in actual water production or sewage treatment, and hence any stoppage would have no justification and be absolutely arbitrary; (b) with regard to persons directly involved in the provision of essential services, the collective bargaining regulations provide for institutions which are perfectly capable of ensuring continuity of service, as is the case with the formation of emergency teams (Labour Code, section 380), which is obligatory in the case of enterprises which provide "special services"; the enterprise can hire replacement staff (Labour Code, section 381); the authority can order the resumption of work (Labour Code, section 385); and (c) the employment reality of sanitation companies is so distorted, through the direct

responsibility of the enterprises themselves, that the prohibition of strikes is totally ineffective owing to the fact that water production and sewage treatment is largely carried out by staff from contracting or subcontracting enterprises.

369. FENATRAOS alleges that unfortunately the review undertaken by the Government to ensure strict compliance with Conventions Nos 87 and 98 has been frustrated by the action, beyond the scope of its competence, of the office of the Comptroller-General of the Republic, which, meeting a request from private sanitation companies mostly funded by multinational capital, declared the Government's decision illegal by means of Ruling No. 37849, deeming sanitation companies to provide essential services, which, in the abovementioned office's view, obliges the Government to impose on them an absolute prohibition of the right to strike. (The office's ruling states that sanitation service providers should be included in the list of entities whose workers may not go on strike.)

370. According to the complainant, the ruling breaches the provisions of article 19(16) of the Constitution and section 384 of the Labour Code, inasmuch as the office of the Comptroller-General arrogates to itself a power of classification which those provisions confer exclusively on the Ministries of Labour and Social Security, National Defence and Economic Affairs, and Public Works and Reconstruction.

371. Under article 19(16) of the Constitution, the law governs the establishment of "procedures for determining the corporations or enterprises whose workers will be covered by the prohibition" on strikes, which applies to "persons employed in corporations or enterprises, whatever their nature, purpose or function, which provide public utility services or services the stoppage of which would cause serious damage to public health, the economy, public supplies or national security". However, in compliance with the Constitution, section 384 of the Labour Code provides that the corporations and enterprises whose workers are not entitled to strike shall be determined through a classification undertaken in July each year by the Ministries of Labour and Social Security, National Defence and Economic Affairs, and Public Works and Reconstruction, taking the form of an administrative act issuing a joint decision.

372. Contrary to the provisions of section 384 of the Labour Code, whose meaning and scope can be deduced unambiguously from the standards concerned without there being any area of dispute in national doctrine, the ruling under challenge differentiates incorrectly and injudiciously between enterprises referred to in clause (a) of that section and those covered by clause (b). It is incorrect because article 19(16) of the Constitution makes no distinction between both situations, and subjects all enterprises to the legal classification procedure established in section 384 of the Labour Code. In fact, it commits a serious error because it violates the Constitution by not complying with legal procedures and by making a distinction not provided for therein in blatant violation of the terms of the final paragraph of section 384, according to which any classification relating to an enterprise in one of the situations described shall be undertaken exclusively by the three ministries referred to above.

373. The classification procedure involves "appraising or determining the qualities and circumstances of a person or thing" and leads to the issuing of a judgement or opinion. In the present case, it is a question of determining whether a specific enterprise provides a public utility service such as to authorize it to deny its workers the right to strike. There is no legislation which defines specific enterprises as being engaged in the provision of public utility services, the latter concept having no precise legal definition. Article 19(16) establishes a distinction between the situation of state and municipal officials and that of workers covered by the second part of the fifth paragraph of article 19(16), namely workers in the enterprises described in both clauses of section 384 of the Labour Code.

374. The classification procedure only applies to corporations or enterprises which provide public utility services or those the stoppage of which would cause serious damage to public health, the economy, public supplies or national security. It does not apply to state or municipal officials, since in this case there is nothing to classify, their status being assigned objectively by law. However, in the case of public utility companies, classification – the process whereby the provision of public utility services is deemed to be the core function of the enterprise – is indispensable. Firstly, because it has to be determined that the service provided is a public utility service; secondly, it must be established that the enterprise is equipped in operational terms for providing this service. Finally and most importantly, it is essential to analyse whether or not the exercise of the right to strike jeopardizes the functioning of the public utility service.

375. Section 380 of the Labour Code fully confirms the above, inasmuch as it explicitly refers to the situation in which an essential service – synonymous with a public utility service – is crippled by a strike, this being one of the prerequisites for the formation of emergency teams. The same may be said regarding the provisions of section 385 concerning the possibility of ordering the resumption of work in an enterprise crippled by a strike or lock-out.

376. Hence, it cannot be claimed that merely assigning the status of enterprise, which provides an essential service or public utility service, automatically imposes the obligation to deprive the workers of their right to strike. If this was the case, as with the ruling issued by the office of the Comptroller-General, it would overstep clear provisions of law such as those already mentioned which allow the possibility that workers providing a public utility service can go on strike. Hence, the classification to be undertaken by the ministries becomes essential, not only because it is required by section 384 but also because it forms part of the regulations governing collective bargaining, which do not call for mechanical classification but for case-by-case consideration which analyses the various aspects concerned.

377. The said classification – which in some form comes within the competence of the office of the Comptroller-General – therefore presupposes an analysis of each specific case rather than a process of objectification. The actual ruling under challenge bears this out, since in reaching the conclusion which gives rise to the appeal it undertakes precisely a classification process for which it has no competence, since that process belongs exclusively to the competence of the ministries referred to above.

378. It is possible that the classification undertaken by the ministries in the exercise of their legal duties and their exclusive competence, whereby sanitation company workers are not included, appears erroneous or inconvenient to the Comptroller-General. But this does not justify the ruling issued, since it is not for the Comptroller-General to enter into issues of substance but only to intervene in the sphere of legality. According to the complainants, it is quite clear that the ministries cannot have breached the law since they merely complied with section 384 of the Labour Code in deciding which enterprises must be deemed to be engaged in the provision of public utility services for the purposes of restricting the right to strike.

379. If the opposite was considered to be the case, i.e. that this was an illegal situation, it is unclear why the Comptroller-General limits the effects of the ruling to sanitation companies in view of the existence of many other enterprises that provide public utility services in areas such as hospitals, transport and communications which have not been included in the scope of decisions issued to implement section 384. The prohibitions imposed by the legislation on the right to strike are clearly directed at the workers. What the legislation seeks is to prevent a work stoppage from affecting the operations of enterprises which provide essential services. Hence, there has to be a necessary and direct

causal link between stoppages arising from workers' exercise of their right to strike and the functioning of essential services provided by the company. If there is no such link, there is no reason to limit the right to strike, since to do so would be to defeat the purpose of the legal provisions whose application is restrictive.

380. In the opinion of the complainants, in the context of respect of fundamental social rights, the fact that the enterprise provides a public utility service is not sufficient in itself for the right to strike to be prohibited; it is also necessary to establish whether or not the stoppage arising from a strike actually jeopardizes the provision of the essential service. In the present case, in the exercise of its powers of classification deriving from section 384 of the Labour Code, the authority has considered with good reason that there is no justification for depriving sanitation company workers of their right to strike, since the regulations on collective bargaining offer other means of meeting public welfare requirements in relation to providing sanitation services. In other words, it considered that this case does not involve the criterion of necessity, resulting in the restriction of the fundamental right being essential in order to achieve the legitimate end, with no easier solution available.

381. It is strange that the multinationals which operate the sanitation companies are quick to raise the alarm concerning the essential nature of their services for protecting people's lives and health but have no hesitation in cutting off drinking water supplies to people who fall behind in the payment of their bills because of financial problems.

B. The Government's reply

382. In its communication of 5 January 2009, the Government states that in 2006, by means of Decision No. 35 of the Ministries of Defence, Economic Affairs, Labour and Social Security and in response to the proceedings undertaken by the Committee on Freedom of Association in Case No. 2135, sanitation company workers were exempted from the prohibition on going on strike which had been in force until then. The office of the Comptroller-General of the Republic, exercising the powers assigned to it by the Chilean Constitution, specifically article 88, first paragraph thereof, declared the Government's decision to be illegal, inasmuch as it deemed sanitation companies to provide essential services.

383. The Government indicates that the fifth and final paragraphs of article 19(16) of the Political Constitution of the Republic of Chile state: "Workers have the right to collective bargaining in the enterprise where they work, except in cases where the law expressly prohibits negotiation. The law shall establish methods of collective bargaining and appropriate procedures for achieving a fair and peaceful outcome. The law shall indicate the cases in which collective bargaining shall be subject to compulsory arbitration, and this shall come within the competence of special tribunals of experts whose structure and powers shall be established by law. State and municipal officials shall not have the right to strike. The same shall apply to persons who work in corporations or enterprises, whatever their nature, purpose or function, which provide public utility services or services the stoppage of which would cause serious damage to public health, the economy, public supplies or national security. The law shall establish the procedures for determining the corporations or enterprises whose workers will be covered by the prohibition laid down by this paragraph."

384. The Government adds that, in accordance with the explicit provisions of the Chilean Constitution, section 384 of the Chilean Labour Code states: "Workers in enterprises which provide (a) public utility services or (b) services the stoppage of which would cause serious damage to public health, public supplies, the economy or national security, shall not have the right to strike." The fifth paragraph of this section states: "In the cases enumerated in this section, if no direct agreement can be achieved between the parties to

collective bargaining, compulsory arbitration shall take place in accordance with the provisions of the law. Whether or not one of the situations referred to in the previous paragraph applies to the enterprise concerned shall be decided by a classification effected in July each year resulting in a joint decision of the Ministries of Labour and Social Security, National Defence and Economic Affairs, and Public Works and Reconstruction."

385. In line with the abovementioned principles, the office of the Comptroller-General of the Republic, by means of the abovementioned ruling, points out that the Chilean Labour Code, after making a distinction between the two scenarios referred to above, establishes a mechanism for determining the criteria for imposing the strike prohibition, but only in relation to the scenario described in section 384(b) and not in relation to enterprises which provide public utility services. It adds that, "account must therefore be taken of the fact that this unequal treatment with regard to entities which provide public utility services, both in the Constitution and in the Labour Code, is based on the fact that the latter constitute the most fundamental and essential services for meeting minimum public welfare requirements, and so it is consistent with this that the strike prohibition should apply without the need for administrative justification of the possible effects of any stoppage, as established in law with regard to the situation described in section 384(b)".

386. The Government recognizes that the present dispute relates to the definition of the indeterminate legal concept of "public utility", which under the terms of the law refers to the classification undertaken by the Ministries of Labour and Social Security, National Defence and Economic Affairs, and Public Works and Reconstruction and issued in a joint decision. Nevertheless, there is nothing established in Chilean law to prevent the office of the Comptroller-General of the Republic, in the exercise of its constitutional powers, from declaring an act of the administration to be illegal. To conclude otherwise would imply that certain acts of the administration are considered exempt from the controls on legality undertaken by the office of the Comptroller-General and this would seriously damage the institutional system in Chile.

387. As regards the indefinite legal concept of "public utility", although neither the Constitution nor the Labour Code states that economic activities include such services, leaving the classification to the abovementioned ministries, it is the ILO Committee of Experts which in 1983 defined essential services as "services the interruption of which would endanger the life, personal safety or health of the whole or part of the population". The Committee on Freedom of Association has provided a more detailed definition, stating that the essential services in which the right to strike may be restricted or prohibited include the hospital sector, electricity services, telephone services, air traffic control and water supply services. The strict application of this list is reinforced by the fact that the Committee on Freedom of Association excluded some of the activities considered previously, maintaining only those which meet the definition of essential services in the strict sense. While not establishing a concept, the General Sanitation Services Act also establishes that these provide public utility services, as referred to by article 19(16) of the Constitution.

388. Thus, the Committee on Freedom of Association establishes that the right to strike can be restricted or even prohibited in the public service or in essential services "in so far as a strike there could cause serious hardship to the national community and provided that the limitations are accompanied by certain compensatory guarantees". In compliance with the above, the Government of Chile has introduced compensatory guarantees through compulsory arbitration in section 384 of the Labour Code, which provides that, in the cases it refers to, if no direct agreement is reached between the parties to collective bargaining, compulsory arbitration shall apply in accordance with the terms of the law. Hence, the Chilean legislature never had any intention to withhold the right to strike from certain sectors but, on the contrary, it established a guarantee to compensate for the right to strike and offers guarantees of independent, impartial and speedy action in which the parties can

intervene at all stages, in order to ensure that the labour rights of workers affected by this restriction are not undermined.

389. It is in this context, and in view of the decision referred to above, that the Ministries of Economic Affairs, Public Works and Reconstruction, Labour and Social Security and National Defence, the National Federation of Sanitation Workers (FENATRAOS), Esval SA Workers' Union No. 1, the workers of Aguas Antofagasta II Region, various unions from Aguas Andina SA and Aguas Cordillera SA, the ESSMET SA Workers' Union, the Essal SA Union of Sanitation Professionals and Professional Technicians and the Aguas El Altiplano Union of Professionals and Technicians, in their efforts to defend and extend strike coverage to at least some sanitation company workers, requested the office of the Comptroller-General of the Republic to review Ruling No. 37849 of 2007.

390. In this request for review, the ministries point out that under the provisions of article 19(16) of the Constitution the right to strike can be limited with respect to workers employed in corporations or enterprises – whatever the nature, purpose or function of the latter – which provide public utility services and that therefore it is a prohibition which is laid down with respect to the worker and not to the entities that provide the said services. Hence, it is necessary to provide an annual classification stating which entities will be covered by the decision issued by the three ministries. They reiterate that the Constitution, in laying down such a limitation, considers the worker and not the enterprise as a whole, which is in line with the need to apply the restrictions on strikes to the employees who are strictly necessary for ensuring the provision of the essential service. Moreover, they explain that the sanitation companies do not necessarily provide public services directly but do so through subcontracting.

391. With regard to the aforementioned situation, the office of the Comptroller-General argues that it is not in keeping with the provisions of article 19(16) of the Constitution to seek on the basis of generic considerations to exclude certain enterprises that provide public utility services from the list contained in the decision issued by the three ministries, or to include some and not others. It claims that this is in line with the content of the presentations, regarding the need to apply the restrictions on strikes to the employees who are strictly necessary for ensuring the provision of the essential service or to limit it only to operational staff, since the provisions of the Constitution establish such limitations for all persons working in enterprises of this kind. It argues that for such reasons the authority has no power to make distinctions with a view to excluding certain public utility enterprises from the scope of the decision of the three ministries on account of the fact that such enterprises use subcontracting to perform part of their work.

392. Finally, the Government, through arduous legislative and administrative work, has striven to ensure strict compliance with the ILO Conventions. Accordingly, the Conventions, Recommendations and abundant doctrine originating from the ILO have been fully incorporated into Chilean law, in the sense that its labour legislation, independent of its hierarchy, has to be in conformity with the ILO Conventions, Recommendations, principles and doctrine. The Government, in the context of the independence of the state authorities and respecting the obligation "not to exercise judicial functions, plead pending cases, revise the foundations or content of decisions or reopen lapsed cases", undertakes to keep the Committee on Freedom of Association informed of the progress made on the issues still pending in this matter.

C. The Committee's conclusions

393. *The Committee observes that in the present case the complainant organization challenges Ruling No. 37849 of 2007 of the office of the Comptroller-General of the Republic, which considers that sanitation companies provide essential services and that sanitation service*

providers should be included in the list of entities whose workers cannot go on strike (the complainant recalls that the administrative authority had exempted sanitation company workers from the strike prohibition).

394. *In this regard, the Committee notes the Government's statement that: (1) in 2006, by means of Decision No. 35 of the Ministries of Defence, Labour and Social Security and in response to the examination of Case No. 2135 by the Committee on Freedom of Association, sanitation company workers were exempted from the prohibition on going on strike which had been in force until then; (2) the office of the Comptroller-General of the Republic, exercising the powers conferred on it by the Chilean Constitution, declared illegal the government decision, on the basis that it considered sanitation companies provided essential services; (3) the dispute in question is connected with classification relating to the indeterminate legal concept of public utility, and such classification entails a joint decision issued by the Ministries of Labour and Social Security, National Defence, and Economic Affairs, Public Works and Reconstruction, but there is still nothing in the legislation to prevent the office of the Comptroller-General, exercising its constitutional powers, from declaring an act of the administration illegal; (4) to conclude otherwise would imply that certain acts of the administration are considered exempt from the controls on legality undertaken by the office of the Comptroller-General, and this would thus seriously damage the institutional system; (5) the Ministries of Economic Affairs, Public Works and Reconstruction, Labour and Social Security, and National Defence, FENATRAOS and other workers' organizations requested the office of the Comptroller-General to review Ruling No. 37849 of 2007 and the office indicated that it was not in keeping with the provisions of the Constitution to seek, on the basis of generic considerations, to exclude specific enterprises that provide public utility services from the list contained in Decision No. 35, or to include some and not others; (6) compensatory guarantees have been established through compulsory arbitration, as indicated by the Committee in relation to the public service or in essential services; and (7) in the context of the independence of the state authorities, the Government undertakes to keep the Committee informed of progress made on the issues still pending in this matter.*

395. *Firstly, the Committee recalls that it has already had occasion to examine allegations concerning the prohibition of the right to strike imposed on sanitation workers in Chile [see 326th Report, Case No. 2135, paras 265–267], and its conclusions included the following:*

> 265. *The Committee notes that the Government states that water supply services are an essential service.*
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> 266. *The Committee recalls that "the right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population)" [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 576].*
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> 267. *The Committee also recalls that water supply services are an essential service where the right to strike may be prohibited with adequate protection to compensate for this limitation [see **Digest**, op. cit., paras 544 and 546]. The Committee notes, however, that the Government states that further investigation is needed as regards the claim presented by the complainants, in which the different sections or duties that are carried out within the company be defined so that only those workers who are directly linked to the provision of the essential service be subjected to the prohibition of the right to strike; that investigation shall be carried out by the Ministry of Labour and Social Security as soon as possible. The Committee appreciates and encourages this initiative; it hopes that this investigation will be carried out very shortly and requests the Government to keep it informed in this regard.*

396. *In this regard, the Committee appreciates the statements from the Government and the complainant to the effect that further to the examination of Case No. 2135 concerning the prohibition of the right to strike not only on sanitation workers who are providing an essential service but also on those who are involved in areas that are clearly separate from the provision of essential services, such as administrative tasks, legal advice, design projects, planning, construction and works inspection, information technology and others, the Government, by means of Decision No. 35, exempted sanitation company workers from the prohibition on strikes which had been in force until then.*

397. *The Committee notes, however, that the office of the Comptroller-General of the Republic revoked the abovementioned decision of the administrative authority, since there were incompatibilities with the provisions of the Constitution of Chile, and that according to the Government the workers thus excluded from the right to strike have compensatory guarantees. This being the case, observing that the Government states that, in the context of the independence of the state authorities, it undertakes to inform the Committee of progress made on the issues still pending in this matter and, taking into consideration the fact that the case evokes complex legal questions, including constitutional ones, the Committee submits this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

The Committee's recommendation

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

The Committee submits this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

CASE NO. 2653

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

Complaint against the Government of Chile presented by the Teachers' Association of Chile

Allegations: Violations of the right to bargain collectively and dismissal of trade unionists

399. The complaint is contained in a communication from the Teachers' Association of Chile dated 27 May 2008. The Government sent its reply in a communication dated 2 March 2009.

400. Chile 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

401. In its communication of 27 May 2008, the Teachers' Association of Chile alleges that, on 3 August 2007, the legal representative of the Carmelite Educational Society of Viña del Mar (SODEC Ltda.), was notified of a draft collective labour agreement presented by the

Union of Education Professionals of the schools under the administration of that enterprise, namely, Jerusalén and Ciudad de Paz.

402. That legal representative, the interim administrator, was appointed by the Under-Secretariat of Education, in accordance with Decision No. 3806 of 26 April 2007, because the accreditation of the private enterprise that was the administrator *(sostenedora)* of the abovementioned schools had been withdrawn by virtue of Decision No. 1635 of 6 June 2007 of the state authority.

403. The abovementioned interim administrator, a representative of the Chilean Government, refused to accept this draft collective agreement and refused to bargain collectively, allowing furthermore, in breach of the legal provisions in force, the former administrator (*sostenedora*) and owner of the schools in question to dismiss, without the right to compensation, the members of the Union of Education Professionals of those schools on 6 August 2007, in violation of the specific provisions of the Labour Code on immunity during the collective bargaining process.

404. Similarly, the abovementioned legal representative appointed by the Chilean Government refused to comply with the 2007 decision of the Second Labour Court of the First Instance of Valparaíso, under Case No. 92-2007, ordering the reinstatement of dismissed union official Cecilia Arancibia Pastén.

405. The complainant organization indicates that the decision of the Head of the Legal Division of the Department of Labour, dated 25 October 2007, and that of the Municipal Labour Inspector of Viña del Mar of 7 August 2007, which are attached to the complaint, are evidence of these failures.

B. The Government's reply

406. In its communication dated 2 March 2009, the Government states that the violations mentioned in the text of the complaint consist of the following: (1) the refusal by the interim administrator of the Jerusalén and Ciudad de Paz schools to accept the collective bargaining request and to bargain collectively; (2) the refusal by the same interim administrator to comply with the decision issued by the Second Labour Court of the First Instance of Valparaíso, ordering the reinstatement of union official Cecilia Arancibia Pastén; and (3) on 6 August 2007, the former administrator (*sostenedora*) and owner of the schools in question allegedly dismissed, without the right to compensation, the members of the schools' Union of Education Professionals, in violation of the specific provisions of the Labour Code on immunity during the collective bargaining process.

407. The Government indicates that the interim administrator of the Jerusalén and Ciudad de Paz schools was appointed by Exceptional Decision No. 3806 of 26 April 2007 of the Chilean Ministry of Education, with the aim of safeguarding the right to education of the schools' pupils during 2007, as the aforementioned educational authority had found, early on in the academic year, a series of irregularities in the management of these schools by SODEC Ltda., the enterprise that was at that time their administrator (*sostenedora*). The purpose of the appointment was to enable "the normal development of school activities in both educational establishments" and "pupils of these schools to complete their studies in a normal manner until the end of 2007" in the schools where they had started the school year.

408. The reason for the appointment was to address a situation that had a specific end date and covered the period between April and December 2007 (the date of the end of the school year), as reflected in the wording of Exceptional Decision No. 3806 of the Ministry of Education, dated 26 April 2007. This administrative act was designed to safeguard the

right to education of the pupils in the schools in question, which in the absence of an administrator (*sostenedora*) could not apply for the educational grant provided by the State pursuant to Decree No. 177/1996 of the Ministry of Education, or provide any education that was recognized by the State. Its aim was also to prevent the pupils from missing the 2007 school year.

409. The Government sends information from the Regional Department of Education of Valparaíso, which indicates that, on 16 April 2007 "a meeting was held with the representatives of the Valparaíso Teachers' Association and some members of the executive committee of the schools' trade union to discuss the possible courses of action, at which it was agreed that by Monday 26 April 2007 the Regional Department of Education would hold a meeting with the lawyer representing some of the parties that had previously participated in the proceedings to liquidate the enterprise in question to agree on how to expedite the process of appointing a liquidator for the enterprise, as a result of which agreement was reached on the appointment of the interim administrator by the Ministry, under the necessary conditions".

410. The Government reports that the workers at the schools mentioned in the complaint were fully aware of the situation that would affect them, and particularly of the imminent termination of their functions as of the 2008 school year. In fact, on 5 March 2007, the Ministerial Secretary of Education informed union members and teachers from both schools that the administrator (*sostenedora*) of the schools would cease to be in effect and of the immediate consequences of such a development, which included the withdrawal of accreditation to run as schools and the non-payment of the state grant that is given for each pupil. Under these conditions, the schools would not have been able to operate as educational establishments even during 2007; however, in order to avoid leaving the pupils with insufficient time to move to other schools and/or facing the risk of missing the 2007 school year, the interim administrator was appointed.

411. It is in these circumstances that, on 30 July 2007, and just four months before the end of the period of the interim administration of the abovementioned schools, the interim administrator was informed of a draft collective agreement, which would cover the period 2007–10. The interim administrator had neither the authority nor the budget to meaningfully involve the schools under its administration in a collective bargaining process governed by the Labour Code.

412. Given the circumstances outlined above and notwithstanding the fact that the interim administrator had effectively refused to accept the request for a collective bargaining process (as recorded in Regular Report No. 4269 requested to that end from the National Labour Directorate), it should be noted that the working conditions that this draft was intended to govern in the future would not exist beyond December 2007, the expiry date of the authorization granted by the interim administration. In other words, the agreement would apply for only four months.

413. However, as established in the first paragraph of section 347 of Chile's Labour Code, "the duration of collective agreements and arbitration decisions shall be no less than two years and no more than four years." In these conditions, it was not possible to engage in what was known under national regulations as "regulated collective bargaining".

414. In accordance with the principle of good faith, broadly recognized in the jurisprudence of the Committee on Freedom of Association in various reports, it was appropriate and in line with that principle to warn employees about the imminent loss of their source of employment and to encourage them to move to other schools, rather than to negotiate pay and working conditions that were impossible to meet. Doing this amounted to engaging in a "spurious" and "non-genuine" simulation of a bargaining process. Indeed, according to the

jurisprudence of the Committee on Freedom of Association, "it is important that both employers and trade unions bargain in good faith and make every effort to reach an agreement; moreover genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties."

415. Regarding the allegation that the appointed interim administrator had refused to comply with the decision of the Second Labour Court of the First Instance of Valparaíso, under Case No. 92-2007, ordering the reinstatement of dismissed union official Cecilia Arancibia Pastén, the Government states that, on the basis of a report requested from the National Labour Directorate, it is established that the Regional Labour Directorate of Valparaíso actually initiated these proceedings on anti-union practices, but against the enterprise SODEC Ltda., because it was this enterprise, in its capacity as administrator *(sostenedora)* of the schools and employer of the trade union official, that dismissed the union official. According to information provided by the Labour Directorate, there is no indication that the interim order to reinstate the union official, issued in the proceedings on anti-union practices that had been initiated against the administrator (*sostenedora*), had been carried out. At present, the court case is pending and no final decision has been reached.

416. As to the third allegation in the complaint, namely that, on 6 August 2007, the former administrator (*sostenedora*) had dismissed, without the right to compensation, the members of the Union of Education Professionals of the schools in question, in violation of the specific provisions of the Labour Code on immunity during the collective bargaining process, the Government states that, on the basis of a report of the National Labour Directorate, the Regional Labour Directorate of Valparaíso brought Case No. 757-2007 before the Second Labour Court of the First Instance of Valparaíso on the grounds of the illegal dismissal of workers covered with trade union immunity in collective bargaining. This case is pending before the court, and no final decision has been reached.

C. The Committee's conclusions

417. *The Committee observes that, in this case, the complainant's allegations relate to: (1) the refusal of the interim administrator of the Carmelite Educational Society of Viña del Mar (SODEC Ltda.), and more specifically of the Jerusalén and Ciudad de Paz schools, to accept the draft collective agreement presented by the trade union and to bargain collectively; (2) the illegal dismissal on 6 August 2007 of the members of the union, in violation of the legal provisions relating to trade union immunity; and (3) the refusal of the abovementioned interim administrator to comply with a court decision ordering the reinstatement of trade union official Cecilia Arancibia Pastén. The complainant organization explains that the interim administrator was appointed by the Under-Secretariat of State on 26 April 2007 after the accreditation of the enterprise SODEC Ltda. was withdrawn on 6 June 2007.*

418. *The Committee notes the statements by the Government explaining the context of the allegations, according to which: (1) the Ministry of Education found, early on in the academic year (2007), a series of irregularities in the enterprise's administration; (2) the appointment of the interim administrator by the authorities was aimed at safeguarding, until the end of the school year in December 2007, the right to education of the schools' pupils so that the students would not miss the 2007 school year; according to the Government, in such conditions the limited liability company in question could neither apply for the educational grant provided by the State nor provide State-recognized education (because the accreditation to run as schools had been withdrawn); in fact, the Government refers to proceedings to liquidate the enterprise; (3) in April 2007, the authorities of the Ministry of Education held a meeting with members of the Valparaíso Teachers' Association and some members of the executive committee of the affected schools' trade union to discuss the possible courses of action, reaching agreement on the*

appointment of an interim administrator; in any case, according to the Government, the employees of the schools and the members of the union were aware of the imminent termination of their functions as of the 2008 school year and they were notified accordingly by the Department of Education in March 2007.

419. *More specifically, with regard to the alleged refusal by the interim administrator appointed by the authorities to accept and negotiate the draft collective agreement presented by the trade union, the Committee notes that, according to the Government: (1) rather than to negotiate pay and working conditions that were impossible to meet in the circumstances described above, it was in accordance with the principle of good faith to warn the employees of the imminent loss of their jobs and to encourage them to move to other schools; (2) the draft collective agreement was submitted by the union on 30 July 2007 (a few months before the end of the period of the interim administration of the schools) and was intended to cover the period 2007–10 with the result that the interim administrator had neither the authority nor the budget to participate in a collective bargaining process for the schools that were going to close down at the end of 2007; and (3) under Section 347 of the Labour Code, collective agreements must have a duration of no less than two years which meant that it was not possible to negotiate under the regulations under the Labour Code relating to regulated collective bargaining. The Committee understands that this reference to "regulated" bargaining (which is impossible, according to the Government, from a legal standpoint) implies that other types of agreement were not ruled out (non-regulated collective bargaining also exists in Chile), for example those on the effective implementation of standards on legal entitlements upon termination of an employment relationship.*

420. *The Committee concludes that the refusal of the interim administrator to negotiate as part of a regulated collective bargaining process a draft collective agreement that continued to be applicable even years after the closure of the two schools did not constitute in the circumstances described a violation of the principles of freedom of association and collective bargaining, although it considers that the interim administrator should have explained the reasons for its refusal to the authorities of the Ministry of Education and the union, instead of refusing (as is indicated in the documents sent by the complainant organization) to give answers and to communicate the draft text to all the employees as is required by law in cases where a trade union presents a draft collective agreement to an enterprise. It also considers that the interim administrator should have been open to dialogue and negotiation in connection with the questions relating to the impact of the school closures on the workers and their rights.*

421. *With regard to the allegation relating to the dismissal of the secretary-general of the Union, Cecilia Arancibia Pastén, and to the refusal of the interim administrator to comply with the court decision ordering her reinstatement, the Committee notes that, according to the Government: (1) it was the regional labour authorities that initiated the proceedings on anti-union practices; (2) there is no indication that the interim reinstatement order issued by the court has been carried out; and (3) the court case is pending and no final decision has been made. The Committee regrets that the interim administrator did not carry out the reinstatement order issued by the court although it understands that the issue of reinstatement is no longer relevant insofar as the two schools have been closed down. The Committee requests the Government to keep it informed of the outcome of the proceedings and expects that, should anti-union practices be determined, the final decision will provide for the payment of all the secretary-general's unpaid wages and legal entitlements.*

422. *Lastly, with regard to the alleged dismissal of trade union members without the right to compensation on 6 August 2007, the Committee notes that, according to the Government, a case on the illegal dismissal during the collective bargaining process of workers with trade*

union immunity against dismissal is being processed by the courts. According to the Government, these proceedings were initiated on the basis of a report by the National Labour Directorate. The Committee understands that the matter of the reinstatement of these workers is no longer relevant following the closure of the two schools. The Committee requests the Government to inform it of the outcome of these proceedings and expects that, should anti-union practices be determined, unpaid wages and other legal entitlements will be paid to those concerned.

The Committee's recommendation

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

The Committee requests the Government to inform it of the outcome of the court proceedings relating to the dismissal of the secretary-general of the complainant union and the members of that union, and expects that, should anti-union practices be determined, unpaid wages and other legal entitlements will be paid to those concerned.

CASE NO. 2560

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

Complaint against the Government of Colombia presented by – the National Union of Employees of BANCOLOMBIA (SINTRABANCOL) and – the Single Confederation of Workers of Colombia (CUT)

Allegations: SINTRABANCOL and CUT alleged that pressure was exerted on employees to deter them from joining SINTRABANCOL, dismissal of unionized employees in contravention of the procedure established in the collective agreement, change in working conditions in violation of the collective agreement and application by the Bank of Colombia to withdraw trade union immunity from several leaders

424. This case was last examined by the Committee at its May 2008 meeting [see 350th Report, approved by the Governing Body at its 302nd Session, paras 508–570].

425. The Government sent new observations in communications dated 15 and 19 September 2008.

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

A. Previous examination of the case

427. At its May 2008 meeting, the Committee made the following recommendations [see 350th Report, para. 570]:

(a) As regards allegations to the effect that, in the context of this anti-union policy, the following dismissals occurred which flouted established disciplinary procedure embodied in the collective labour agreement: Janne del Carmen Herazo Salgado, Liliana Robayo, Nelsy Monroy Alfonso, Gloria Ximena Ramírez Alturo, Diana Alexis Paez Maldonado, María del Pilar Salazar Lizcano, María del Pilar Rojas González y Marco Iván Rico Elhga Mercedes Gómez Hañez, Omar Fredi Nova Rueda and Sandra Katalina Zambrano Mantilla, the Committee requests the Government to forward a copy of the court rulings which have already been handed down and to keep it informed of the judicial proceedings under way, with a view to identifying the reasons for the dismissals and how these were viewed by the judicial authorities and to prove that they were not related to the exercise of the workers' trade union rights and, if it is found that the workers were dismissed on anti-union grounds, to take measures to impose sufficiently dissuasive sanctions on those responsible.

(b) With reference to the other allegations regarding: pressure on workers not to join SINTRABANCOL and persecution of those who had become members, the impossibility of posting communications on the bank notice board because they would be immediately destroyed by management, pressure on workers to sign a letter against the trade union; increased working hours without payment of overtime; changes in working conditions laid down in the collective agreement; pressure on staff to give up present and future agreement-based benefits and interference by the Bank in the employees' private lives, the Committee requests the Government to carry out an independent investigation in order to ascertain the veracity of all allegations submitted, taking into account both the position of the trade union and that of the employer, and to keep it informed in this respect.

(c) As regards allegations that the company systematically contract service companies, the Committee requests the Government to guarantee that all those working at BANCOLOMBIA can enjoy the right to establish or join a trade union of their choice, in compliance with Article 2 of Convention No. 87.

B. The Government's reply

428. In its communications of 15 and 19 September 2008, the Government sent its observations with regard to the outstanding issues.

429. As regards subparagraph (a) of the recommendations, the Government states that the information provided by BANCOLOMBIA concerning the dismissals reveals the following:

- Omar Fredi Nova Rueda: a letter was sent terminating his contract of employment. Mr Nova Rueda lodged an appeal for protection of constitutional rights *(tutela)* which was dismissed as unfounded. BANCOLOMBIA has not been notified of any judicial proceedings.

- Nelsy Azucena Monroy Alfonso: a letter was sent terminating her contract of employment with just cause. Ms Monroy Alfonso filed legal proceedings. The proceedings are under way and no ruling has been handed down.

- Marco Iván Rico: the Second Labour Court of Cucuta Circuit authorized Mr Rico's dismissal on 4 July 2006, and its decision was upheld by the court of second instance on 3 October 2006. Mr Rico lodged a *tutela* action with the Labour Appeals Chamber of the Supreme Court of Justice, and on 28 November 2006 the Court handed down a ruling denying the action.

- Liliana Rocío Robayo: a letter was sent terminating her contract of employment with just cause on 27 October 2006. She filed proceedings in the ordinary labour jurisdiction, which are currently under way before the 19th Labour Court of the Bogotá Circuit. No ruling has been handed down yet.

- María del Pilar Rojas González: a letter was sent terminating her contract of employment with just cause on 9 May 2006. This former employee has not filed proceedings with the ordinary labour jurisdiction. At the time of her dismissal, the Bank was not aware that she was a member of any trade union.

- María del Pilar Salazar Lizcano: a letter was sent terminating her contract of employment with just cause on 31 July 2006. This former employee has not filed proceedings with the ordinary labour jurisdiction. At the time of her dismissal, the Bank was not aware that she was a member of any trade union.

- Diana Alexis Páez Maldonado: was sent a letter terminating her contract of employment with just cause on 12 June 2006. This former employee has not filed proceedings with the ordinary labour jurisdiction. At the time of her dismissal, the Bank was not aware that she was a member of any trade union.

  The Government emphasizes that it is very important that the trade union correct the trade union status of María del Pilar Salazar Lizcano, Diana Alexis Páez Maldonado and María del Pilar Rojas González.

- Janne del Carmen Herazo: dismissed with just cause from BANCOLOMBIA on 12 August 2004. Ms Herazo filed proceedings with the First Labour Court of Sincelejo Circuit, which found for the Bank, and its decision was upheld by the Sincelejo Superior Court.

- Sandra Katalina Zambrano Mantilla: dismissed with just cause from BANCOLOMBIA on 15 May 2007. Proceedings are currently under way before the 11th Labour Court of the Bogotá Circuit.

- Gloria Ximena Ramírez Alturo: dismissed on 21 April 2006. Filed proceedings in 2007 which are ongoing.

430. As regards subparagraph (b) of the recommendations and the request to carry out an independent investigation, the Government reports that the Office for Cooperation and International Relations made inquiries about the administrative labour investigations conducted against BANCOLOMBIA by the Cundinamarca and Antioquia Regional Directorates. In this regard, the Cundinamarca Regional Directorate reported that on 11 November 2007, the President of the SINTRABANCOL trade union filed a complaint of alleged violation of the right to organize. By a decision dated 22 November 2007, the coordinating office of the Inspection and Oversight Group assigned the 18th labour inspector the task of conducting the administrative labour investigation within its remit against the employer BANCOLOMBIA. By a decision of 3 December 2007, the 18th labour inspector took over the administrative labour proceedings and ordered the gathering of evidence. In an official telegram dated 6 March 2008, the legal representative of the trade union was summoned to appear on 25 March 2008 to confirm, add to or withdraw the complaint. The President of SINTRABANCOL came at the appointed time for the administrative labour procedure, stating that the matter at issue in the complaint had been dealt with in a meeting with the representative of the International Labour Organization (ILO) in Colombia and representatives of the Bank of Colombia and the Ministry of Social Protection, at which it was agreed that the trade union and the enterprise would engage in direct bargaining within 90 days on the subject of the right to organize with a view to reaching a direct settlement. Accordingly, a request was made to shelve the

complaint, with the proviso that if a settlement were not reached, an application would be made to reopen the proceedings. In view of the withdrawal of the complaint by the complainant, the authority shelved the complaint by decision of 25 March 2008.

431. As regards the Antioquia Regional Directorate, the Government states that it will send its observations on the matter once it has received a reply.

432. The Government adds that, thanks to the good offices of the Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT), there has been a marked improvement in relations between BANCOLOMBIA and SINTRABANCOL, as evidenced by the meetings held by the parties in Rondalla, Antioquia, on 31 March and 1 and 2 April 2008, at which BANCOLOMBIA and SINTRABANCOL made certain commitments to enhance dialogue between the parties. In addition, on 4 September 2008, again within the framework provided by the CETCOIT, the parties undertook to make progress in labour relations, as expressed as follows in the attached document:

> (1) We note with special satisfaction the positive labour relations climate currently prevailing in BANCOLOMBIA, as a result of a process of building and enhancing trust between the parties through ongoing communication and dialogue as the best means of preventing and settling differences that naturally arise in labour relations; (2) a valuable contribution to this positive labour relations climate has been the joint participation of the parties in academic events on consultation and dispute settlement held in the presence of experienced facilitators whose background and expertise stimulated the process; another trade union operating in BANCOLOMBIA, the National Union of Bank Employees (UNEB), also participated in the events; (3) moving forward to our goal of building a new labour relations style, based on mutual respect, dialogue and trust, we achieved progress at an early stage, enabling us to resolve certain issues that would otherwise have given rise to conflict and confrontation between the parties, which encourages us to take an optimistic view of the future of labour relations in BANCOLOMBIA; (4) in particular, we observe with satisfaction that this new labour relations climate has made it possible to begin preparations sufficiently in advance for the coming round of collective bargaining, which will lead to the conclusion of a collective agreement to replace the current one, due to expire on 31 October next. Accordingly, committees of both parties are working together to that end, which is very important, considering that no list of demands has been submitted yet, and that this is the first time such a situation has arisen in BANCOLOMBIA; this gives reason to hope that the forthcoming negotiations will lead to a satisfactory outcome for both parties, in a speedy, fair and direct manner; and (5) in view of the above, we are pleased to state that, thanks to the commitment of the parties, a very positive labour relations climate now prevails in BANCOLOMBIA, quite unlike that which gave rise to the complaint presented by the executive committee of SINTRABANCOL to the ILO (Case No. 2560). While differences remain, we are convinced that with our renewed commitment to ongoing dialogue and willingness to review these divergences, they can be overcome or at least managed in a respectful and professional manner, in keeping with the fundamental labour principles of the ILO.

433. The Government highlights the capacity for consultation and goodwill displayed by SINTRABANCOL and BANCOLOMBIA to settle their differences, which is in keeping with the principles of the Committee on Freedom of Association, according to which: "The Committee recalls the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations". The Government emphasizes the importance of the CETCOIT's intervention, since it was thanks to its good offices that a rapprochement could be achieved between the parties; it should be borne in mind that it was the CETCOIT that had scheduled the first meeting, which was the starting point for the parties to set in motion a process for settling their differences.

434. As regards subparagraph (c) of the recommendations, the Government emphasizes that Colombian workers are free to organize in accordance with Article 2 of Convention No. 87, provided that they comply with national legislation when establishing such organizations.

435. In this regard, according to the law only employers and persons who are workers as defined by section 22 of the Substantive Labour Code, that is persons bound by a verbal or written employment contract, may organize in employers' organizations and trade unions. Other persons carrying out activities otherwise than under an employment contract may organize in a different form of organization, as guaranteed by article 38 of the Political Constitution. It is thus an indispensable requirement, in order to form an employer organization or trade union, to be an employer or a worker, according to article 39 of the Political Constitution and sections 353 and 356 of the Substantive Labour Code.

C. The Committee's conclusions

436. *The Committee notes the Government's observations on the issues that remained pending.*

437. *As regards subparagraph (a) of the recommendations, concerning dismissals, which flouted established disciplinary procedure embodied in the collective labour agreement, of Janne del Carmen Herazo Salgado, Liliana Robayo, Nelsy Monroy Alfonso, Gloria Ximena Ramírez Alturo, Diana Alexis Páez Maldonado, María del Pilar Salazar Lizcano, María del Pilar Rojas González, Marco Iván Rico, Omar Fredi Nova Rueda and Sandra Katalina Zambrano Mantilla, the Committee recalls that it requested the Government to forward a copy of the court rulings which have already been handed down and to keep it informed of the judicial proceedings under way, with a view to identifying the reasons for the dismissals, and, if it were found that the workers had been dismissed on anti-union grounds, to take measures to impose sufficiently dissuasive sanctions on those responsible. In this regard, the Committee notes the information provided by the Government and the copies of the judicial decisions and proceedings, which indicate that proceedings are under way in the cases of Nelsy Monroy Alfonso, Liliana Rocío Robayo, Gloria Ximena Ramírez Alturo and Sandra Katalina Zambrano Mantilla. In the case of Marco Iván Rico, the judicial authority authorized the lifting of trade union immunity, and the decision was upheld by the court of second instance. Moreover, the* amparo *proceedings brought by Mr Rico were dismissed, as were those initiated by Omar Fredi Nova Rueda. In the judicial proceedings brought by Janne del Carmen Herazo, the court found for the Bank. As regards Diana Alexis Páez Maldonado, María del Pilar Salazar Lizcano and María del Pilar Rojas González, they had not brought any judicial action. Moreover, the Government states that the enterprise was not aware that they were members of the trade union. The Committee notes this information and requests the Government to keep it informed of the judicial decisions still pending.*

438. *As regards subparagraph (b) of the recommendations concerning pressure on workers not to join SINTRABANCOL and persecution of those who had become members, the impossibility of posting communications on the bank notice board because they would be immediately destroyed by management, pressure on workers to sign a letter against the trade union; increased working hours without payment of overtime; changes in working conditions laid down in the collective agreement; pressure on staff to give up present and future agreement-based benefits and interference by the Bank in the employees' private lives, the Committee recalls that it requested the Government to carry out an independent investigation in order to ascertain the veracity of all allegations submitted, taking into account both the position of the trade union and that of the employer. In this regard, the Committee notes with interest that in the context of an investigation initiated by the Antioquia Regional Directorate at the request of SINTRABANCOL and following the intervention of the Special Committee for the Handling of Conflicts referred to the ILO*

(CETCOIT), a marked improvement was achieved in relations between the bank and SINTRABANCOL, as a result of which the trade union withdrew its complaint. In addition, again with CETCOIT's assistance, an agreement was concluded on 4 September 2008 between the Bank and the complainant organization to put an end to the dispute through dialogue between the parties. The Committee notes the agreement with interest and firmly hopes that, under the agreement that has been reached, the parties will be able to settle their differences in accordance with the principles of freedom of association.

439. *As regards subparagraph (c) of the recommendations, concerning the allegations that the enterprise systematically contracts service companies, the Committee recalls that it requested the Government to guarantee that all those working at the bank can enjoy the right to establish or join a trade union of their choice, in compliance with Article 2 of Convention No. 87. In this regard, the Committee notes that the Government states that only persons bound by a written or verbal employment contract may establish or join trade unions, under section 22 of the Substantive Labour Code. Recalling that under Article 2 of Convention No. 87, all workers, without distinction whatsoever, shall have the right to establish and join organizations of their own choosing, and that the criterion for determining the persons covered by this right is not based on the existence of an employment relationship with an employer, the Committee requests the Government once again to take the necessary steps to guarantee that all those working at or for the bank can establish or join a trade union of their choice and to keep it informed in this respect.*

The Committee's recommendations

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

(a) As regards the alleged dismissals, which flouted the established disciplinary procedure embodied in the collective labour agreement, of Liliana Robayo, Nelsy Monroy Alfonso, Gloria Ximena Ramírez Alturo and Sandra Katalina Zambrano Mantilla, the Committee requests the Government to keep it informed of the judicial decisions still pending.

(b) As regards the allegations concerning pressure on workers not to join SINTRABANCOL and persecution of those who had become members, the impossibility of posting communications on the bank notice board because they would be immediately destroyed by management, pressure on workers to sign a letter against the trade union; increased working hours without payment of overtime; changes in working conditions laid down in the collective agreement; pressure on staff to give up present and future agreement-based benefits and interference by the Bank in the employees' private lives, the Committee, noting with interest the agreement concluded with CETCOIT's assistance on 4 September 2008 between BANCOLOMBIA and SINTRABANCOL, firmly hopes that, under the agreement that has been reached, the parties will be able to settle their differences in accordance with the principles of freedom of association.

(c) As regards the allegations that the Bank systematically contracts service companies, the Committee once again requests the Government to guarantee that all those working at or for the bank can establish or join a trade union of their choice and to keep it informed in this respect.

CASE NO. 2565

INTERIM REPORT

Complaints against the Government of Colombia presented by

- **the Single Confederation of Workers of Colombia (CUT)**
- **the National Trade Union of Workers of Omnitempus Ltda (SINTRAOMNITEMPUS)**
- **the National Unitary Trade Union of Official Workers and Public Servants of the State (SINUTSERES) and**
- **the Trade Union of Workers of the Silvania Lighting International Enterprise (SINTRAESLI)**

Allegations: (1) Declaration of loss of enforceability (validity) of the decisions entering in the trade union register, the founding document, executive board and by-laws of the Trade Union of Workers of Omnitempus Ltda. (SINTRAOMNITEMPUS) and subsequent dismissal of all of the officers and 80 per cent of the members; (2) refusal by the administrative authority to enter the Trade Union of Workers of the Silvania Lighting International Enterprise (SINTRAESLI) in the trade union register; (3) refusal by the administrative authority to register María Gilma Barahona Roa as national controller (fiscal) of the National Unitary Trade Union of Official Workers and Public Servants of the State (SINUTSERES) and her subsequent dismissal, along with other union officers and over 20 employees of the National Local Road Fund, which is in the process of being liquidated, in which Ms Barahona Roa was employed; and (4) refusal by the administrative authority to register the executive committee of the Soacha Cundinamarca Colombia branch of the same trade union

441. The complaints in this case are contained in communications from Single Confederation of Workers of Colombia (CUT) and the Trade Union of Workers of the Silvania Lighting International Enterprise (SINTRAESLI) dated 3 August 2007, the National Trade Union of Workers of Omnitempus Ltda (SINTRAOMNITEMPUS) dated 15 February and 22 June 2007, and the National Unitary Trade Union of Official Workers and Public Servants of the State (SINUTSERES) dated 27 September and 27 November 2007.

442. The Government sent its observations in communications dated 23 January and 10 October 2008, and 25 February 2009.

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

A. The complainants' allegations

444. In its communications of 15 February and 22 June 2007, SINTRAOMNITEMPUS alleges that on 26 April 2005, an application for registration of the trade union was made to the Ministry of Social Protection. The trade union had been established on 24 April 2005. In Decision No. 001834 of 29 June 2005, the labour, employment and social security inspector issued the order for the trade union SINTRAOMNITEMPUS to be entered in the trade union register. However, the enterprise submitted a request for reconsideration with a subsidiary appeal.

445. Through Decision No. 002626 of 19 August 2005, the labour, employment and social security inspector upheld Decision No. 001834 in its entirety. The enterprise submitted a request for reconsideration with a subsidiary appeal, against the same Decision No. 001834. Once again, the inspector of the Employment, Labour and Social Security Group, in Decision No. 003057 of 21 September 2005, upheld Decision No. 001834 of 29 June 2005 in its entirety.

446. On 6 July 2006, the enterprise applied to the Ministry of Social Protection requesting direct annulment of Decision No. 001834 of June 2005. The inspector of the Employment, Labour and Social Security Group, in Decision No. 002247 of 29 August 2006, rejected the application for direct annulment of Decision No. 001834.

447. On 1 December 2006, the enterprise applied to the Ministry of Social Protection requesting that Decisions Nos 001834, 002626 and 003057 of 2005, "ordering registration of the founding document, by-laws and executive committee of SINTRAOMNITEMPUS", be declared unenforceable (invalid). The inspector of the Employment, Labour and Social Security Group, in Decision No. 004183 of 21 December 2006, issued the order declaring the abovementioned decisions unenforceable. The Omnitempus Ltda enterprise dismissed the entire executive committee and 80 per cent of the members of SINTRAOMNITEMPUS, all of whom were fully covered by special trade union immunity based on the fact that negotiations were under way on a list of demands which the trade union had presented to the enterprise. On the date on which administrative decision No. 004183 was issued, the trade union was awaiting the holding of a compulsory arbitration tribunal ordered by Decisions Nos 002980 of 18 August 2006 and 004321 of 17 November 2006, signed by the Deputy Minister for Labour Relations, Ministry of Social Protection.

448. In their communication of 3 August 2007, CUT and SINTRAESLI allege that in decision No. 00734 of 8 March 2007, the inspector of the employment group under the Ministry of Social Protection refused to register the trade union and its executive committee on the grounds that the union did not have the minimum number of workers required for the establishment of a trade union, without taking the content of the minutes of the assembly into account. In light of the above, the workers decided to hold another general assembly, in which 36 workers participated – 11 more than the legal requirement. Nevertheless, the administrative authority again refused to register the trade union and its executive committee in Decision No. 00842 of 21 March 2007, on the grounds that it amounted to a "trade union carousel" – a term that does not exist in law – and adding that trade unions were not set up to prevent workers from being dismissed. Once the decision became enforceable, the enterprise dismissed the workers who had established the trade union, with only two members remaining employed.

449. The trade union filed two actions for protection of constitutional rights *(tutela)* which were initially rejected and challenges are now pending against these decisions.

450. In its communications of 27 September and 27 November 2007, SINUTSERES alleges, firstly, that the Ministry of Social Protection refused to register trade union member María Gilma Barahona Roa as controller (fiscal) of the trade union, reiterating its refusal twice on the same grounds.

451. On 4 September 2004, the general assembly of members of the trade union elected its national executive committee for the statutory period 2004–06. One of the officers elected (to the post of controller) was María Gilma Barahona Roa, an employee of the National Local Road Fund, which is in the process of being liquidated.

452. The trade union recalls that after a number of decisions and appeals, the labour inspectorate, by Decision No. 00015 of 21 January 2005, ordered the registration of the executive committee, except for the post of controller, which was left vacant since Ms Barahona Roa was employed by a body in the process of liquidation.

453. The same situation arose when the executive committee for the period 2005–07 was registered: Decision No. 0047 of 7 October 2008 ordered the registration of the executive committee, but left the post of controller vacant. A request for reconsideration and an appeal were filed, but were turned down.

454. Meanwhile, the National Local Road Fund dismissed more than 20 employees, including three members of the national executive committee and of the Bogotá branch committee of the trade union (María Gilma Barahona Roa, Olga Mercedes Suárez Galvis and Yolanda Montilla).

455. In addition, despite the recommendations made by the Committee on Freedom of Association during its examination of Case No. 2448, the Meta office of the Ministry of Social Protection has not complied with these recommendations.

456. María Gilma Barahona Roa, who was elected as a trade union officer by the general assembly of members, has not been registered to date.

457. SINUTSERES alleges further that the labour inspectorate of the Ministry of Social Protection did not register the executive committee and the Soacha Cundinamarca Colombia branch committee of the trade union.

458. On 25 October 2006, the workers and officials employed by the Soacha Cundinamarca municipality, who are members of the trade union, met in assembly and voted by an absolute majority in favour of establishing the Soacha Cundinamarca branch committee, the officers of which were elected at the same assembly. On 31 October, the documents were submitted to the labour inspectorate of the Ministry of Social Protection with a view to applying for registration of the trade union. On 6 November of the same year, 2006, the labour inspector drew up a list of observations requesting the organization to provide certain documents and add the list of officers and the name and address of the employer, among other items. The trade union was given two months in which to provide the information.

459. The complainant adds that the mayor of that town issued Decree No. 768 of 21 December 2006, dismissing the chairperson of the executive committee of the branch union.

460. On 11 January 2007, the additional information requested in the list of observations was provided. However, on 15 January 2007, the labour inspector returned the supporting documents on the grounds that they had been submitted late.

461. On 26 January 2007, the trade union submitted a request for reconsideration with a subsidiary appeal, which was rejected.

B. The Government's reply

462. In its communications dated 23 January and 10 October 2008 and 25 February 2009, the Government sent its observations on the allegations.

463. As regards the allegations presented by SINTRAOMNITEMPUS concerning the declaration of unenforceability of decisions registering the trade union, the Government reports that the workers filed an *amparo* action and obtained a temporary suspension of the effects of declaration of unenforceability, pending a ruling by the administrative court.

464. An action to have the decision revoked and the right restored is currently pending in the administrative court; hence it is essential that the trade union provide information on the proceedings and the case number, so that enquiries may be made concerning the state of the proceedings.

465. The Government provides information on the measures taken by the Ministry of Social Protection in the proceedings concerning registration of trade unions. Firstly, in accordance with Rulings Nos C-465 of 14 May and C-695 of 9 July 2008, the Inspection, Monitoring and Control Unit of the Ministry of Social Protection issued instructions to the officials of the different regional directorates indicating the procedure to be followed for registering trade unions, with attached models of acknowledgment of receipt of amendments to by-laws and changes in some or all of the members of the executive committee.

466. In its Ruling No. C-465 of 14 May 2008, the Consitutional Court gave the following reasoning:

> … Firstly, the purpose of the requirement to inform the Ministry of Social Protection and employers of changes in membership of trade union executive committees is to make public the decisions taken in the organization, so that they may be enforceable against third parties – in regard to trade union immunity, for example – and so that the trade union may be bound by the acts of its officers. The purpose of the regulation at issue is to guarantee the rights of trade unions and third parties by defining the moment at which the changes in the membership of a trade union executive committee become effective. Notification is thus a prerequisite, not for validity but for enforceability against third parties.
>
> Two questions arise in regard to the regulation at issue, having a bearing on freedom of association and trade unions' independence to organize their activities and elect their officers.
>
> The first is whether the Ministry of Social protection may refuse to register changes approved by a trade union in the membership of its executive committee. The Court considers that this is not the case. Pursuant to the principle of trade union autonomy, it is for the trade union to decide who its officers shall be.
>
> Notification of the Ministry is in fact equivalent to a deposit of information before the … The administration cannot refuse to register members of an executive committee who have been appointed in compliance with the legal requirements. This would constitute undue interference by the administration in the internal affairs of trade unions.
>
> If the Ministry – or the employer – considers that a person cannot hold trade union office, it must bring the case before the labour courts, which shall rule on the issue.

> … For all of the above reasons, the regulation at issue is declared constitutional, subject to two conditions: (i) the Ministry cannot refuse to register the new trade union officers, since if it, or the employer, considers that there are grounds to deny registration they must bring the case before the labour courts, which shall rule on the issue; and (ii) the guarantee of trade union immunity for new officers takes effect immediately after the Ministry or the employer has been notified of their appointment. The regulation at issue is thus enforceable, on the understanding that notification to the Ministry of changes in a trade union's executive committee is solely for the purpose of publicity, and that trade union immunity takes effect immediately after the first notification.

467. In Ruling No. C-695 of 2008, the Constitutional Court found as follows:

> ... Fourth. – TO DECLARE ENFORCEABLE, subject to conditions, on the counts set forth in this judgment, section 372, subsection 1, of the Substantive Labour Code, replaced by section 50 of Act No. 50 of 1990 and expressly amended by section 6 of Act No. 584 of 2000, on the understanding that registration of the founding document of a trade union with the Ministry of Social Protection is solely for the purpose of publicity, and does not authorize the Ministry to exercise prior control over its content.

468. Pursuant to the above, the Ministry of Social Protection can no longer refuse to enter trade unions in the register; in the event of an irregularity, it is the courts that are competent to rule on such an irregularity.

469. Lastly, as regards the case of SINTRAOMNITEMPUS, the Government will abide by the decision of the administrative court, which is competent to rule on decisions taken by the Ministry of Social Protection.

470. As regards the allegations presented by CUT and SINTRAESLI, on refusal by the Ministry of Social protection to enter SINTRAESLI in the trade union register, the Government states that according to the report sent by the Cundinamarca Regional Directorate, refusal to register the trade union was due to its failure to comply with national legislation. Concerning registration formalities, the documents provided by the trade union did not contain the names, signatures and identification numbers of the members, so that it was not possible to determine whether it was a constituent assembly of a trade union, or the date on which it was held; the same applied to the list of persons elected as members of the executive committee. In this regard, the Constitutional Court ruled that it was appropriate for a newly established trade union to submit a written application for registration within a legal time limit, with a copy of the founding document attached. The documents required have a direct bearing on the establishment itself of the trade union, as they provide information on its members and representatives, and thus the State does not exercise any prior control over the legality of the trade union's existence, and hence there is no infringement either of the Political Constitution or of the provisions of Convention No. 87 in the requirement that a newly established trade union, which already has legal personality, subsequently comply with statutory requirements in order to be registered with the competent authority, for purposes of publicity, security and proof of its existence.

471. The Government emphasizes that the official of the Ministry of Social Protection acted in accordance with national legislation, given that she required compliance with the statutory requirements for the inscription of a trade union in the trade union register.

472. As regards the allegations presented by SINUTSERES, the Government points out that those allegations have already been examined in the context of Case No. 2448.

C. The Committee's conclusions

473. *The Committee observes that this case refers to: (1) the declaration of loss of enforceability (validity) of the decisions entering in the trade union register, the founding document, executive board and by-laws of SINTRAOMNITEMPUS and subsequent dismissal of all of the officers and 80 per cent of the members; (2) refusal by the administrative authority to enter SINTRAESLI in the trade union register; (3) refusal by the administrative authority to register Ms María Gilma Barahona Roa as national controller (fiscal) of SINUTSERES and her subsequent dismissal, along with other union officers and over 20 employees of the National Local Road Fund, which is in the process of being liquidated, in which Ms Barahona Roa was employed; and (4) refusal by the administrative authority to register the executive committee of the Soacha Cundinamarca Colombia branch of the same trade union.*

474. *As regards the allegations presented by SINTRAOMNITEMPUS, the Committee notes that according to the complainant, on 26 April 2005, an application for registration of the trade union was made to the Ministry of Social Protection, which was ordered by Decision No. 001834 issued in June 2005. The Committee notes that the enterprise filed two consecutive requests for reconsideration against that decision, which were rejected on 19 August 2005 (Decision No. 002626) and 21 September 2005, as well as a request for direct annulment on 6 July 2006, which was also rejected (Decision No. 002247). The Committee notes that despite the above, on 1 December 2006, the enterprise applied to the Ministry of Social Protection requesting that the decisions issued up to that date be declared unenforceable (invalid), this request being granted by Decision No. 004183 of 21 December 2006. The Committee notes that the enterprise then proceeded to dismiss all the officers and 80 per cent of the members of the trade union, despite the fact that negotiations were under way on a list of demands and they were thus covered by the special trade union immunity applicable to workers in the process of collective bargaining.*

475. *The Committee notes that the Government reports that the workers filed an* amparo *action and obtained a temporary suspension of the effect of the declaration of unenforceability, pending a ruling by the administrative court, and that an action to have Decision No. 004183 invalidating the trade union registration revoked and the right restored is currently pending in the administrative court.*

476. *The Committee also notes recent Constitutional Court Rulings Nos C-465 of 14 May and C-695 of 9 July 2008, which found that registration with the Ministry of Social Protection of the founding document or changes in membership of the executive committees is solely for purposes of publicity, and does not authorize the Ministry to exercise prior control over the content of such documents. According to the Court, in the event of an irregularity, it is the courts that are competent to rule on such an irregularity. In that regard, the Committee notes the information provided by the Government to the effect that, pursuant to those rulings, the Inspection, Monitoring and Control Unit of the Ministry of Social Protection issued instructions to the officials of the different regional directorates indicating the procedure to be followed for registering trade unions, with attached models of acknowledgment of receipt of amendments to by-laws and changes in some or all of the members of the executive committee. The Committee notes that in this case, the Government states that it will abide by the decision of the administrative court.*

477. *The Committee requests the Government, in accordance with Constitutional Court Rulings Nos C-465 of 14 May and. C-695 of 9 July 2008, to provisionally reinstate the dismissed officers and members of the trade union, and provisionally register SINTRAOMNITEMPUS pending a final decision by the administrative court on both the refusal to register the trade union and the subsequent dismissal of the officers and*

members of the trade union. The Committee requests the Government to keep it informed in this regard.

478. *As regards the allegations of refusal by the administrative authority to register SINTRAESLI, the Committee notes that CUT and SINTRAESLI allege that: (1) the administrative authority refused to register SINTRAESLI and its executive committee by Decision No. 000734 of 8 March 2007 on the grounds that the trade union did not have the minimum number of members required to establish a trade union; (2) the organization held another constituent assembly with 36 members (more than the 25 required by the legislation) but the administrative authority again refused registration by Decision No. 000842 of 21 March 2007, pointing out that trade unions were not set up to prevent workers from being dismissed; (3) once the decision became enforceable, the enterprise dismissed the workers who had established the trade union, with only two members remaining employed; and (4) the trade union filed two actions for protection of constitutional rights* (tutela) *which were initially rejected and challenges are now pending against these decisions.*

479. *The Committee notes in this regard that the Government states that according to the report sent by the Cundinamarca Regional Directorate, refusal to register the trade union was due to its failure to comply with national legislation (the documents provided by the trade union did not contain the names, signatures and identification numbers of the members, so that it was not possible to determine whether it was a constituent assembly of a trade union, or the date on which it was held; the same applied to the list of persons elected as members of the executive committee). The Committee notes that the Government states that these are statutory requirements laid down by the authority for purposes of publicity, security and proof of the trade union's existence.*

480. *In this regard, the Committee observes that it is clear from the allegations that registration was refused, despite the fact that the statutory requirements had been met, on the grounds that the trade union had been established to prevent the founding members from being dismissed (the Committee recalls that under section 406, subsection (a) of the Substantive Labour Code, founding members of a trade union shall be covered by trade union immunity from the date on which it was established, up to two months from the date of registration of the trade union, for a period not to exceed six months).*

481. *The Committee observes that the Government states that the statutory requirements for the establishment of a trade union were not met. The Committee observes further that according to the allegations, once registration had been refused, the enterprise proceeded to dismiss the founding members of the organization, which meant that the trade union did not currently have the number of members required to establish an organization. In these circumstances, the Committee requests the Government to take the necessary steps to ensure that an investigation is carried out without delay into these allegations and, should they be found to be true, to take appropriate steps to reinstate the workers dismissed for having attempted to form a trade union, with back pay and compensation constituting sufficiently dissuasive sanctions, and to proceed with the registration of the SINTRAESLI trade union, in accordance with the two abovementioned Constitutional Court rulings stating that the registration authority cannot refuse registration on the grounds of irregularities in the content of the documents submitted by the trade union; it is for the judicial authority to rule on such irregularities. The Committee requests the Government to keep it informed in this regard, as well as on the challenges filed against the rejection of the* tutela *actions initiated by the trade union.*

482. *As regards the allegations made by SINUTSERES, the Committee notes that according to the trade union, Ms Barahona Roa was elected in 2004 to the post of controller (fiscal) of the national executive committee for the period 2004–06. However, the administrative*

authority refused to register Ms Barahona Roa because she was employed in the National Local Road Fund, which is in the process of being liquidated; it refused again when Ms Barahona Roa was re-elected to the same post in 2007. The Committee notes that according to the trade union, despite having presented a complaint on this issue to the Committee and the latter's recommendations, Ms Barahona Roa was never registered. The Committee notes further that after the appeals were rejected, the authorities of the National Local Road Fund, pursuant to the decree ordering its liquidation (according to the evidence enclosed by the complainant) proceeded to dismiss Ms Barahona Roa and two other officers (Olga Mercedes Suárez Galvis and Yolanda Montilla), as well as over 20 other employees of the Fund. Moreover, the Committee notes the allegations concerning the refusal to register the executive committee of the Soacha Cundinamarca Colombia branch of the same trade union.

483. *The Committee notes that according to the Government, these allegations have already been examined in the context of Case No. 2448. In this regard, the Committee observes that the allegations examined in that case indeed refer to the refusal by the administrative authority to register Ms Barahona Roa as controller (fiscal) of the national executive committee of SINUTSERES (see 342nd Report, paras 373–411; 344th Report, paras 802–823, and 349th Report, paras 47–54). On those occasions, the Committee requested the Government to take the necessary measures for Ms Barahona Roa to be registered without delay as a member of the executive committee of SINUTSERES. The Committee observes, however, that the new allegations concerning the administrative authorities' disregard for the Committee's recommendations on the registration of Ms Barahona Roa as controller and the subsequent dismissal of Ms Barahona Roa and other union officers, as well as other officials of the National Local Road Fund, and their refusal to register the executive committee of the Soacha Cundinamarca Colombia branch of the same trade union and dismissal of the president of the executive committee of the branch were not examined under Case No. 2448. In these circumstances, and given that that case is closed, the Committee requests the Government to send its observations in this regard in the context of the present case.*

The Committee's recommendations

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

(a) As regards the declaration of loss of enforceability (validity) of the decisions entering in the trade union register, the founding document, executive board and by-laws of SINTRAOMNITEMPUS, the Committee requests the Government, in accordance with Constitutional Court Rulings Nos C-465 of 14 May and C-695 of 9 July 2008, to provisionally reinstate the dismissed officers and members of the trade union, and provisionally register SINTRAOMNITEMPUS pending a final decision by the administrative court on both the refusal to register the trade union and the subsequent dismissal of the officers and members of the trade union. The Committee requests the Government to keep it informed in this regard.

(b) As regards the allegations of the refusal by the administrative authority to register SINTRAESLI and the subsequent dismissal of the founding members of the trade union, the Committee requests the Government to take the necessary measures to ensure that an investigation is carried out without delay into these allegations and, should they be found to be true, to take appropriate steps to reinstate the workers dismissed for having attempted to

form a trade union, with back pay and compensation constituting sufficiently dissuasive sanctions, and to proceed with the registration of the SINTRAESLI trade union. The Committee requests the Government to keep it informed in this regard, as well as on the challenges filed against the rejection of the* tutela *actions initiated by the trade union.

(c) The Committee requests the Government to send its observations on the allegations made by SINUTSERES concerning the administrative authorities' disregard for the Committee's recommendations on the registration of Ms Barahona Roa as controller and the subsequent dismissal of Ms Barahona Roa and other union officers, as well as other officials of the National Local Road Fund, and their refusal to register the executive committee of the Soacha Cundinamarca Colombia branch of the same trade union.

CASE NO. 2595

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

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

Allegations: Search of trade union headquarters and homes of union officials, in some cases without a search warrant; arbitrary arrest; accusing union officials and members of rebellion and terrorism; kidnapping of union officials by paramilitary groups and threatening them with reprisals if they lodge complaints against the company; violation of the collective agreement; a request by the company to have the registration of the union's by-laws annulled; anti-union dismissals; links between the company and paramilitary groups

485. The complaint was lodged in a communication dated 18 September 2007 from the National Union of Food Industry Workers (SINALTRAINAL). In a further communication dated 26 October 2007, the union supplied further information. SINALTRAINAL presented additional allegations in communications dated 25 March, 1 April and 4 June 2008. In a communication dated 4 February 2009, the union presented additional information.

486. The Government sent its observations in communications dated 6 December 2007, 25 April, 22 and 27 August 2008 and 9 February 2009.

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

A. The complainant's allegations

488. In its communications dated 18 September and 26 October 2007, 25 March, 1 April and 4 June 2008, and 4 February 2009, SINALTRAINAL alleges that serious acts of intimidation have been committed against the union's officials and its members, in some instances by bottling plants (Embotelladora de Santander SA, Embotelladora Román SA, Panamco Colombia SA, Coca-Cola Femsa and Embotelladora de Carepa) and in others by paramilitary organizations, in order to dissuade them from engaging in trade union activities. The complainant also cites instances of anti-union action by other companies, to which reference will be made later in this report.

489. The complainant organization states that the companies it cites have been pursuing a highly anti-union policy for more than 20 years. It refers to a series of arbitrary searches and arrests without a warrant that have occurred since 1984. Union members and officials have been kidnapped by paramilitary groups and warned not to lodge complaints against the companies. According to the complainant, the physical integrity and security of its members has been violated, they have been physically aggressed, and 32 of them have received threats. Complaints about the incidents have been lodged but the subsequent inquiries have led to nothing. According to SINALTRAINAL, many workers have given up their union activities as a result, for fear of reprisals. It adds that these violations of fundamental rights are part of a policy pursued by the State, the companies and the paramilitary groups in order to greatly restrict freedom of association. In its communications the complainant organization describes in detail numerous instances of violence, threats and intimidation, including the assassination and attempted assassination of several officials and members of SINALTRAINAL.

490. According to the complainant organization the companies have stigmatized the union officials over the years in order to justify their harassment and repression, and have tried to criminalize social protest and freedom of thought, opinion and association, so as to frighten the workers and discourage them from becoming members. There have been false accusation of calumny and detraction, association for the purpose of committing a crime, terrorism and rebellion, participation in guerrilla groups, sabotage, damage to property and qualified theft, applications for the suspension of the immunity of trade union officials so that they can be dismissed, etc. In the cases that have been brought to trial the judges have rules in favour of SINALTRAINAL officials and declared them not guilty, in spite of which some of them have had to stay in prison until they have cleared their name.

491. According to SINALTRAINAL, on 9 December 1996 members of paramilitary groups entered the Carepa bottling plant, called the members of SINALTRAINAL together and obliged them under threat to sign letters of resignation from the union that were printed from company computers.

492. The complainant organization alleges that several bottling plants do not respect freedom of association. In 2000 the judicial authority found Embotelladora de Santander SA guilty of violating the collective agreement; the company was subsequently condemned in court in 2001 to pay the union dues it owed SINALTRAINAL, but it appealed the decision and the case is still pending. Finally, several officials of the bottling plant were fined for not respecting the right to hold meetings and the right of association.

493. The complainant organization further alleges that in 2003 the Coca-Cola Femsa company brought pressure to bear on workers and threatened them to accept compensation in exchange for the resignation or else face dismissal. Complaints were lodged with the authorities, but to no effect. It adds that the Higher Court of the Judicial District of Medellín ordered that a number of the workers who were dismissed be reinstated in their jobs.

494. The complainant organization also refers to the closure of production centres and bottling plants in 2003, which led to the dismissal of a large number of workers. A number of appeals for trade union immunity were brought before the courts, some of which ruled in favour of their reinstatement of the workers and some in favour of the bottling plants.

495. SINALTRAINAL further alleges that on 8 July 2004, Coca-Cola Femsa requested the Ministry of Social Welfare to revoke SINALTRAINAL's by-laws so as to prevent subcontracted workers from becoming members of the trade union organization. As a result, the Coordinating Board of the Labour, Employment and Social Security Group adopted Resolution No. 2994 revoking SINALTRAINAL's by-laws. According to SINALTRAINAL, the Resolution was passed before it was properly notified of the request for revocation. The District Council of the Judiciary of Cundinamarca ruled that SINALTRAINAL's application for trade union protection was legitimate, but the application was rejected on procedural grounds and its appeals denied. The complainant adds that the National General Meeting of Delegates of SINALTRAINAL, which was held from 3 to 7 December 2007 in the Municipality of Cachipay, department of Cundinamarca, approved the amendments to the by-laws declaring that the trade union was comprised of food and agriculture and allied workers, under various employment relationships and working methods. It defined the union as a democratic and class organization whose fundamental objective is to demand and promote full economic, social, cultural and labour rights, and to defend political freedoms, social welfare, national food sovereignty, the natural environment, peace, genuine democracy, solidarity, the fight against poverty, and solidarity and unity with the international trade union movement. The amendments were registered with the Ministry of Social Welfare of the Territorial Directorate of Cundinamarca in accordance with the law, and in Resolution No. 0005 of 14 January 2008, the Labour and Social Security Inspectorate of Facatativa approved the registration of the amended by-laws and declared that they were in compliance with the Political Constitution of Colombia. However, on 8 February 2008, the Panamco Colombia SA bottling company opposed the amended by-laws and accused SINALTRAINAL of procedural fraud and tried to deceive the authority into treating a perfectly legal situation as something that was illegal, so as to prevent SINALTRAINAL from amending its by-laws, on the grounds that in 2004 they were not legally registered, while ignoring the fact that a legal protection judge of Colombia had ruled that it was a fundamental right of all workers and other persons to join a trade union irrespective of the type of labour or contract concerned. The complainant organization notes that on 25 March 2008, the Coordinating Board of the Labour, Employment and Social Security Group of the Territorial Directorate of Cundinamarca issued Resolution No. 000984 annulling Resolution No. 0005 of 14 January 2008, and thus denying the registration and adoption of SINALTRAINAL's amended by-laws. Without any legal basis, the Ministry argued that it was the same amendment made to SINALTRAINAL's by-laws in 2001, and which the same official had refused in 2004. The Ministry now maintains that decision, which it makes even worse by adopting almost word for word the terminology proposed by Panamco Colombia SA on 8 February 2008, to the effect that the law was not properly analysed and that moreover, the Board had assumed the powers of a judge of the Republic and of the Constitutional Court itself which were outside its competence, amounting to a case of fraud.

496. The complainant also refers to a number of lawsuits brought by two bottling plants, Panamco Colombia SA (now Coca-Cola Femsa) and Embotelladora Román SA, by Compañía Nacional de Chocolates SA, by Supertiendas y Droguerías Olímpica SA and by Eficacia SA in a bid to have the official registration annulled of trade unions or of the new executive boards of union branches in a number of cities, such as Girardot, Cali, Villavicencio, Bucaramanga, Santa Marta and Bogotá. The annulments were called for on the basis that there were not enough members to form a subcommittee and on the companies' claim that the workers seeking to join the union were not food sector workers but were employed in service enterprises operating in the sector. Only in a few cases was

the right of association upheld and the lawsuits decided in favour of SINALTRAINAL. In others, the annulment of the unions' registration or the refusal to recognize the members of their executive committees meant that the companies were able to dismiss the workers who were exercising their trade union rights. As a result:

– On 22 August 2003, the Cundimarca Circuit Labour Court issued court order No. 0236-03 in favour of a special request to have the Girardot branch trade union dissolved and its registration revoked. The request had been submitted by Panamco Colombia SA on the grounds that the Girardot branch union did not have the minimum legal membership, as its members were in fact independent workers in the food sector. By Resolution No. 0153 of 6 February 2004, the Ministry of Social Welfare ordered the registration of the executive board of the Girardot branch union of SINALTRAINAL; but on 9 March 2004, Panamco Colombia SA lodged an appeal for a new examination of the case and on 25 August 2004 the Ministry of Social Welfare issued Resolution No. 00003196 revoking the registration of the executive board. On 7 December 2004, the Ministry of Social Welfare notified the trade union in Girardot, Cundinamarca, of Resolution No. 02065 of 30 November 2004, revoking the registration of its executive board at the request of Panamco Colombia SA.

– On 4 January 2002, Embotelladora Román SA submitted a request for the dissolution, liquidation and de-registration of the Santa Maria branch trade union, on the grounds that it did not meet the legal requirements for its recognition. On 4 March 2004, the Third Labour Circuit Court of Santa Maria denied the request.

– By Resolution No. 00627 of 13 December 2004, the Ministry of Social Welfare registered the executive board of SINALTRAINAL's Villavicencio branch union; but on 18 January 2005, Panamco Colombia SA lodged an appeal for a new examination of the case, and on 25 August 2004, the Ministry of Social Welfare issued Resolution No. 00319 of 26 July 2005 dissolving the executive board elected on 30 November 2005.

– At the request of Panamco Colombia SA, the Ministry of Social Welfare issued court order No. 00001700 of 29 June 2005 annulling the registration of the executive board of the Bogotá branch union which had been elected on 18 March 2005, on the grounds that it did not have a large enough membership as some of the members were independent workers in the food sector.

– By Resolution No. G0287 of 27 March 2006, the Ministry of Social Welfare ordered the registration of the executive board of the Bucaramanga branch union of SINALTRAINAL, but on 7 and 18 April 2006 Compañía Nacional de Chocolates SA and Acueducto Metropolitano de Bucaramanga requested a new examination of the case and on 29 December 2006 the Ministry of Social Welfare issued Resolution No. 2022 partially dissolving the executive board.

– By Resolution No. 000629 of 17 April 2006, the Ministry of Social Welfare ordered the registration of the executive board of SINALTRAINAL's Cali branch union; but on 9 May 2006 Panamco Colombia SA challenged the decision. By Resolution No. 2022 of 28 September 2006, the Ministry confirmed the board's registration.

– By Resolution No. 361-062 of 2 November 2006 the Ministry of Social Welfare registered the executive board of SINALTRAINAL's Santa Marta branch union; but in a letter dated 17 November 2006 Empresa Supertiendas and Droguerías Olímpica SA requested a new examination of the case, and on 16 January 2007 the Ministry of Social Welfare issued a Resolution partially annulling the registration of the board. The company thereupon ordered the indiscriminate dismissal of workers.

497. SINALTRAINAL adds that in 2006 Eficacia SA, refused to deduct the union dues owing to SINALTRAINAL or to recognize the complaints committee, arguing that it was not part of the sector covered by SINALTRAINAL, which was food sector. According to the complainant, although the workers were employed by Eficacia SA, they had in fact been working for years for the Santander SA bottling plant. Some 70 per cent of Santander SA's employees were subcontracted, and the company refused to grant them the rights negotiated under its collective agreement with SINALTRAINAL on the grounds that it applied only to workers it employed directly. According to the allegation, this left the Eficacia SA workers in an extremely precarious situation.

498. The complainant organization goes on to state that, using the same argument, Eficacia SA refused to negotiate the list of demands presented by SINALTRAINAL on 25 August 2006. Consequently, SINALTRAINAL requested the Ministry of Social Welfare to order the company to negotiate, and to impose sanctions if it refused. However, the Ministry merely sent SINALTRAINAL a letter from Eficacia SA explaining why it was not obliged to negotiate. The Ministry itself took no decision. Since then the company has engaged in a campaign of threats to prevent its workers from joining the union and has dismissed those who attempted to do so.

499. According to the allegation, on 15 February 2007, Coca-Cola Femsa called a meeting of the workers subcontracted from Eficacia SA and informed them their contract had ended but that they could be subcontracted through another enterprise, PROSERVIS. However, according to the allegation, the workers affiliated to SINALTRAINAL were not taken on again.

500. SINALTRAINAL states that article 2 of its by-laws reads as follows: "The membership of the National Union of Food Industry Workers (SINALTRAINAL) shall comprise workers linked to enterprises whose purpose is to cultivate, harvest, manufacture, dehydrate, pulverize, package, prepare, buy, sell, distribute, export or import food products or products that are to be mixed with any food products."

501. According to SINALTRAINAL the company's legal argument is aimed at all the workers and supposedly justifies its refusal to negotiate the list of demands the union presented on 4 September 2006 in order to establish minimum rights for the subcontracted workers. Such workers are subjected to degrading working conditions; they are not covered by any collective agreement; they are paid minimal salaries; their right to freedom of association is not respected; and they are victims of abuse.

502. SINALTRAINAL alleges that Andrés Olivar was suspended from work for having taken union leave. It also alleges that the Villavicencio and Bogotá bottling plants dismissed workers after they joined SINALTRAINAL in March 2007. This happened to 16 distributors and one other worker in Villavicencio and to Edgar Alfredo Martínez Moyano in Bogotá.

503. Another service enterprise under contract to Coca-Cola Femsa, Ayuda Integral SA, refused to negotiate collectively the list of demands presented by SINALTRAINAL or to recognize its workers affiliation to the union.

504. SINALTRAINAL further alleges that the Santander Territorial Directorate of the Labour, Employment and Social Security Group of the Ministry of Social Welfare refused to register Ernesto Estrada Prada as a member of the union's executive board because he is under contract to a service enterprise, Empaques Hernández, which is a supplier of services to Saceites SA where he is employed.

505. SINALTRAINAL adds that the Ministry of Social Welfare has ruled that the workers of Acueducto Metropolitano de Bucaramanga cannot join SINALTRAINAL because they are not food workers. According to the complainant, the company stocks drinking water for human consumption.

506. In its communication of 4 February 2009, SINALTRAINAL refers to the legal status in Colombia of the companies Coca-Cola SA, Coca-Cola FEMSA SA, Embotelladoras de Santander SA, Embotelladoras Roman SA, Indega SA and Bebidas y Alimentos de Urabá SA and indicates:

– The companies Coca-Cola FEMSA SA, Embotelladoras de Santander SA, Embotelladoras Roman SA, Indega SA and Bebidas y Alimentos de Urabá SA are directly linked to and are controlled by Coca-Cola SA or Coca-Cola Company SA, by means of a franchise contract, access to which is evidently not possible, being confidential in nature.

– In the case of Panamco, which had direct control of Embotelladoras de Santander SA, Embotelladoras Roman SA and Indega SA, it is controlled by Coca-Cola Company or Coca-Cola SA, not only as a franchise, but also through stock ownership equivalent to 24 per cent and representatives on the board of directors and is one of the main bottlers of the Coca-Cola Company, registered as Panamerican beverages.

– Coca-Cola FEMSA SA acquired Panamco for $3.6 million and thereby automatically acquired Embotelladoras de Santander SA, Embotelladoras Roman SA and Indega SA by which Coca-Cola SA or Coca-Cola Company thereby increase not only its control, but also its stock ownership and representation on the board of directors.

– Coca-Cola FEMSA SA appeared on the letterhead of a document dated 29 October 2008 and signed by Embotelladoras de Santander SA, giving notice of approval of the merger and acquisition (of the latter) by Industria Nacional de Gaeseosas SA.

– Industria Nacional de Gaeseosas SA is the same company as Indega SA.

– Coca-Cola SA or Coca-Cola Company is registered to Coca-Cola Services of Colombia SA, through which it executes its operations with its bottlers.

– Embotelladoras Roman SA was acquired in the same way by Coca-Cola FEMSA SA.

B. The Government's reply

507. In its communications dated 6 December 2007, 25 April, 22 and 27 August 2008 and 9 February 2009, the Government states that the allegations concerning human rights (non-respect of the inviolability of people's home and of their right to personal freedom) and the accusations of terrorism and rebellion should be examined under Case No. 1787. It adds that the office of Cooperation and International Relations has sent a copy of the allegations to the Human Rights Coordinating Board of the Ministry of Social Welfare for it to initiate appropriate inquiries.

508. Regarding the legal status of the companies cited in the allegations and the links between them, the Government encloses information submitted by Industria Nacional de Gaseosas (INDEGA), according to which:

1. Coca-Cola Femsa is a member of a corporate group of Mexican origin that bottles non-alcoholic drinks (including drinks bearing *The Coca-Cola Company* trademark) in a number of Latin American countries. In Colombia, Coca-Cola Femsa operates through

the corporate group Industria Nacional de Gaseosas, which is controlled by the company Industria Nacional de Gaseosas SA (formerly PANAMCO Colombia SA).

2. In December 2008, Industria Nacional de Gaseosas SA took over Embotelladoras de Santander SA and Embotelladora Román SA (both belonging to the Industria Nacional de Gaseosas group), as a result of a merger process.

3. The correct name of the company was Embotelladora Román SA, not Embotelladora San Román. Our company in Colombia has nothing to do with the control or management of either of these companies.

4. Coca-Cola Servicios de Colombia SA is a company that belongs to *The Coca-Cola Company*. Their relationship is strictly commercial and is based on a bottling contract with *The Coca-Cola Company*, under which the latter authorizes Coca-Cola Femsa to bottle and market its products in various parts of Colombia.

5. As for Embotelladora Carepa, we confirm that our company has no relationship whatsoever either with that establishment or with its holding company Bebidas y Alimentos de Urabá SA However, (i) we are aware that Embotelladora Carepa operates in Urabá, and (ii) our bottling contract does not cover that area, and therefore, we cannot operate there.

509. For the rest, the Government, basing itself on the observations sent by the INDEGA group and by the Inspection, Monitoring and Enforcement Group of the Ministry of Social Welfare, makes the observations below.

510. Following a brief summary of the group's activities in keeping with the right to freedom of association, INDEGA states that it operates within the framework of the Constitution and legislation of Colombia and is deeply committed to the observance of human rights, the right of association, collective bargaining and the furtherance of trade union activities.

511. INDEGA works with more than 16 trade union organizations, with which it has entered into three collective agreements that are renegotiated every two years. All three are currently in force, and SINALTRAINAL was party and signatory to all of them. Some 30 per cent of INDEGA's employees belong to a trade union, one of which is SINALTRAINAL. At each of its plants, the company maintains an open and permanent dialogue with the union shop stewards; it also provides financial assistance to all 18 executive boards registered in the country, more than half of which are part of SINALTRAINAL. In addition, the company encourages trade union activity by offering a number of tangible advantages that guarantee freedom of association. For example, it grants the trade unions 6,000 days of paid leave for union activities, as well as US$500,000 in funding of which SINALTRAINAL, with 40 per cent of the overall membership, is the principal beneficiary.

512. INDEGA adds that it is committed to preserving the integrity and security of the workers, and duly and diligently does everything it can in that direction. The company has a specific plan with appropriate procedures and resources for dealing with security issues raised by SINALTRAINAL. It is in permanent contact with the human resources directorates of the Ministry of the Interior and with the Office of the Vice-President of the Republic, which are responsible for issuing security plans to over 6,000 people in Colombia, of which 1,500 are trade union officials, with an annual investment of US$40 million. The company holds regular meetings with SINALTRAINAL's officials and members to assess any security problems that might arise and provides direct assistance in the form of cell phones, paid leave, transport, housing subsidies, flexible working hours and other kinds of help in addition to that afforded by the Government. Whenever workers and their organizations have been subjected to threats, the company has recommended that the authorities be informed and be requested to conduct an inquiry into the matter and adopt appropriate protective measures.

513. Regarding the restructuring process, the company states that it was obliged to introduce a plan to streamline its production line which was overstaffed in terms of market requirements at the time, and this generated high costs and a loss of competitivity that threatened the stability of the enterprise. It therefore invited some of its collaborators from plants whose production was being cut back, irrespective of whether they were union members or not, to consider a voluntary retirement plan. The plan envisaged financial incentives beyond those required by law or by the collective agreement, along with additional benefits. To implement its offer it contracted the services of an enterprise specializing in career guidance and reconversion to provide advice to those who wanted to accept the voluntary retirement plan.

514. The voluntary retirement plan was taken up by 220 production workers throughout the country, some of them members of trade unions and others not, with whom financial arrangements were reached that on average were 250 per cent above the legal requirements. Of all those who left the company, less than one-third were members of SINALTRAINAL. Since some of the collaborators turned down the plan and the number of vacancies corresponding to their profile was limited, the company requested the Ministry of Social Welfare to authorize their collective dismissal. The Ministry gave its approval for the dismissal of 88 production workers in the country as a whole (copy of the authorization attached). Once the administrative procedure was completed, the company began judicial proceedings to implement the decision. A dialogue was maintained with the trade unions throughout the process. In the specific case of SINALTRAINAL, and after several months of discussion, the company and the union reached an agreement that entailed both sides dropping the judicial proceedings they had initiated, along with the relocation of some workers and the retirement by mutual consent of others, with whom a conciliation procedure was engaged through the Ministry (copy attached). In accordance with the agreement, the union undertook not to engage in any further legal action with respect to the reorganization of production and the Ministry of Social Welfare's authorization of the collective dismissal. Similarly, and as part of the agreement, the company undertook to relocate 24 workers.

515. The Government stresses that the termination of the workers' contracts was unrelated to their union membership and that before beginning the collective dismissal process the company duly consulted the organization.

516. Regarding the accusation of slander the company states that the accused distributed printed material denouncing the company for criminal conduct. Moreover, a poster containing slanderous information was put up on the union's noticeboard. The company accordingly lodged a complaint on 27 January 2004 requesting that the incident be investigated. As a result of the complaint an investigation was undertaken that brought to light the involvement of the accused. Following an agreement with SINALTRAINAL the company withdrew its criminal and civil charges.

517. In another instance of alleged libel and slander, the company states that it lodged a complaint against several members of SINALTRAINAL requesting the Office of the Attorney-General to determine whether a complaint lodged by SINALTRAINAL officials with a federal court in the State of Florida, United States, and other public statements and press conferences accusing the company of associating with groups outside the law, along with other illegal activities, constituted libel and slander. Though a ruling of the Office of the Attorney-General initially took the view of the complainant, it reversed its decision after the appeal lodged by the union was settled in January 2004, and the case was dropped.

518. The company also recognizes that it brought criminal charges against members of SINALTRAINAL for accusations voiced at a protest meeting in front of its main office in

Bogotá on 5 December 2002. The case is currently with the Office of First Instance of the Attorney-General pending the formal start of the trial in court. The Government makes the point that, in a company that directly generates over 8,000 jobs in Colombia and which has been operating in the country for over 80 years, it is both understandable and logical that over the years situations should have arisen in which it disagrees with the behaviour or actions of its workers – whether unionized or not, members of SINALTRAINAL or not – just as it is obvious that in the course of 80 years the workers should sometimes have been at odds with decisions taken by the company. The important thing is that such differences of view be settled within the framework of the law. If in the course of a demonstration the union carries banners claiming that "Coca-Cola kills", "Coca-Cola violates human rights", "Coca-Cola sponsors the AUC" (the AUC are illegal paramilitary groups) and "Coca-Cola murders its workers", it is hardly surprising that the company should bring legal charges of libel and slander. There is a limit to people's rights, but one right is that the good name of juridical and natural persons must be respected. In this kind of situation, the least a company can do is defend its reputation, which it has built up thanks to the day-to-day efforts of its workers. Of course it has to do so through the appropriate legal channels and in accordance with the rulings handed down by the authorities. Nobody can claim that any legal steps involving a trade union that the company has ever taken to defend its rights amount to "trade union persecution".

519. The Government observes that in July 2008, an evaluation mission was carried out in five Coca-Cola bottling plants in Colombia to assess employment conditions and labour relations. The mission took place after consultation with the country's authorities and with the national employers' and workers' organizations concerned, which agreed to the mission.

520. Six high-level ILO officials visited the sites unannounced, with a questionnaire which the parties concerned answered and to which they contributed such documentary evidence as they saw fit. On each occasion the mission called a meeting of the company and the union, visited the plant's installations and interviewed union representatives in private.

521. This direct inquiry by the ILO was described in a report that not only lists the incidents that gave rise to the original complaint but contains an extensive and accurate evaluation of such issues as the performance of their duties by the workers, freedom of association and collective bargaining in Coca-Cola's various bottling plants in Colombia. In certain of the observations which follow, the Government refers to that report which, though it does not substitute for the normal functions of the ILO's regular or special supervisory bodies, is the fruit of a serious and direct inquiry conducted by high-level ILO officials who gave the parties every opportunity to express their views on the case.

522. Regarding relations between SINALTRAINAL and the Coca-Cola bottling plants in Colombia, the Government has established that 247 of the 587 unionized workers at Coca-Cola Femsa are members of SINALTRAINAL. There are three registered collective agreements that are reviewed every two years by direct agreement among the parties concerned. According to the territorial directorates of North Santander, Magdalena, Meta, Santander and Valle, no complaints are pending with the labour inspection and monitoring authorities regarding any failure to implement the law or the collective agreements.

523. The ILO report states:

> In general terms, everything suggests that conditions of work applicable to direct employees are duly respected, to the extent that they are regulated by legal instruments, collective agreements or accords.
>
> …

> The complexity of labour relations in the Coca-Cola bottling plants in Colombia in large measure reflects the complexity of these relations nationally. On the one hand, there are a considerable number of trade unions. On the other, some unions of a national or regional character play a role which sometimes goes beyond defence of the specific interests of their members in the plants and also play an active part in actions of socio-political sectoral and/or national order.

The Government is aware that the steady improvement of labour relations is an ongoing process and therefore considers it appropriate to invite the company and the union to take part in the social dialogue programmes being organized in cooperation with the ILO and the Swedish Government.

524. Regarding the allegation concerning the Carepa bottling plant belonging to Bebidas y Alimentos de Urabá SA, the Government has forwarded the information provided by the company, to the effect that it is common knowledge that around the middle and end of the 1990s the Urabá area especially was the scene of violent incidents. During that period the entire banana-growing zone comprising the municipalities of Turbo, Apartado, Carepa, Chigorodó, Mutatan and Necocli bore the brunt of this violence, which had a direct impact on Bebidas y Alimentos de Urabá SA. Before this period of violence the area had been dominated by left-wing illegal armed groups which in the mid- and late 1990s attempted to take control of the rich area of Urabá by force.

525. Bebidas y Alimentos de Urabá SA played no part in this, either directly or indirectly or even tacitly in favour of one side or the other, but it still suffered the ill effects of the armed conflict, which led to loss of life and to part of the company plant's personnel leaving the area. Though there were violent incidents everywhere, it was the civil bodies that suffered most, including the administrative headquarters of SINALTRAINAL and a large number of workers who, whether members of the union or not, worked for the company. Once the violence, which was common knowledge, had died down, SINALTRAINAL appealed to the competent authorities for protection and for assurances that the life, right to work, freedom of association and other rights of the entire working population, and not just the trade union, would be guaranteed. Despite all the complaints that were lodged and the impartiality of the company, and given the magnitude of the armed confrontation, there were inevitably people who preferred to set up a smokescreen and to try to implicate the company – as the visible and well-known face of Coca-Cola which operates in this banana-growing area – as the direct instigator of the incidents.

526. By a ruling of 11 April 2001, the subsequent investigation, with file No. 164 UDH, (copy attached), ordered by the Human Rights Unit of the Office of the Attorney-General, into the events of October, November and December 1996 which had led to the assassination of one of the company's workers, Isidro Segundo Gil Gil, as well as other crimes, established the total innocence of the manager of the company and absolved Bebidas y Alimentos de Urabá SA of any responsibility in the matter.

527. The foregoing conclusions were reached not only by the Human Rights Unit of the Office of the Attorney-General but by SINALTRAINAL itself, whose vice-president and education secretary, in a statement issued on 30 September 1996, called on the national executive board to withdraw the press release it had published against Bebidas y Alimentos de Urabá SA.

528. In a ruling of 22 April 1997, the Tenth Criminal Circuit Court rejected the request for trade union immunity presented by workers of Bebidas y Alimentos de Urabá SA on a number of counts, including acts of violence. It considered that the company did not violate the workers' rights but, on the contrary, had notified the authorities and requested security measures for them.

529. The Government adds that it also sent a copy of the case to the Office of the Coordinating Board of the Human Rights Group of the Ministry of Social Welfare for it to investigate the incident.

530. Regarding Embotelladora de Santander SA's alleged non-compliance with the collective agreement, the company states that on several occasions the trade union in Cúcuta y Bucaramanga brought legal charges against the company for allegedly violating some of its provisions. The outcome was a number of judgements in favour of the company and two ordering it to post vacancy notices and the corresponding requirements for any jobs covered by the Convention. The company duly complied with the decisions of the authorities.

531. The Government emphasizes the diligence of the officials of the Ministry of Social Welfare in monitoring and enforcing the labour standards with regard to the right of freedom of association.

532. Regarding the non-payment of union dues, the company states that in 1995 SINALTRAINAL brought charges against it in Santander, alleging that it had stopped paying some of the dues owing to the union. The Court of First Instance ruled that the company must pay over to the union the dues that it should have deducted from non-unionized workers covered by the collective agreement. The Court of Second Instance demurred and partially absolved the company, on the grounds that the dues to which the ruling referred concerned only the workers who were engaged in the tasks described in article 93 (Scope of the agreement) between 25 January 1993 and 29 June 1995. The company therefore owed SINALTRAINAL the dues that it should have deducted from the workers covered by article 93 of the collective agreement during that period. These sums the company duly paid. Although the company could have appealed the ruling, on 25 January 2006 it opted not to do so. The company states that in meetings with the union's lawyer it handed over to SINALTRAINAL documents listing the dues it had paid at the time in respect of the workers covered by article 93 of the collective agreement between 25 January 1993 and 29 June 1995, and the matter was closed.

533. Regarding the amendment to SINALTRAINAL's by-laws, the Government states in a communication dated 9 February 2009, that the union has not yet taken any legal steps to have Resolution No. 000984 of 25 March 2009 (annulling the registration of their amendment) rescinded.

534. Furthermore, the Ministry of Social Welfare has modified its union registration criteria and procedures pursuant to Constitutional Court rulings Nos C-695, C-465 and C-732 of 2008, to the effect that any dispute over the registration of trade unions or their executive boards or by-laws must be referred to the ordinary courts of law. Ruling No. C-695 reads as follows:

> This modification means that the Ministry of Social Welfare may no longer deny the registration of amendments to the bye-laws of trade unions that are submitted to it. Insofar as the requirement placed on the union is simply to "submit" an amendment to its bye-laws – which also means depositing the relevant documents confirming that the amendment conforms to legal requirements – the Ministry is not competent to determine whether or not the amendment complies with the Constitution or the law. Should the Ministry deem that an amendment submitted is unconstitutional or illegal, it shall refer the matter to the appropriate labour court to decide.
>
> The submission of an amendment merely serves as a means of publicizing the fact, which is in keeping with the principle of trade union autonomy, […] and it does not entitle the Ministry of Social Welfare to carry out a preliminary verification of the amendment to the bye-laws.

In addition, the Office of the Attorney-General issued a directive summarizing the above rulings in accordance with the standards in force, which concludes:

> Amendments to trade union bye-laws and changes in the composition of their executive boards must be duly registered. Should the Ministry or employer have any objection to their registration, they must submit a corresponding request for an election or modification with the labour courts.

535. The Government states that, as a result, the Ministry of Social Welfare has since October 2008, taken note of registrations automatically, for which purpose it has no special resources. The Ministry has instructed all its officials with monitoring and enforcement responsibilities to ensure strict compliance with the new criteria and procedures relating to trade union registration.

536. In accordance with the information provided by the Facatativá Labour Inspectorate, SINALTRAINAL's by-laws were duly submitted under No. 0003 on 22 October 2008 (the Government attached a copy of the relevant record).

537. Regarding the request for the annulment of the registration of the Santa Marta branch union, the Government refers to the company's statement that Colombian legislation requires that trade unions and their branches have at least 25 members, without which they must be dissolved. In January 2002, the company initiated legal proceedings to have the Santa Marta branch executive board dissolved, since according to the company's information it had only ten members. The company's case was dismissed on the grounds that the trade union had produced evidence showing that a number of independent workers other than those ten people were also members of the organization. Although under Colombia's regulations only dependent workers may join industrial trade unions, the Ministry of Labour did at that stage of the proceedings authorize an amendment to SINALTRAINAL's by-laws allowing independent workers to become members. The amendment was subsequently declared illegal. The company states that the branch union is currently functioning normally and maintains an open dialogue with the company, under an agreement whereby it receives assistance and a number of advantages.

538. Regarding the annulment of the registration of the executive branch of the Girardot union branch by the Ministry of Social Welfare, INDEGA states that in February 2004 SINALTRAINAL workers of the city of Girardot held a meeting to elect an executive board that was mostly attended by independent workers – including street vendors and shopkeepers. However, the law requires that, as an industrial trade union, it be composed of dependent workers, i.e. workers employed by a company. As this requirement was not fulfilled, the company appealed against the Ministry's decision to register the branch union, and on 25 August 2004 the Ministry's hierarchical superior reviewed the matter, confirmed that the SINALTRAINAL branch union in Girardot did not meet the legal requirements and proceeded to cancel its registration. In the Ministry's words, "to belong to a company or industrial trade union (such as SINALTRAINAL) it is a sine qua non that, in the first instance, a worker be employed by the said company and, in the second, that the worker be employed in one or other of the companies operating in the said industry or branch of economic activity, which is clearly not the case in the matter before the Ministry where 40 stationary street vendors appear as "members" of SINALTRAINAL. Although as street vendors the latter cannot be members of a food industry trade union, this does not mean that they may not form trade unions, inasmuch as the law makes provision for them to establish guilds and trade associations of various kinds so long as they do not claim to be members of an industrial trade union" (Resolution No. 3196 of 25 October 2004).

539. The Government considers that the Ministry acted in accordance with Colombian law, bearing in mind the recognized classification standards for union organizations – in this case the standards governing industrial trade unions.

540. The company adds that in November 2004, the members of SINALTRAINAL in Girardot again tried to register a new district branch but failed to meet the requirements of the law – notably with regard to the membership of independent workers, which is against the law that states that industrial union members must by hypothesis be employed by a company in the said industry, and not independent workers. Consequently, the company requested the authorities not to register the executive board since it did not conform to the labour standards in force. As a result, the Ministry of Social Welfare issued a ruling on 30 November 2004 refusing to register the branch union. SINALTRAINAL appealed against the ruling, which the Ministry reconfirmed. That said, the fact that SINALTRAINAL has no branch executive board in Girardot does not mean that it has no members in the city. On the contrary, the organization currently has 11 members in Girardot and the company has taken no action against them.

541. Regarding the executive board of the Villavicencio branch union, INDEGA states that on four occasions the four company workers who are affiliated to SINALTRAINAL tried to register a branch executive board without meeting the legal requirement as to membership, i.e. 25 workers from the same city who are employed in any food industry enterprise. The company thereupon took steps to ensure compliance with the law. In no case did the Ministry register the executive board once it had established that it did not meet the legal requirements. In July 2005, SINALTRAINAL again applied for the registration of a branch executive board, which the Ministry did register as it met the necessary conditions. However, at the beginning of 2007 Almacenes YEP SA – a company that has no link whatsoever with INDEGA – requested that the decisions to register the Villavicencio branch of SINALTRAINAL be reversed as it did not have the 25 members required for the establishment of a branch union in a city. After conducting a count of the branch's membership and verifying the evidence presented by Almacenes YEP SA, the Ministry of Social Welfare acceded to its request.

542. Regarding the refusal to register the executive board of the Bogotá branch union, the company states that in March 2005 members of SINALTRAINAL in Bogotá applied for the registration of a branch union. Following normal procedures, the Ministry raised objections and requested further information and documentation as evidence that the minimum legal requirements were met. As the trade union failed to produce the information requested, the Ministry issued Resolution No. 1700 on 20 June 2005 refusing the branch union's registration.

543. As for the partial rejection of the Bucaramanga branch executive board, the company states that it had no objection to the registration of SINALTRAINAL's Bucaramanga branch; on the contrary, it recognizes the branches' officials, maintains an open dialogue with the union and grants leave for union activities, plane tickets and financial assistance under the collective agreement with SINALTRAINAL.

544. Regarding the registration of the executive board of SINALTRAINAL's Cali branch union, the company states that the union has operated in Cali since its establishment. The company has recognized the legality of its constitution, respected the immunity of its officials, reached collective agreements with its delegates and provided its management with financial assistance by means of a monthly contribution and paid leave in accordance with a collective agreement. In April 2006, SINALTRAINAL changed the executive board of the Cali branch and submitted it for registration as required by law. The Ministry notified the company of the request, and the company asked it to verify that it had the minimum number of members required by law, bearing in mind that 12 company workers were affiliated to SINALTRAINAL in Cali. The Ministry decided to register the change notified by SINALTRAINAL and the company respected the decision taken.

545. Regarding the incidents relating to Eficacia SA, the Government states that this is a company that provides services to third parties in whatever is required for the normal conduct of activities in banking, agro-industry, cleaning, marketing and sales, advertising and trade in general.

546. The commercial contracts it enters into are carried out by workers whose labour relationship with it is that of service providers, which means that they make their services available to companies in whatever industry or branch of economic activity its clients are engaged in. Such is the case with Embotelladora de Santander SA, according to the complaint it lodged, inasmuch as the economic activity of Eficacia SA is not "to cultivate, manufacture, dehydrate, pulverize, package, prepare, buy, sell, distribute, export or import food products or products that are to be mixed with any food products". Consequently, there is no legal basis whatsoever for claiming that its workers meet the criteria for membership of SINALTRAINAL.

547. The Government adds that, as the company's general manager points out, "considering that Eficacia SA's clients include such companies as Colgate, Procter & Gamble, Johnson & Johnson, Pfizer, Beidersdorf (BDF), Bayer, Schering, Avon, Prebel, Belleza Express, Exito, Carulla, Olímpica, Colsubsidio and Comfandi, one might well ask how its workers could provide such services while being members of a food industry trade union".

548. The Government goes on to state that article 2 of the trade union's by-laws stipulates that "the membership of the National Union of Food Industry Workers (SINALTRAINAL) shall comprise workers linked to enterprises whose purpose is to cultivate, harvest, manufacture, dehydrate, pulverize, package, prepare, buy, sell, distribute, export or import food products or products that are to be mixed with any food products". That being so, Eficacia SA's workers do not meet the criteria either of the legislation or of SINALTRAINAL's own by-laws for membership of the organization.

549. In the light of the foregoing, a trade union organization that accepts members who do not conform to the requirements of its own by-laws would be in an illegal and irregular situation that would have many implications for its legal rights, one of which is that no list of demands could be submitted or agreements negotiated in its name without the outcome being invalidated; for these reasons, Eficacia SA is not required to negotiate the list of demands presented by SINALTRAINAL.

550. The Government further states that the Territorial Directorate of Santander did conduct a labour administration investigation into Eficacia SA for violating the right to freedom of association and refusing to negotiate a list of demands, as a result of which it passed Resolution No. 0802 of 28 June 2007 clearing Eficacia SA of the charges and releasing the parties so that they could initiate legal proceedings, since the case involves a legal controversy that only the courts are competent to judge.

551. Should the organization believe that its right to bargain collectively has been infringed, there are a number of administrative bodies to which a decision in the matter could be referred but which the union chose to forego. In any case, SINALTRAINAL is at liberty to submit the case to an ordinary labour court for it to conduct a new investigation. According to the company, it has not been notified of any such court action having been taken.

552. The Government adds that the Ministry of Social Welfare will take immediate action should any similar situation arise and will monitor these companies at all times to ensure that they comply with the law in terms of their obligation to deduct and transfer union dues to their unionized workers and to negotiate the demands submitted by them.

553. Regarding these companies and the workers they employ, the ILO evaluation mission report states:

> In all the plants visited there are collective agreements and accords, with the exception of Barranquilla and Carepa-Urabá, where there are only collective agreements.
>
> …
>
> In general terms, everything suggests that conditions of work applicable to direct employees are duly respected, to the extent that they are regulated by legal instruments, collective agreements or accords.
>
> With regard to the administration of the company payroll, i.e. full payment of wages at intervals laid down by law, collective agreement or accord, payment of wages in a form which ensures that they are enjoyed in full, respect for the working time regime (eight hours per day and 48 hours per week) and rest, no comments or complaints were made which might suggest problems of compliance.

554. For the Government, the situation as to trade union membership that was verified by the ILO mission and reflected in its report is highly significant and a clear indication of the freedom of association that is enjoyed by bottling plant employees in Colombia. As the report points out, the company appears to tolerate demonstrations (e.g. workers with t-shirts alluding to their demands) by unionized workers.

555. Though the report contains statements from people interviewed that reveal profound differences of opinion between the company and the trade union, it is equally clear that the employers respect fundamental rights at work, such as freedom of association, the right to bargain collectively, non-recruitment of minors, non-discrimination and an eight-hour working day. The report also recognizes that the benefits accorded in the collective agreements, which are periodically renegotiated, are greater than those required by law and that the mission received no complaints of non-compliance with those agreements.

556. As to the alleged refusal of PROSERVIS, the new provider of specialized services to Embotelladora de Santander SA, to engage union members, the Government refers to the mission's direct verification of this issue and to the conclusion reached on the subject in its report:

> ... it appears that no action by the company has up to now indicated any type of discrimination in pre-contracting processes.
>
> …
>
> In the case of direct employees, the average length of service is fairly long, and this is reflected in a particular way between the company representatives and the union leaders. This means that the turnover rate (entrants to leavers) of employees is low despite the incorporation of technological innovations in the production processes.
>
> According to data provided by the company, in the Barranquilla plant the average length of service is 11.9 years. In the Bogotá-Norte plant, out of a total of 494 recognized direct employees, 359 have over eight years' service and the average is 15.02 years. In the Cali plant, out of a total of 193 recognized direct employees, 122 have over eight years' service and the average is 13.94 years. In the Medellín plant, out of a total of 274 recognized direct employees, 188 have over eight years' service and the average is 15 years. In the Bogotá-Sur plant, out of 83 direct employees, 34 have between 10 and 15 years' service and 11 even have over 30 years. In Carepa-Urabá, lastly, 33 per cent of workers have over eight years' service and 25 per cent have between five and eight years.

557. Regarding the suspension of Andrés Olivar's contract, the company states that on 28 February 2007, SINALTRAINAL requested permission for Mr Olivar, an employee of the company and a union member, to attend a trade union activity. Mr Olivar is a company liquidator, and at that time there was a problem with the system platform that had been

holding up data for more than three days. As the liquidator, Mr Olivar's presence was essential, and so the company informed the trade union and, after explaining the reasons, informed Mr Olivar in person and in writing that it could not grant him the time off. In spite of this, Mr Olivar ignored the decision and did not turn up for work, as a result of which – as required by law and the agreements in force – the company had to call him in to explain himself. After hearing his explanation and since it did not justify his absence from work, Mr Olivar was duly sanctioned in accordance with the collective agreement, the company's internal regulations and the law.

558. As part of the normal dialogue between them, a meeting of the company and SINALTRAINAL was held on 24 May 2007 at which it was agreed to waive the sanction, on the understanding by both parties that this did not mean that Mr Olivar had not committed a serious fault that warranted his being sanctioned. Since an agreement has been reached between the company and the trade union organization, the Government considers that the incident does not call for further examination.

559. The company adds that the distribution of the products it bottles is carried out by independent micro-enterprises with which it has a trade relationship in the form of a concession to re-sell the products. Under this arrangement, each concession holder buys the company's products and then re-sells them on the market. It is an exclusive contract that places mutual obligations on the parties involved. To conduct their business (i.e. the re-sale of the product) the concession holders use their own means and contract their own employees directly. Their commercial activities generate a profit which is the difference between their purchasing price and the selling price once they have covered their overheads. The company does not pay or in any way remunerate the concession holders; on the contrary, it is they who pay the company for products that they buy at a preferential rate.

560. In March, the company exercised its legal and contractual faculties to break off trade relations with some of its concession holders for a variety of reasons, some for their failure to fulfil the contractual clauses and others because they decided to give up their routes.

561. As to the incidents surrounding the demonstration by subcontracted workers at the Villavicencio distribution centre, INDEGA states that on 23 April 2007, some of the concession holders whose contracts had been terminated organized a demonstration to block access to the company's distribution plants, occupying the public area without authorization. Following neighbours' complaints of "visual and noise pollution" the authorities took action to clear the public area and suggested to the demonstrators that they use the legal channels to make known their complaints or concerns. As already mentioned, the Government considers that the police acted correctly in restoring public order, which is in line with the principles of the Committee on Freedom of Association.

562. Regarding the dismissal of Edgar Alfredo Martínez Moyano, INDEGA states that it has a contract for specialized services with Ayuda Integral SA. Under Colombian legislation, service contracts imply the technical and administrative autonomy of the contractor, which, inter alia, covers the administration of its employees. All the contracts entered into by the company require that the contractor comply with the law and that the contract be subject to the control and enforcement of the state authorities. According to information supplied by Ayuda Integral SA, Edgar Alfredo Martínez Moyano was questioned about failing to carry out his duties and, on the basis of information received, Ayuda Integral SA terminated his contract for just cause – namely, that while he was under employment Ayuda Integral SA had never been informed of his affiliation to SINALTRAINAL. In April 2006 SINALTRAINAL informed Ayuda Integral SA of the affiliation of Carlos Alberto Guzmán Rojas, Luis Enrique Pacheco Contreras and Luis Eduardo Rubio Morales, and this led to a discussion of the legal validity of the termination of his contract. At the time

Ayuda Integral SA informed the Ministry of Social Welfare of its position so as to resolve the conflict and determine if the presumed affiliation placed it under any obligation. At the present time Mr Guzmán, Mr Pacheco and Mr Rubio are still working for Ayuda Integral SA.

563. The Government adds that the Ministry of Social Welfare has established that no complaints have so far been lodged with any of its territorial directorate concerning any failure of Ayuda Integral SA to check off union dues or to negotiate any list of demands.

C. The Committee's conclusions

564. *The Committee notes the complaint presented by SINALTRAINAL on 18 September and 26 October 2007 and 25 March, 1 April and 4 June 2008. The Committee likewise notes the Government's replies dated 6 December 2007, 25 April, 22 and 27 August 2008 and 9 February 2009.*

565. *The Committee observes that the allegations in the present case concern: (a) murder, acts of intimidation and threats against officials and members of SINALTRAINAL to dissuade them from pursuing their trade union activities, including their stigmatization as subversive elements and accusing them of calumny and slander; (b) violation of the collective agreement by Embotelladora de Santander SA; (c) non-payment of union dues by the said company; (d) restructuring of the company and consequent closure of production centres by Coca-Cola Femsa; (e) a request by a number of bottling plants to have the registration of SINALTRAINAL's by-laws and of the executive boards of several of its branch unions revoked; (f) disregard of the right of the workers of Eficacia SA and Ayuda Integral SA to become members of SINALTRAINAL and to bargain collectively with it; (g) the sanctioning of a trade union official for taking union leave; and (h) refusing to allow the workers of Acueducto Metropolitano de Bucaramanga to become members of SINALTRAINAL.*

Acts of violence

566. *Regarding the alleged murder and intimidation of, and threats against, officials and members of SINALTRAINAL, the Committee notes that according to SINALTRAINAL several of the bottling plants referred to above have pursued an anti-trade-union policy that dates back to 1984, that many of its officials and members have been murdered or been the victims of other acts of violence, that its officials have been accused of terrorism and in many cases arrested before being released after being proven innocent, and that on occasion they have been kidnapped and threatened by paramilitary groups not to lodge complaints against the company. The Committee further notes that, according to the complainants, complaints have accordingly been lodged but that the investigations have led to nothing. As a result, many of the workers have abandoned their trade union activities.*

567. *The Committee also notes the Government's statement that it has passed on a copy of the allegations to the Coordinating Board of the Human Rights Group of the Ministry of Social Welfare for it to conduct appropriate inquiries. The Committee likewise notes the Government's reply in which the corporate group INDEGA, which includes companies operating under the umbrella of Industria Nacional de Gaseosas, begins by clarifying the juridical situation of the companies cited in the allegations. It explains that Industria Nacional de Gaseosas (INDEGA, formerly known as Panamco Colombia SA) represents Coca-Cola Femsa in Colombia, a company that bottles non-alcoholic drinks (including drinks sold under trade names belonging to The Coca-Cola Company). In 2008, INDEGA absorbed Embotelladora de Santander SA and Embotelladora Román SA. Embotelladora*

de Carepa does not belong to INDEGA but to Bebidas y Alimentos de Uraba SA. INDEGA states that it is committed to its workers' integrity and security, that is has a specific security plan to meet SINALTRAINAL's concerns in the matter, that it is in permanent contact with the human rights directorates of the Ministry of the Interior and with the office of the Vice-President of Colombia, that the company holds regular meetings with the trade union organization to assess security issues raised by the latter's officials and members and that it provides additional assistance directly in addition to that provided by the Government.

568. *While the Committee appreciates the security measures adopted by the various enterprises in the group, it considers that the allegations, if true, refer to matters of utmost gravity and recalls in this respect that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 44]. That said, the Committee observes that, for the most part, complaints have already been lodged in this respect and are being examined in the context of Case No. 1787. In these circumstances, it will pursue their examination under that case.*

569. *Regarding the allegation concerning Embotelladora de Carepa, to the effect that in December 1996, paramilitary groups entered the company premises and obliged SINALTRAINAL members to resign from the union, the Committee notes that, according to the Government, a copy of the allegation has been passed on to the Coordinating Board of the Human Rights Group of the Ministry of Social Welfare for it to initiate inquiries into the matter. The Committee also notes the company's statement that at the time of the incidents there were violent confrontations between left-wing and right-wing extremist factions to take control of the territory, but that the company took no part whatsoever in the confrontation and was not in favour of either faction. The Committee notes further the company's statement that it too lodged a complaint with the authorities regarding the violence of which its workers were victims, and that the inquiry carried out by the Human Rights Unit of the Office of the Attorney-General (file No. 164) into the 1996 incidents, in the course of which a worker was also killed, cleared the company of any responsibility, as did the decision of the tenth criminal circuit judge in a ruling on 22 April 1997. The Committee takes due note of this information and requests the Government to keep it informed of the outcome of the inquiry conducted by the Coordinating Board of the Human Rights Group of the Ministry of Social Welfare.*

Criminal charges

570. *Regarding the accusations of slander brought against members of SINALTRAINAL, the Committee notes that, according to INDEGA, members of the organization distributed printed material denouncing the company for criminal conduct. The company initiated legal proceedings which it subsequently abandoned. In another investigation into accusations of slander made against Coca-Cola in the United States as part of an international campaign in which, according to Coca-Cola, the organization was involved, the General Attorney revoked a decision in which the members of SINALTRAINAL had been accused of slander and calumny. The Committee notes that the said inquiry has been terminated. As to a third complaint concerning accusations made by the organization at a meeting held in front of the company's Bogotá office, the Committee notes that the formal opening of a trial is still pending with the Office of the Attorney-General.*

571. *Stressing the importance of dialogue between the trade union organization and the company in order to achieve harmonious labour relations, the Committee calls on the Government to take whatever steps it can to encourage the company and the complainant*

organization to improve the dialogue in the group's various establishments and bottling plants so that each side can carry out its functions properly in a climate of mutual respect and put hostilities and any forms of violence aside.

Restructuring process

572. *Regarding the restructuring process in Coca-Cola Femsa in 2003, the Committee notes the complainant organization's statement that the company brought pressure to bear on workers to resign from their jobs in exchange for financial compensation, and that a complaint was duly lodged with the authorities to this effect. The Committee notes that the Higher Court of the Judicial District of Medellín ordered that a number of the workers who were dismissed be reinstated in their jobs. The Committee also notes that, according to the allegation, the restructuring process entailed the closure of production centres and bottling plants and the consequent dismissal of a large number of workers, and that this led to several appeals being lodged for trade union immunity which on some cases were decided in favour of the workers.*

573. *The Committee notes the Government's statement that, according to the company, the restructuring was due to issues that had nothing to do with freedom of association and that both unionized and non-unionized workers were affected and received compensation far higher than that required by law. The Committee notes that throughout the process a dialogue was maintained with the trade unions, and specifically with SINALTRAINAL to which less than one third of the workers concerned belonged and with which an agreement was reached after months of negotiations, whereby the trade union undertook not to press legal charges and the company to relocate 24 workers.*

574. *The Committee observes in this connection that, according to information supplied by both the complainant and the company, the restructuring affected the workers as a whole, whether unionized or not, that the process was the subject of negotiations with the trade unions and that, in the specific case of SINALTRAINAL, an agreement was reached whereby 24 workers were redeployed. The Committee recalls that it can examine allegations concerning economic rationalization programmes and restructuring processes, whether or not they imply redundancies or the transfer of enterprises or services from the public to the private sector, only in so far as they might have given rise to acts of discrimination or interference against trade unions [see* ***Digest****, op. cit., para. 1079]. That being so, the Committee will not pursue its examination of these allegations.*

Violation of the collective agreement and payment of union dues

575. *Regarding the alleged violation of the collective agreement and non-payment of union dues by Embotelladora de Santander SA, the Committee notes that according to the allegation the company was sanctioned by the judicial authority and that several officials were fined for not respecting the right to hold meetings and the right of association. As to the non-payment of union dues, the Committee notes the complainant organization's statement that the company appealed the decision and the case is still pending.*

576. *The Committee notes in this respect the Government's observation that, according to the reply sent to it by the company, SINALTRAINAL took legal action against it for the alleged violation of a number of standards provided for in the collective agreement in the cities of Cúcuta and Bucaramanga; the court decided in favour of the company and also handed down two rulings ordering the company to respect the collective agreement as it related to the posting on its noticeboard of existing vacancies and the corresponding requirements. The Committee notes the company's statement that the decisions were duly carried out.*

The Committee also notes the Government's statement that the officials of the Ministry of Social Welfare have met their obligations as regards the monitoring of labour standards.

577. *Regarding the alleged non-payment of union dues, the Committee notes the company's confirmation that the judicial authority ordered it to pay the dues but the court of second instance qualified the ruling and limited payment of the dues to the period between January 1993 and June 1995; these payments were duly made, as the organization's lawyer was able to ascertain in meetings with the company.*

Official registration and right of association and right to bargain collectively

578. *Regarding the allegation that on 8 July 2004, the Panamco Colombia SA bottling plant requested the Ministry of Social Welfare to revoke its decision to register the amendment of SINALTRAINAL's by-laws, the Committee notes that, according to the complainant, the Coordinating Board of the Labour, Employment and Social Security Group passed Resolution No. 2994 revoking the registration of its by-laws, and that the requests for trade union protective relief lodged with the District Council of the Judiciary were denied. The Committee notes that on 7 December 2007 the complainant decided at its national general meeting to amend the organization's by-laws so as to allow the affiliation of workers in the food and agriculture sector and allied workers irrespective of their labour relationship and type of work. The Committee observes that article 2 of the trade union's by-laws (copy attached) stipulates that its membership shall comprise "workers in the food and agriculture sector and allied workers engaged under various forms of labour relationship and in various types of work …". This wording was approved by the Inspectorate of Labour and Social Security in Resolution No. 0005 of 14 January 2008, but subsequently annulled by the Territorial Directorate of Cundinamarca in Resolution No. 000984 of 25 March 2008, following an appeal by Panamco Colombia SA.*

579. *Also on this issue, the Committee notes the complainant's allegation that Panamco Colombia SA, Embotelladoras Román SA, Compañía Nacional de Chocolates SA and Supertiendas y Droguerías Olímpica SA have requested the annulment of the registration of a district union executive board in several cities, according to the companies because some of those who tried to join were independent workers and the union therefore did not have the required number of members.*

580. *The Committee also notes that in other instances the companies refuse to allow SINALTRAINAL to affiliate certain workers that it employs on the grounds that they are not food sector workers but services sector workers, as they are supplied through service enterprises such as Eficacia SA and Ayuda Integral. For their part, the service enterprises supplying companies with employees likewise refuse to allow SINALTRAINAL to represent them, on the grounds that they are employed in the services sector and not in the food sector. The Committee notes that, according to the complainant organization, 70 per cent of the staff of Embotelladora de Santander SA is employed in this way; they are thus not covered by the collective agreement between the company and SINALTRAINAL, which leaves them in an extremely precarious situation. According to the allegation, Eficacia SA uses the same argument to refuse to check off trade union dues on behalf of SINALTRAINAL or to negotiate the list of demands that it has submitted. The Committee notes further the allegation that, in February 2007, Embotelladora de Santander SA terminated its contract with Eficacia SA, merely informing the workers employed in the bottling plant that they could be contracted again through PROSERVIS, but that those who were affiliated to SINALTRAINAL were not taken on again.*

581. *With respect to the official registration of the amendment to SINALTRAINAL's by-laws, the Committee notes the Government's observation of 9 February 2009 to the effect that*

SINALTRAINAL has not so far initiated any legal proceedings against Resolution No. 00984 of 25 May 2008, annulling the registration of the amendment to its by-laws. The Committee also notes the recent rulings of the Constitutional Court (C-465 and C-695 of 2008) to the effect that the Ministry of Social Welfare cannot refuse to register amendments to by-laws that are submitted to it and that, if it considers them to be irregular, it must refer the matter to the judicial authority which alone can rule on the matter. The Committee notes with interest that in line with these rulings SINALTRAINAL's amended by-laws were duly registered under No. 0003 on 22 October 2008. The Committee calls on the Government to ensure that the by-laws of the various district executive boards whose registration had been refused or annulled at the request of the bottling plants or other enterprises in the food sector are duly registered once they have been submitted.

582. *Regarding the right to join SINALTRAINAL of workers supplied by the services enterprises Eficacia SA and Ayuda Integral SA and employed in the bottling plants, the Committee notes that, according to the Government, Eficacia SA provides services to third parties in whatever is required for the normal conduct of activities in banking, agro-business, cleaning, marketing and sales, advertising and trade in general, by contracting out staff with whom it has entered into a labour relationship. Consequently, it is not possible for these workers to join an industrial trade union such as SINALTRAINAL because many of them provide services in companies outside the food sector and, by the same token, the trade union cannot rightfully present a list of demands on their behalf. The Committee notes that the Territorial Directorate of Santander initiated an administrative inquiry into the company for violating the right of association and refusing to negotiate a list of demands and passed Resolution No. 082 of 28 June 2007 leaving it open to the parties to submit the matter to the judicial authority.*

583. *Regarding the allegation that Embotelladora de Santander SA terminated its contract with Eficacia SA and informed those of its workers who had been employed in the bottling plant that they could be contracted through PROSERVIS, but that those who were affiliated to SINALTRAINAL were not taken on again, the Committee notes that, according to the Government, there did not appear to have been any discrimination in subcontracting workers from PROSERVIS.*

584. *The Committee considers in this respect that workers who provide their services to companies in the food sector should be entitled to become members of SINALTRAINAL if they so wish. In the present case, although the employees of Eficacia SA or Ayuda Integral have no direct employment relationship with the bottling plants when working in the food sector, they may wish to join a trade union that represents the interests of workers in that sector at the national level [see 349th Report of the Committee, Case No. 2556, para. 754]. Moreover, the trade union organization that represents these workers should, as a corollary of the right of association, have the right to present lists of demands and to bargain collectively with companies in the sector on their behalf. That being so, the Committee calls on the Government to take the necessary steps amending the legislation without delay to guarantee Eficacia SA (or PROSERVIS) and Ayuda Integral SA workers providing services in the bottling plants the right to join SINALTRAINAL and to have their union dues checked off, and also to guarantee the right of the trade union organization to present lists of demands and to bargain collectively on their behalf. The Committee requests the Government to keep it informed in the matter.*

585. *Regarding the alleged refusal to register Ernesto Estrada Prada as a member of the executive board of SINALTRAINAL on the grounds that he is under contract to the services enterprise Empaques Hernández but works for Saceites SA, and the alleged refusal of the Ministry of Social Welfare to grant workers of Acueducto Metropolitano de Bucaramanga the right to join SINALTRAINAL, the Committee expresses the firm hope that, in the light*

of the recent rulings of the Constitutional Court referred to, and in accordance with Articles 2 and 3 of Convention No. 87, the Government will proceed to register the executive board of SINALTRAINAL and will examine the right of the workers of Aqueducto Metropolitano de Bucaramanga to join SINALTRAINAL.

Sanctions and dismissals

586. *Regarding the alleged suspension of Andrés Olivar, a SINALTRAINAL official, for having taken union leave, the Committee notes the Government's observation that the sanction was in accordance with the collective agreement, the company regulations and the legislation in force, but that an agreement was reached between the company and the trade union on 24 May 2007 to waive it.*

587. *Regarding the allegation that in March 2007 the Villavicencio and Bogotá bottling plants dismissed 16 distributors, one other worker, and Edgar Alfredo Martínez Moyano, following his affiliation to SINALTRAINAL, the Committee notes the Government's statement that the distribution of the products that the company bottles is carried out by micro-enterprises with which it has a commercial relationship in the form of a concession to re-sell the products. The concession holder buys the merchandise and then re-sells it on the market. The Committee also notes that in March 2007, the company decided to terminate its commercial relationship with some of its concession holders for a variety of reasons, including their failure to observe the clauses of their contract and to follow their distribution routes. The Committee notes the Government's further observation that some of the concession holders in Villavicencio organized a demonstration in April 2007 to protest against the termination of their contracts, and that this led to the intervention of the public authorities and to the protestors being advised to take appropriate legal action.*

588. *Regarding the dismissal of Edgar Alfredo Martínez Moyano, the Committee notes the Government's observation that INDEGA states that he worked for Ayuda Integral SA, which terminated his contract with just cause for failing to carry out his duties. The Committee requests the Government to undertake an independent inquiry in this regard and to keep it informed of the results thereof.*

The Committee's recommendation

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

(a) Regarding the allegations concerning Embotelladora de Carepa, according to which paramilitary groups entered the company's premises in December 1996 and forced members of SINALTRAINAL to resign from the trade union, the Committee requests the Government to keep it informed of the outcome of the inquiry conducted by the Coordinating Board of the Human Rights Group of the Ministry of Social Welfare.

(b) Regarding the accusations of slander lodged against the members of SINALTRAINAL, the Committee, while noting that the company has withdrawn some of its charges, calls on the Government to take whatever steps it can to encourage the company and the complainant organization to improve the dialogue in the group's various establishments and bottling plants, so that each side can carry out its functions properly in a climate of mutual respect and put aside hostilities, threats, slander and all other forms of violence.

(c) Regarding the annulment of the registration of SINALTRAINAL's by-laws, the Committee calls on the Government, in the light of the recent rulings of the Constitutional Court, to ensure that the by-laws of the various district executive boards of SINALTRAINAL whose registration has been refused or annulled at the request of the bottling plants or other enterprises in the food sector are duly registered once they have been submitted.

(d) While noting the information provided by the Government in paragraph 582, the Committee requests the Government to take the necessary steps without delay to amend the legislation to guarantee Eficacia SA (or PROSERVIS) and Ayuda Integral SA workers providing services in the bottling plants the right to join SINALTRAINAL and to have their union dues checked off, and also to guarantee the right of the trade union organization to present lists of demands and to bargain collectively on their behalf. The Committee requests the Government to keep it informed in this respect.

(e) Regarding the alleged refusal to register Ernesto Estrada Prada as a member of the executive board of SINALTRAINAL on the grounds that he is under contract to the services enterprise Empaques Hernández but works for Saceites SA, and the alleged refusal of the Ministry of Social Welfare to grant workers of Acueducto Metropolitano de Bucaramanga the right to join SINALTRAINAL, the Committee expects that, in the light of the recent rulings of the Constitutional Court and in accordance with Articles 2 and 3 of Convention No. 87, the Government will proceed to the registration of the executive board of SINALTRAINAL and will consider the right of the workers of Acueducto Metropolitano de Bucaramanga to become members of SINALTRAINAL. The Committee requests to be kept informed in this respect.

(f) As concerns the dismissal of Mr Martinez Moyano, the Committee requests the Government to undertake an independent inquiry in this regard and to keep it informed of the results thereof.

CASE NO. 2612

INTERIM REPORT

Complaints against the Government of Colombia presented by
– the National Union of Workers of Banco Bilbao Vizcaya Argentaria Colombia (SINTRABBVA) and
– the National Union of Bank Employees (UNEB)

Allegations: The complainant organizations allege pressure being put on workers to accept a collective accord, violation of the collective agreement in force, dismissals and disciplinary proceedings with respect to trade union leaders, and mass dismissals of bank workers

590. The complaints are contained in a communication from the National Union of Workers of Banco Bilbao Vizcaya Argentaria Colombia (SINTRABBVA) dated 29 October 2007 and in two communications from the National Union of Bank Employees (UNEB) dated 7 April and 23 June 2008.

591. The Government sent its observations in communications dated 3 June and 30 July 2008 and 21 January 2009.

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

A. The complainants' allegations

593. In the communications dated 29 October 2007 from SINTRABBVA and dated 7 April and 23 June 2008 from UNEB, the complainant organizations SINTRABBVA and UNEB allege that at the time of the merger in 2006 between BBVA and Granahorrar, all the employees of Granahorrar were pressured into signing the collective accord in exchange for continuity of employment at the bank. However, the conditions of the accord were less favourable than those of the collective agreement in force at BBVA. They allege that the BBVA workers were also pressured into accepting the collective accord, despite their being covered by the collective agreement, which was renewed until 31 December 2007. Nevertheless, the workers were exposed to constant pressure, harassment and deceit to withdraw from the collective agreement and sign the collective accord, which implied relinquishing the benefit of employment stability.

594. The trade unions also refer to other failures to abide by the collective agreement in force, including the following:

– non-observance of the regulations concerning study allowances and loans (alleged by SINTRABBVA);

– obligation placed on workers to accept posts in a lower grade or category (alleged by SINTRABBVA);

– refusal of housing loans provided for under the collective agreement, with a more expensive credit being offered in their place (alleged by UNEB);

– payment of lower wages than those agreed, and non-payment of food, transport and maternity allowances and other social benefits (alleged by UNEB); and

– non-observance of the regulations concerning the hiring of apprentices (alleged by UNEB).

595. The complainants add that the bank is engaging in a campaign of anti-union harassment. SINTRABBVA makes the following allegations:

(1) Mr Jairo Obando López joined the union on 25 July 2006, a letter notifying the bank of his membership in connection with the respective payroll check-off was received by the bank on 4 August 2006, and he was dismissed in the same month and year;

(2) Ms Nidia Patricia Beltrán from Cali became a union member on 25 July 2006, the bank was notified on 4 August 2006, and she left the union on 25 August 2006;

(3) Mr Dairo Cortés and Ms Luz Helena Vargas joined the union at the end of July 2006, the bank was notified of their membership on 2 August 2006, and their letters indicating their resignation from the union arrived on 10 and 11 August 2006. In addition, a letter dated 30 January 2007 informed the bank of the membership of Ms Marina Guzmán and Ms Gloria María Carvajal. The following day, the administrator from Ibagué went to Espinal, where the women worked, and pressured them into signing an *affidavit* that they would leave the institution; and

(4) Mr José Murillo, a member of the union, was dismissed, even though the bank was aware that he was protected by a reinstatement order under Decree No. 2351/65. Mr Henry Morantes from the Employees' Fund was also unfairly dismissed for exercising his right to organize.

596. UNEB, for its part, alleges that pressure is being put on workers to leave the union and disciplinary proceedings have been instituted in relation to six union leaders in order to intimidate them.

597. Furthermore, the bank is filing various actions against the union at the Ministry of Social Welfare on account of the union assemblies held by UNEB, seeking to have the union's legitimate action penalized, thereby compromising UNEB union leaders working at the bank and facilitating possible proceedings for lifting trade union immunity in the civil courts with a view to the subsequent dismissal of the union leaders. The ultimate goal is to reduce union activity in exchange for withdrawing the administrative actions filed at the Ministry.

598. UNEB adds that the bank is assigning tasks forming an inherent part of current banking activity, such as customer service, to workers from temporary employment agencies, in breach of the collective agreement in force (1996–97 agreement), which provides that the bank must give preference to workers on open-ended contracts for carrying out its work.

599. The union states that the bank has dismissed large numbers of workers, in some cases without taking account of the provisions of the collective agreement, but the union cannot file an action for mass dismissals at the Ministry of Social Welfare since the dismissals have been carried out by means of conciliation agreements. All of this has taken place with the knowledge of the Government.

B. The Government's reply

600. In its communications of 2 June and 30 July 2008 and 21 January 2009, the Government sent the following observations.

601. With regard to the allegations concerning the pressure put by the BBVA on workers to sign a collective accord, as a result of the merger between the latter and Granahorrar and the disregard for the collective agreement in force, the Government points out that domestic legislation provides that a collective accord and a collective agreement may co-exist within an enterprise in cases where the trade union's membership does not account for more than one third of the workers (section 70 of Act No. 50 of 1990). In effect, employers in Colombia are free to enter into collective accords, said freedom being limited by the rights, values and principles as a whole that are recognized by the Constitution. In other words, the said freedom remains undiminished and protected by the Constitution and the law but may not be exercised by an employer to infringe the fundamental rights of workers or of a trade union.

602. The Government points out that these allegations are currently being investigated by the Territorial Directorate of Cundinamarca, which has scheduled three conciliation hearings.

The allegations have been compiled at the 14th Labour Inspectorate of the Territorial Directorate of Cundinamarca because multiple complaints were submitted in various territorial directorates.

603. The Government refers to the statement from the BBVA legal adviser that the bank respects and recognizes freedom of association and the right to organize, in conformity with national law and the provisions of international Conventions. The bank explains that in signing the collective accord the workers acted voluntarily and without any kind of pressure. The collective accord establishes non-statutory benefits by explicit agreement between an employer and non-unionized workers, a situation which is covered by section 481 of the Labour Code.

604. The bank explains that at the time of the merger between the BBVA Colombia and Banco Granahorrar, the vast majority of Granahorrar employees were covered by a collective labour accord. Pursuant to the provisions of the law, that accord could exist alongside the collective labour agreement established at the BBVA in view of the number of unionized workers resulting from the merger, namely 23.5 per cent of the total workforce of the bank at the end of April 2006. Furthermore, before the merger, in compliance with the law and constitutional principles concerning the right to equality, the provisions of the collective accord were harmonized with those of the BBVA collective agreement. This situation proved favourable to the workers of the former Banco Granahorrar, who therefore accepted and signed the collective accord voluntarily and without coercion.

605. Most workers who had not belonged to the BBVA union before the merger but had merely been beneficiaries of the agreement preferred to sign the collective labour accord granting equal benefits and decided for themselves not to join a union.

606. On the expiry of the collective accord, the bank, in full compliance with the legal provisions which give legitimacy to collective accords, naturally pursued negotiations with the workers to determine the amendments or additions to be made for the next term of validity, which makes it perfectly clear that the collective accord was in no way imposed on the employees as alleged but was the result of an explicit, free and consensual agreement between the bank and its non-unionized workers.

607. The bank emphatically denies the allegation that the continuity of a worker's employment at the institution depended on signing the collective accord, something which can be shown with absolute certainty using objective figures, since to date there are approximately 1,209 unionized workers, 3,131 who have signed the collective accord and as many again who have neither signed the accord nor taken out union membership. Although the latter have not been part of any union or signed the collective accord, their employment stability has not been affected at any time or depended on signing the collective accord.

608. The bank has compared the provisions of the agreement and the accord with respect to educational loans and concludes that both coincide in terms of possibilities for study and the performance-related defrayal of costs.

609. According to the bank, it cannot be concluded that one instrument is more beneficial than the other. They have simply been the means for regulating situations involving different wishes and needs, namely those of the union at the time the agreement was concluded and those of the non-unionized workers when the accord was signed, as stated at the time of negotiation and signature of each of the instruments.

610. As regards non-compliance with the terms of the collective agreement concerning employment stability, the bank indicates that various stances have been adopted with respect to the latter in judicial rulings. In some cases the rulings have defended the terms of

the collective agreement and in others they have given precedence to the labour legislation in force. The bank adds that as regards employment stability on completion of ten years of service, the collective agreement of 1972 upheld the right to reinstatement as established at the time by Colombian labour law, but that right was explicitly abolished in 1990 by Act No. 50 of that year, under which the terms of the agreement ceased to be valid, and that has been the interpretation of the ordinary labour courts in successive rulings.

611. With regard to the allegations relating to the supposed violations of national law by the bank in transferring or reassigning posts or failing to give salary increases to certain employees, the bank explains that it has always observed the applicable labour laws in force (national and international ratified by Colombia) and the provisions of the collective labour agreement existing in the enterprise. All transfers and reassignments of posts and salary increases are carried out as part of the objective and responsible exercise of *ius variandi*, and, hence, the accusations made by the complainant without any supporting evidence have no basis either in fact or in law.

612. Concerning the failure to comply with the provisions relating to pay increases, the bank points out that account must be taken of the fact that the collective labour agreement provides for annual percentage salary increases for workers in categories 1 to 7 of the pay scale and excludes all other workers covered by the agreement from such increases. With regard to 1997, the pay scale also contained categories 8, 9, 10 and 11, and the workers in them did not benefit from the annual pay raise laid down in the collective agreement; their annual pay raises were governed by the wage policy approved by the management board. Under the restructuring carried out at the time, categories 8, 9, 10 and 11 were abolished and the workers in them moved to salary levels or bands in which pay raises were also governed by that policy, and so the rules applying to annual pay raises have not undergone any change.

613. With regard to the failure to observe the collective agreement in relation to the hiring of apprentices, the bank indicates that in accordance with national law this form of hiring does not entail a direct employment relationship, and, hence, the collective agreement cannot be applied to these persons, contrary to the claim of the trade union.

614. With regard to the allegations of harassment of union leaders, the bank will abide by the final outcome of the administrative labour investigation launched by the Territorial Directorate of Cundinamarca.

615. With regard to the allegations made by SINTRABBVA concerning the dismissal of Mr Jairo Obando López, Ms Nidia Patricia Beltrán, Mr Dairo Cortés, Ms Luz Helena Vargas, Ms Marina Guzmán, Ms Gloria María Carvajal, Mr José Murillo and Mr Henry Morantes, the Government points out that the Ministry is not competent for dealing with worker dismissals, as this competence rests exclusively with the ordinary labour court. Dissatisfied workers must therefore have recourse to the aforementioned court to assert rights which they consider to have been violated.

616. The bank points out that it cannot state the reasons why the aforementioned employees chose to leave SINTRABBVA since this is an internal matter for each worker concerned. As regards the point relating to the dismissal of Mr Jairo Obando López, the bank explains that it had no knowledge of his union membership since the said person was dismissed on 25 July 2006 and he joined the union on 4 August of that year.

617. The bank emphasizes that, in accordance with the legislation, the employer has the power to decide on the termination of a contract of employment, provided that any special guarantees relating to the individual case are respected (trade union immunity, maternity protection, reinstatement, etc.). In the cases in question, the bank took the decision to

terminate the employment relationship by virtue of the power conferred on it by law, without there being any special guarantee of protection.

618. With regard to the allegations from UNEB regarding the launching of disciplinary proceedings, the Government indicates that according to the information supplied by the bank the latter acted in conformity with national labour legislation, respecting trade union immunity and due process.

619. With respect to the administrative investigations launched by the bank against the union, the bank states that their purpose is to avoid action aimed at stopping work or blocking workers' access to their workplaces.

620. With regard to the allegations relating to the mass dismissal of workers, the Government refers to the bank's statement to the effect that mutual agreement to terminate an employment relationship is an established ground in current legislation and in the majority of situations it supposes more favourable conditions for workers at the time of their retirement. The bank explains that the merger process was conducted in a reasonable, rational and cordial manner, emphasizing the fact that conciliation agreements were concluded in the presence of labour inspectors from the Ministry of Social Protection, this being a legal, valid and accepted practice. The bank maintains that if the union considered that the conciliation agreements were not valid, it should have had recourse to the competent legal body in order to cancel them and accordingly request the restoration of the rights which it considered to have been violated. In the light of the above and since an administrative complaint and various judicial proceedings are in progress, in line with the facts reported by the union, the Government considers that the present facts should be examined once the administrative decision and the corresponding judicial rulings have been issued.

621. The Government also adds that the present allegations made by SINTRABBVA were examined in the context of the Special Committee for the Handling of Conflicts (CETCOIT) referred to the ILO, within which two subcommittee meetings were held. At the first meeting, which took place on 2 October 2007, the special representative in Colombia put forward various proposals for drawing up an agreement which would enable trust between the union and the enterprise to be restored. However, at the second meeting held on 31 October 2007, the industry union which participated took no account of the terms according to which the first meeting had been conducted and proceeded to criticize the employers. For the meeting in question the employers had prepared a number of items, including the possibility of withdrawing a collective accord which it had concluded with various workers, but those items could not be discussed because of the absence of the representatives of the trade union. The Government expresses its surprise at the course of action taken by SINTRABBVA, which, despite the fact that the dispute was being examined in the context of CETCOIT, submitted a complaint to the Committee on Freedom of Association without having given any opportunity to end the dispute in a positive way and reach a beneficial agreement for all workers.

C. The Committee's conclusions

622. *The Committee observes that in the present case the complainant organizations (SINTRABBVA and UNEB) allege: (1) in the context of the merger between the BBVA and Granahorrar in 2006, the former pressured the workers of both institutions to sign a collective accord, despite the existence at the BBVA of a collective agreement which was valid until 31 December 2007; (2) various failures to comply with the collective agreement in force (with respect to study, transport and maternity allowances and other social benefits, seniority, housing loans, pay raises and hiring of apprentices); (3) the bank engaged in a policy of anti-union harassment, which involved the dismissal of Mr Jairo*

Obando López, just after the dismissals of Mr José Murillo and Mr Henry Morantes, and the forced departure of Ms Nidia Patricia Beltrán, Mr Dairo Cortés, Ms Luz Helena Vargas, Ms Gloria María Carvajal and Ms Marina Guzmán from SINTRABBVA, and brought administrative complaints against the leaders of UNEB; and (4) the bank effected the collective dismissal of workers by means of conciliation agreements in order to replace them with subcontracted workers.

623. *With regard to the allegations concerning the pressure put on the workers, in the context of the merger between the two bank entities in 2006, to sign a collective accord despite the existence of a collective agreement which was valid until 31 December 2007 and the non-compliance with various provisions of that agreement, the Committee firstly notes the Government's statement to the effect that SINTRABBVA brought the same allegations in the context of the CETCOIT referred to the ILO, and then also decided to bring the present complaint before the Committee. The Committee further notes that the Government also points out the following: (1) Colombian legislation authorizes the signature of collective accords in cases where the unions account for no more than one third of the workers; (2) the bank did not place any pressure on the workers to sign the collective accord which already benefited the majority of Granahorrar workers before the merger; (3) once the merger had occurred, the BBVA workers who did not belong to the union (according to the Government, 23.5 per cent of the workers were unionized) preferred to sign the collective accord; (4) the bank denies that it made continuity of employment at the bank dependent on accepting the collective accord (there are 1,209 unionized workers and 3,131 workers who signed the collective accord); (5) the bank undertook an evaluation of the respective benefits provided by the collective accord and collective agreement, and concluded that one could not be said to be more beneficial than the other but that each responded to different needs of the workers; and (6) these allegations are being investigated by the Territorial Directorate of Cundinamarca, having been compiled at the 14th Labour Inspectorate because multiple complaints were submitted in various territorial directorates, and the former has scheduled three conciliation hearings.*

624. *In this regard, while recalling "that the principles of collective bargaining must be respected taking into account the provisions of Article 4 of Convention No. 98 and that collective accords should not be used to undermine the position of the trade unions" [see, inter alia, 336th Report, Case No. 2239, para. 356, and 337th Report, Case No. 2362, para. 761 (Colombia)], the Committee requests the Government to keep it informed with regard to the pending investigations before the Territorial Directorate of Cundinamarca.*

625. *With regard to the allegations concerning harassment of trade union leaders, the Committee notes that the bank, according to the communication sent by the Government, will abide by the final outcome of the administrative labour investigation launched by the Territorial Directorate of Cundinamarca. As regards the allegations by SINTRABBVA concerning the dismissal of certain workers (Mr Jairo Obando López just after he joined the union and of Mr José Murillo and Mr Henry Morantes), and the forced departure from the union of Ms Nidia Patricia Beltrán, Mr Dairo Cortés, Ms Luz Helena Vargas, Ms Gloria María Carvajal and Ms Marina Guzmán a short time after they joined the union, the Committee notes the Government's statement to the effect that competence for deciding on the legality of the dismissals rests with the ordinary labour courts and that it cannot establish the causes of the aforementioned workers' departure from the union. The Committee further notes that the Government also refers to the information from the bank to the effect that, with regard to the dismissals, it fully respected the legislation in force, including trade union immunity and due process. In the case of Mr Obando López, the Committee notes the bank's statement that the latter was dismissed on 25 July 2006 and joined the union on 4 August of the same year (according to the complainant, the bank received the notification on 4 August). The Committee notes that the bank also indicates*

that the administrative investigation launched against UNEB was intended to avoid work stoppages and blocking of workers' access to their work.

626. *In this regard, the Committee requests the Government to keep it informed of developments in the investigation launched by the Territorial Directorate of Cundinamarca and expresses the hope that the investigation will cover all the allegations of harassment brought by the unions, including the dismissals and pressure put on some workers to leave the union.*

627. *With regard to the allegations concerning the mass dismissal of workers by means of conciliation agreements in order to replace them with subcontracted workers, the Committee notes the Government's statement to the effect that, according to the information supplied by the bank, the conciliation agreements were voluntary, that these offered favourable conditions for those who accepted them, that they were concluded in the presence of labour inspectors and that currently an administrative complaint and various judicial proceedings are pending. The Committee therefore requests the Government to keep it informed with regard to all the aforementioned actions.*

The Committee's recommendations

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

(a) The Committee requests the Government to keep it informed of developments in the investigations currently before the Territorial Directorate of Cundinamarca with regard to:

(i) the allegations relating to the pressure put on workers at the BBVA and Granahorrar in the context of the merger between the two entities in 2006 to sign a collective accord despite the existence of a collective agreement which was still valid until 31 December 2007 and non-compliance with various provisions of this agreement;

(ii) the allegations concerning the harassment of trade union leaders; in this respect, the Committee expresses the hope that the aforementioned investigations will cover all the allegations of harassment brought by the trade unions, including dismissals (Mr José Murillo and Mr Henry Morantes) and the pressure put on some workers to leave the union (Ms Nidia Patricia Beltrán, Mr Dairo Cortés, Ms Luz Helena Vargas, Ms Gloria María Carvajal and Ms Marina Guzmán).

(b) With regard to the allegations concerning the mass dismissal of workers by means of conciliation agreements in order to replace them with subcontracted workers, the Committee requests the Government to keep it informed with regard to the administrative complaint and the judicial proceedings in progress.

CASE NO. 2668

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

Complaint against the Government of Colombia presented by the National Union of Food Workers (SINALTRAINAL)

Allegations: Violent intervention by the police in the context of a strike in the sugar cane sector, threats and intimidation of union members; interference by sugar refineries in the trade union activities of workers

629. The present complaint is contained in a communication dated 25 September 2008.

630. The Government sent its observations in communications dated 10 February and 12 May 2009.

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

A. The complainant's allegations

632. In its communication of 25 September 2008, the National Union of Food Workers (SINALTRAINAL) makes the following allegation.

Violation of the right of personal freedom

633. In its communication of 25 September 2008, the National Union of Food Workers (SINALTRAINAL) makes the following allegation. On 15 September 2008, over 19,000 workers subcontracted through associated labour cooperatives in the sugar sector in the departments of Valle del Cauca, Risaralda and Cauca called a strike in the Pichichi, Providencia, Manuelita, Central Tumaco, Mayagüez, Central Castilla, María Luisa, La Cabaña and Cauca sugar refineries. The main reason for the strike was the refusal by employers in the sugar sector, represented by ASOCAÑA, to negotiate the list of claims submitted on 14 July 2008 by SINALTRAINAL, SINALCORTEROS and the Single Confederation of Workers of Colombia (CUT), calling for direct contracts with workers, the right to work, the correct weighing and the right price for cane that has been cut, an increase in wages, measures for the over 300 workers suffering disability due to the inhumane working conditions, and the right to health, education and housing.

634. According to the union, before the work stoppage, an attempt was made to reach agreement, but the employers refused, as also happened in the public hearing held in the town of Pradera (Valle del Cauca) by the Sixth Commission of the Senate. Nor was there a response to the claims of the cane cutters in the meetings with ASOCAÑA, when the action was announced to the media, nor through the intervention by parliamentarians of the Alternative Democratic Pole and the debates in the Congress of the Republic. On 5 September 2008, 5,000 workers went to meet President Alvaro Uribe Vélez on his arrival in the city of Cali to enter into dialogue, but he refused to receive them, in disregard of the serious situation affecting the families of sugar cane cutters.

635. The union alleges that the Colombian Government's response to the strike by sugar workers has been to treat it as a public order issue rather than a labour dispute, with the violent repression of the rights of workers and unions, and the refusal to sit and negotiate the list of claims. The refusal has been accompanied by aggression, as illustrated by the following incidents:

- the army and the police forces remain inside and outside the sugar refineries, intimidating the workers with the presence of snipers from the official forces in the labour dispute;
- employers are preventing work by various members of cooperatives;
- several workers have been subjected to death threats (Efraín Muñoz Yánez, Daniel Aguirre and Luis Aguilar);
- the owners of the refineries are engaged in disinformation campaigns in the press to create divisions among the workers;
- unknown persons constantly follow, take photographs of, and film workers;
- at approximately 12.40 a.m. on 24 September, in the Providencia refinery, unknown hooded persons infiltrated the cane crops and were removed by the workers;
- on 23 September 2008, delegates of the Ombudsperson and the Office of the Attorney-General went to strike locations, including the Providencia refinery, calling for children and pregnant women to withdraw;
- the Minister of Social Protection met the employers and the authorities on 23 September, justifying and organizing the use of the public forces to dislodge the workers engaged in the stoppage, expressing in public the argument that, in light of democratic security, employers have the right to extract ethanol and the workers have the right to work. The Minister described the dispute as an illegal movement promoted by "dark and subversive forces", in allusion to the presence of unions affiliated to the CUT, parliamentarians and social organizations. The owners of the refineries tried to justify their action by claiming that personnel were being abducted in the refineries, calling upon the authorities to back up this false claim, which, of course, the latter denied;
- they made the false charge, in public, that workers engaged in the stoppage had threatened to set fire to the union headquarters of SINTRAPICHICHI if its members do not stop work;
- employers are forcing workers to mobilize against the strike, as occurred with the march on the city of Cali on 24 September, obliging them to sign letters calling on the authorities to allow them to return to work;
- pressure is being exerted on subcontracted workers engaged in the stoppage by the leaders of SINTRACAÑAVALC, SINTRARIOPAILA Castilla SA, SINTRAPICHICHI CTC, FEGTRAVALLE CGT, SINTRAINCAUCA, SINTRAINDULCE Mayagüez and SINTRAPROVIDENCIA, who are publicly accusing SINALTRAINAL and the leaders of the CUT of being instigators, as occurred on the radio programme of the W, on which the President of SINTRAPICHICHI made these bold claims on 25 September 2008, as well as in the letter dated 23 September 2008, addressed to the Minister of Social Protection;

- the employers have also imposed a clearly discriminatory labour system on workers who are subcontracted through associated labour cooperatives, thereby violating the right to equality set out in the National Constitution and in international labour standards;

- the forces of order, in abuse of their authority, have violently and repeatedly repressed workers engaged in the stoppage, making use of tear gas grenades, rubber bullets and tanks equipped with 105 mm canons. These acts occurred in the Providencia and Incauca refineries on 15 September 2008, causing serious injuries: Willintong Obregón (fracture of the right arm and injury to the lower lip); Faustino Cuero (injuries to the scalp and bruising of various parts of the body); Bonifacio Sinisterra (impact of a blunt weapon on the left eye); and 30 workers with bruising on various parts of the body;

- the possessions of certain workers (bags, clothing, work tools and identity documents) were damaged in the Providencia refinery on 15 September 2008;

- the workers in the Central Tumaco refinery were besieged without food on 15, 16 and 17 September 2008;

- on 17 September, at approximately 11.45 p.m., certain Atlas security personnel broke the security bars of the Providencia refinery and entered the plant;

- since 23 September 2008, in the refineries the workers are being scared by announcements that the army and the police will use force to dislodge them;

- on 24 September 2008, in the Central Castilla refinery, at approximately 11.50 a.m., a police captain and two SIJIN officers in civilian clothes requested the names of the SINALTRAINAL leaders José Onofre Esquivel, Jairo Paz and Alberto Ayala, required them to show their identity cards and attempted to attack their tents using their official vehicles;

- on 25 September 2008 in the Central Tumaco and Providencia refineries, among others, the police once again repressed the workers engaged in the stoppage and removed them from where they were, taking control of the entrance to the refineries. On the same day, in the early hours, the army and the police attacked the workers, leaving two injured, Franklin Murillo and Rubén Dario Cordoba, and blocked the thoroughfare; and

- thirteen workers from the Mayagüez refinery were dismissed after participating in a meeting held in the town of Palmira and were informed orally that their dismissal was a reprisal for participation in meetings and events organized by the workers' movement.

B. The Government's reply

636. In its communications of 10 February and 12 May 2009, the Government considers that the union has not provided evidence in support of its accusations, which give sufficient grounds to consider the complaint inadmissible.

637. First, with regard to the allegations relating to human rights, the Government calls for them to be transferred to Case No. 1787.

638. According to the Government, in the present case SINALTRAINAL confines itself to making a series of statements without providing the necessary evidence so that the

Committee has sufficient information available to be able to examine the substance of the matter and, before making any recommendations, calls on the Committee to request the complainant to provide the corresponding evidence, without which it should refrain from examining the case.

639. The Government indicates that the alleged acts of harassment have not been reported to the competent authorities. In this regard, the Government emphasizes that the State of Colombia has supervisory mechanisms, the principal function of which is to monitor the official conduct of those in public functions through appropriate investigations and the imposition of the respective penalties in accordance with the law of the land. Nevertheless, the Government does not consider that there is any harassment when the authorities ask citizens their names and for their identity documents, particularly when the authority making the request is fully identified.

640. With regard to the conduct of the forces of order in relation to an armed stoppage, the Government considers that the action that they took was in accordance with the indications of the Committee, under the terms of which, *"violence resulting from inter-union rivalry might constitute an attempt to impede the free exercise of trade union rights. If this were the case and if the acts in question were sufficiently serious, it appears that the intervention of the authorities, in particular the police, would be called for in order to provide adequate protection of those rights. The question of infringement of trade union rights by the government would only arise to the extent that it may have acted improperly with regard to the alleged violence"* [see *Digest of decisions and principles of the Freedom of Association Committee*, fifth edition, 2006, para. 1125].

641. The Government indicates that in the present case the enterprise-level unions reported at the appropriate time the acts of intimidation, threats and aggression against them for not joining the blockade. The purpose of the police interventions was to ensure the safety of persons who were not participating in the blockade, including trade union members and leaders from enterprise-level unions and employees of the refineries. The reaction to the police action was the attack by those responsible for the blockade, which resulted in certain persons suffering injuries, including members of the forces of order. The Government asserts that it was an "armed stoppage" and that the authorities maintained a clearly pacific attitude, despite the fact that the participants were armed.

642. The Government emphasizes that the stoppage was carried out by cane cutters, who had their machetes (tools specially designed for cane cutting), which they generally use in their work. They had them with them during the blockade, when it could not be said, in view of the circumstances, that they were required for their work, particularly since they were blockading the work: they showed them in a threatening manner, which leads to the conclusion that it was not a legitimate trade union activity as it automatically became an armed stoppage.

643. It is the Government's view that had SINALTRAINAL ordered the cane cutters not to carry their work tools (machetes) during the stoppage, they would have obeyed such an order. There is no evidence that such an order was issued. According to the information provided by the refineries, several workers who had to go into the enterprise, as they live in housing supplied by the company, were seized by cane cutters bearing these arms. The Committee has outlined various principles in this respect which show that such action is not protected by ILO instruments: "*The Committee has considered legitimate a legal provision that prohibited pickets from disturbing public order and threatening workers who continued work*" [see *Digest*, op. cit., 2006, para. 650]. The legitimacy of such action lies in the fact that threats of this type are in violation of ILO Conventions on freedom of association, the right to organize and collective bargaining.

644. With regard to the allegation that "employers in the sugar industry, represented by ASOCAÑA", refused "to negotiate the list of claims submitted ... by SINALTRAINAL, SINALCORTEROS and the Single Confederation of Workers of Colombia (CUT)", the Government observes that, according to the communications sent by the sugar refineries, in no event, in their capacity as affiliates, have they entrusted ASOCAÑA with the function of engaging in collective bargaining on their behalf, as they reserve that function for themselves as enterprises. In practice, negotiations are at present being held between one of the refineries and the union. The Government attaches copies of a number of collective agreements that are in force between sugar refineries and unions.

645. The Government adds that ASOCAÑA is a private non-profit-making association established on 12 February 1959. Its function is to promote, maintain and improve the conditions required by private enterprises in the sugar sector, develop plans for their improvement and development, and promote the spirit of solidarity, union and concord between affiliates and enterprises in the sector. Legally and according to its statutes the structure of ASOCAÑA corresponds to that of a civil non-profit-making association gathering together persons, associations and sugar enterprises with a view to promoting the development and improvement of conditions in the sugar sector, but without legal representation in the activities and business of individual members. ASOCAÑA does not intervene or interfere in commercial activities or labour relations, or in any of the business activities of any of its members. Nor does it have or has it ever had throughout its history the capacity to represent its members in any type of collective bargaining under the terms of the legislation that is in force. Accordingly, the role of ASOCAÑA in the sugar sector consists of examining prospective scenarios, designing policies and planning strategies for the economic development of enterprises in the sugar sector. For this reason, ASOCAÑA has no capacity or competence to negotiate agreements, intervene in or deal with civil, commercial, labour or administrative matters on behalf of its members, nor does it exercise authority over member enterprises or individuals, or is empowered to enter into commitments on behalf of its members in such matters. A reading of its statutes shows that at no time have its members granted it the capacity to represent them in the negotiation of lists of claims presented by workers' organizations, of whatever type or level. ASOCAÑA has no capacity to enter into commitments on behalf of its members in labour, administrative or contractual matters, etc. This was the wish of the association's member refineries, as they indicate in the comments that they have provided to the ILO in relation to the present complaint.

646. The Government notes that, according to ASOCAÑA, at the present time there is no administrative labour investigation into any refinery concerning alleged violations of the right to organize or freedom of association, according to information provided by the labour inspector of Palmira, Valle.

647. The Government adds that the acts alleged by SINALTRAINAL in relation to the refusal to bargain are unfounded as there are unions in all the sugar refineries, and collective labour agreements are in force with all of them. Relations with unions and union leaders are optimal in all cases. In its communication dated 12 May 2009, the Government indicated that in the case of each of the refineries affected by the blockage, the parties reached a satisfactory agreement and the points giving rise to the conflict were resolved. The Government communicated a copy of one of the agreements and added that, currently, relations are regularized between the refineries and the cooperative of sugar cane cutters.

648. With regard to the refusal of the President of the Republic to enter into dialogue with the cane cutters, the allegation is vague, as the union does not provide even the slightest proof. The complainants disregard the constant willingness of the national Government to engage in dialogue, as expressed on the various occasions that the Minister of Social Protection

held meetings to seek solutions to the blockade. However, it is for the complainants to specify the allegations and to provide supporting evidence.

649. In relation to the allegations that the Minister of Social Protection held meetings in the city of Cali on 23 September with employers in the sugar sector and the forces of order with a view to dislodging the striking workers, the Government indicates that the cane cutters were never dislodged by the forces of order.

650. The Government denies the allegations that the Minister described the dispute as "an illegal act" and recalls that it is for the courts, and not the Government, to declare strikes illegal. The respective law has already entered into force and it is not therefore the role of the Minister to declare a strike unlawful, which is the responsibility of the courts. The Government adds that neither the Government nor the employers in the sugar sector have sought such a ruling from the courts.

651. With regard to the allegations that the Minister described the dispute as a movement promoted by "dark and subversive forces", as a means of indicating, or as claimed in the complaint, "in allusion to the presence of unions affiliated to the Single Confederation of Workers of Colombia (CUT), parliamentarians and social organizations", the Government says that the Minister at no time described or intimated that the CUT was a dark or subversive force. What the Minister called on the authorities to do was to investigate whether in practice subversive elements were involved in the organization of the stoppage. This statement and request are not in any way in violation of the content and principles derived from ILO Conventions Nos 87 and 98. Nor did they result in any act against workers, parliamentarians, social organizations or members and leaders of the CUT that were in any way related to the blockade.

652. The Government maintains that the blockade was a case of direct action. It was a total violation of international standards relating to work stoppages and peaceful protest action by workers. The unions and workers' federations denounced the violation of human rights, labour rights, education, health and housing. The cane cutters who participated in the blockade prevented thousands of workers who lived and depended on the refineries from having access to their work, for which purpose they did not hesitate to threaten them and intimidate them with their machetes.

653. These acts and certain threats to trade union leaders were refuted and reported to the Office of the Ombudsperson, the Office of Public Prosecutor and the Representative Office of the International labour Organization in Bogotá. The Government attaches the relevant documents as evidence for the ILO Committee on Freedom of Association, in particular in its communication of 12 May 2008 in which the Government refers to legal rulings against six cane cutters.

654. With regard to the threats and alleged acts of violence against the leaders of the blockade, ASOCAÑA sought information from the Local Directorate of Public Prosecutors of Valle del Cauca and found 19 penal denunciations, all brought by refineries, workers in refineries, union leaders and contracted workers, denouncing the blockade and the unlawful coercion to which workers are subjected, as well as threats against the unions in the refineries and other acts in violation of the Penal Code of Colombia. None of the acts or situations reported in SINALTRAINAL's complaint were found.

Form	Source	Date	Violation to be investigated	Against whom
Oral	Pichichi cane cutter	19 September 2008	Subversion, conspiracy to commit offences, sabotage, threats	Alexander López, Juan Pablo Ochoa, Alberto Bejarano and others (over 16 persons)
Written	Riopaila-Castilla	19 September 2008	Disruption of the occupancy of premises, disruption of collective transport services, and of freedom of work	Pending identification
Written	Official	1 October 2008	Subversion, conspiracy to commit offences, sabotage	Alexander López, Juan Pablo Ochoa, Alberto Bejarano and others
Written	Mayagüez	1 October 2008	Violation of the right to work, unlawful coercion, damage to property	Luis Aguilar and others
Written	Pichichi	29 September 2008	Violation of the freedom to work, unlawful coercion, damage to property	Ariel Díaz, Javier Correa, Ramón Palacios, Omar Cedano and others
Written	Manuelita	29 September 2008	Violation of the right to work	Ernesto Afranio Cuaspud, Abel Oviedo, José Libardo Encizo
Oral	Central Tumaco	15 September 2008	Violation of the freedom to work, unlawful coercion	Carlos Darwin Suárez, José Adolfo Vallecilla and others
Written	Holmes Velasco Meneses – Cooperativa Fuerza y Futuro	25 September 2008	Violation of the right to work – death threats	Porfirio Granja, José Ovildo Caicedo and others
Written	Jairo Antonio Saavedra – Manuelita refinery union	26 September 2008	Violation of the right to work and threats	Pending identification
Written	Jaime Suárez González – Mayagüez union	29 September 2008	Violation of the right to work and threats	Pending identification
Written	Fabio Popo Montenegro and others – Cooperativa Fuerza y Progreso	29 September 2008	Violation of the right to work and threats	Alexander Pérez, Luis Armando Ruales and Jonson Torres
Written	Diego Díaz Alzate – Mayagüez union	29 September 2008	Violation of the right to work and personal injury	Pending identification
Written	Leonel Idrobo – Driver of a bus for contracted workers	29 September 2008	Violation of the right to work and threats	Pending identification
Written	Cauca refinery	2 October 2008	Violation of the freedom to work, unlawful coercion, damage to property and other offences	Against unspecified persons
Written	Providencia refinery	2 October 2008	Violation of the freedom to work, unlawful coercion, damage to property and other offences	Against unspecified persons
Written	María Luisa refinery	9 October 2008	Violation of the freedom to work and other offences	Against unspecified persons
Written	Manuelita SA	23 October 2008	Unlawful coercion	Ariel Díaz and others
Written	Central Tumaco	30 October 2008	Violation of the privacy of homes	Baldim Máximo Bolonia
Written	La Cabaña contracted worker	30 October 2008	Terrorism and unlawful coercion	Against unspecified persons

Source: Local Directorate of Public Prosecutors of Valle del Cauca.

655. With reference to the information provided in SINALTRAINAL's complaint concerning the abuse of force by the police and the army, the Government describes the situation reported by the national police on the premises of the Central Tumaco SA and Providencia SA refineries. The police indicate that on 25 September 2008 they entered these two sugar refineries to investigate intelligence information concerning the presence of explosives in the area. When the police arrived they approached the persons blocking the access to the refineries and requested them to withdraw so that they could undertake an inspection. The demonstrators became furious and attacked the police with explosives, incendiary devices and stones, which gave rise to a confrontation. Three police officers and five cane cutters were injured as a result. The Office of the Public Prosecutor launched an investigation into the violations of the law that had occurred in the context of this situation.

656. Moreover, the report of the Office of the Ombudsperson (attached by the Government) makes it totally clear that the presence of the forces of order in the blockaded refineries was completely peaceful, with a view to safeguarding rights and ensuring that no action was taken in breach of the peace, property and human rights. There is no report by the above Office referring to a hostile attitude or aggression by the representatives of the forces of order on the sites of the blockade.

657. The Government indicates that the recent blockade (stoppage) and the present complaint can be explained by an inter-union dispute. There are first-level or enterprise-level unions in the refineries. The blockade or stoppage that occurred was organized by SINALTRAINAL, a branch-level union affiliated to the CUT. The Government refers to ASOCAÑA's comments, according to which SINALTRAINAL considers that enterprise-level unions should be replaced by industry-level unions. This was the purpose behind the submission of the list of claims, in which the above enterprise-level unions played no role, and offers sufficient proof of the rivalry.

658. The Government adds that the Office of the Ombudsperson and the enterprise-level unions of the various refineries have submitted reports on the matter.

659. The reasons why a change in the trade union structure is being promoted further explain the conflict with certain enterprise-level unions, as is occurring in the present case with the refinery unions. The Government maintains that in practice a strategy is being proposed and developed for the replacement of enterprise-level unions by industry-level unions, as indicated in one of the SINALTRAINAL documents, on which the previous paragraphs are based. In this respect, the stoppage, or in practice "blockade", in certain refineries was clearly undertaken for this purpose. It details, among other acts, the intimidation and threats against the leaders of enterprise-level unions, which were duly reported to the national authorities and the ILO representative in Colombia. The Government therefore believes that the situation does not involve a conflict between the Government and the unions, but is the result of a conflict within the trade union movement, and that the parties involved are solely responsible for resolving it.

660. In the view of the Government, SINALTRAINAL's description of the Valle del Cauca region as a poor and violent area with deplorable social conditions, in addition to being untrue, misrepresents the true situation of the people in the region. Sugar refineries have a long tradition in the development of the region and the country. They are not foreign companies, appearing out of nowhere or with obscure links to foreign persons or capital. It was at the end of the last century that the sugar industry was established in Valle del Cauca. The enterprises in the sector are reputed throughout the country for their serious and moral approach and the quality of life to which they have given rise in one of the most prosperous departments of the country, largely due to the sugar industry, which accounts for 11 per cent of the GDP of Colombia.

661. With regard to the alleged use of associated labour cooperatives in sugar refineries by the Government and employers in the sector to make work more precarious, the Government describes the efforts made to prevent this from happening and to ensure that this lawful form of relationship with the staff is effective in generating development and investment. A series of measures were adopted for this purpose in Act No. 1233 of 2008, including the obligation for the cooperatives to pay parafiscal contributions. The objective of the Act is to extend social protection to the members of the cooperatives, and to ensure that they benefit from family allowance funds and the SENA.

662. Two minimum and inalienable rights have been established for the members of associated labour cooperatives:

- they are entitled to receive ordinary monthly compensation that may not in any event be lower than the applicable monthly minimum wage; and

- protection for young workers, taking into account permitted types of work and the minimum age for admission to work, and maternity protection (prohibition of dismissal, maternity leave and other social security health benefits).

663. The Act provides that associated labour cooperatives shall be responsible for the process of registration and the payment of their members' contributions to the overall social security system (health, pensions and occupational risks).

664. The above Act prohibits the provision of employment services by associated labour cooperatives. Section 8 of the Act is particularly relevant, as it provides that ILO principles and provisions respecting decent work shall be applicable to associated labour cooperatives. The Government provides the Committee with details on the situation of associated labour cooperatives, in accordance with the information provided by the refineries. There are currently 102 associated labour cooperatives, which provide a source of autonomous and independent labour, and these entities, as employers, are responsible for social security procedures and contributions and in respect of social insurance bodies. In conformity with their social responsibility, the refineries ensure that the cooperatives with which they conclude contracts comply with the labour rights of their members.

665. Since the adoption of Act No. 1151 of 2007, associated labour cooperatives have been able to be affiliated to family allowance funds and to obtain all the benefits that they provide, including family allowances. Nevertheless, in the sugar sector, even before the adoption of the Act, many associated labour cooperatives were affiliated and contributed to family allowance funds.

666. This system of affiliation to family allowance funds continues and allows the cooperatives to conclude agreements and develop programmes for the provision of housing and training to their members.

667. During the month of May 2008, under the coordination of the Ministry of Social Protection, ASOCAÑA hired an international auditor to undertake an audit of the associated labour cooperatives providing services in sugar cane harvesting. The contract was concluded with the international firm Deloitte & Touche, with its headquarters in New York, and which is present in 150 countries. Among other reasons, the audit was entrusted to this company taking into account the fact that its work is accepted and recognized for the submission of World Bank and Inter-American Development Bank projects. The Government attaches copies of the respective reports.

668. According to the data compiled by the audit, which evaluated the operation and organization of the cooperatives during the course of 2007, they made full contributions to

the social security system and were in compliance with all the labour-related obligations established by law during the audit period. The situation of the cooperatives in relation to labour and social rights may be summarized as follows:

- The audit found that all associated labour cooperatives are in compliance with the fundamental Conventions of the International Labour Organization (ILO) applicable to the work carried out by their members. The audit verified compliance with the Minimum Age Convention, 1973 (No. 138), the Worst Forms of Child Labour Convention, 1999 (No. 182), the Abolition of Forced Labour Convention, 1957 (No. 105), the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

- It also verified compliance with the Promotion of Cooperatives Recommendation, 2002 (No. 193), and particularly with the principles and guidelines that have to be adopted as fundamental cooperative values, such as: voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; cooperation among cooperatives; and concern for community.

- Comprehensive social security: all the associated labour cooperatives which provide services in sugar cane cutting are affiliated to the comprehensive social security system, paying contributions to health, pensions and occupational risks schemes. It was also found that contribution payments to the comprehensive social security system are made in a precise and timely manner (source: audit of associated labour cooperatives, Deloitte, 2008).

- Types of work and the working day. The working day for cane cutting begins between 6.30 and 7.00 a.m., and finishes between 3.30 and 4.00 p.m., with breaks of two hours to eat, rest and organize the work. On average, 7.8 hours are worked in a day. All cane cutters have access to transport, which picks them up near their homes and takes them back again when the working day has finished.

C. The Committee's conclusions

669. *The Committee observes that in the present case the complainant organization, SINALTRAINAL, alleges that the public authorities violently repressed a work stoppage in sugar refineries which began on 15 September 2008 with the participation of 19,000 workers subcontracted through associated labour cooperatives. Certain workers were injured during this repression and their belongings were destroyed. According to the allegations, the work stoppage was undertaken because of the refusal of the sugar refineries and of ASOCAÑA, their association, to engage in collective bargaining with the union. The Committee notes that, according to SINALTRAINAL, the Government and the employers considered the collective dispute to be a political matter, rather than a labour dispute. It also alleges that the army and the police remained inside and outside the refineries, that snipers were placed in the plant, that the employers prevented certain members of the cooperatives from working and engaged in disinformation with a view to creating divisions among them, exerting pressure on certain workers to mobilize them against the strike; various workers were threatened and 13 workers in the Mayagüez refinery were dismissed after participating in the workers' movement. Certain workers are accused of having committed acts of violence.*

670. *In this respect, the Committee notes that the Government calls for issues relating to human rights to be transferred to Case No. 1787, which is under examination by the Committee.*

671. *The Committee further notes that the Government rebuts the allegations that are made and indicates that the complainant organization has not provided evidence for them, with the result that there is not sufficient information available to examine them in depth. Moreover, according to the Government, there is no record of SINALTRAINAL denouncing the acts of violence that it alleges it suffered.*

672. *With regard to the facts alleged by SINALTRAINAL, the Committee notes the Government's indication that the work stoppage was armed, as the workers participated in it with their machetes (which are their work tools), despite the fact that they did not require them at that time for their work. The Committee notes that, according to the Government, the action taken by the forces of order was in response to the acts of violence by workers engaged in the stoppage who were blocking entry to the refineries; that the workers engaged in the stoppage were not dislodged at any time; that only one of the refineries was entered in response to a report concerning the presence of explosives, which gave rise to a violent reaction by the workers who were blocking the entrance, resulting in injuries to some of them and also to some police officers. The Committee notes the Government's indication that the report of the Office of the Ombudsperson, who was present during these events, indicates the peaceful intervention of the forces of order and that the Office of the Public Prosecutor has launched an investigation.*

673. *The Committee further notes that, according to the Government, certain workers and enterprise-level unions that were not in agreement with the stoppage were intimidated and threatened and that they were prevented from entering the workplace, and in some cases their homes, located within the refineries. The Committee notes that various workers and unions reported 19 offences by workers engaged in the stoppage to the Office of the Public Prosecutor and the Office of the Ombudsperson in relation to these events.*

674. *The Committee notes that, according to the Government, neither the public authorities nor the employers called for the stoppage to be declared unlawful. The Committee notes that the Minister of Labour nevertheless requested an investigation to determine whether there were subversive elements among the workers engaged in the stoppage.*

675. *The Committee finds that there is a contradiction on the substance of the case between the allegations of the complainant organization and the Government's reply. On the one hand, the complainant organization refers to a stoppage that was repressed with violence by the forces of order, particularly on 25 September 2008, when they entered the premises of two refineries, resulting in injuries to several workers, that the plants were militarized and that the refineries incited workers to mobilize against the stoppage. On the other hand, the Government indicates that: (1) the stoppage was armed and consisted of a blockade of the refineries; (2) workers and unions that were not in agreement with the stoppage were intimidated and threatened and were prevented from entering the refineries; (3) the workers who participated in the stoppage reacted violently against the forces of order present on 25 September in response to a report concerning the presence of explosives in two refineries: (4) several workers and some police officers were injured as a result; and (5) the authorities called for an investigation to determine whether subversive elements were participating in the blockade.*

676. *The Committee observes that, according to the reports of the inspectorate and of the Office of the Ombudsperson, a copy of which was attached by the Government, the workers blocked the entry to the refineries without letting through workers who were not participating in the stoppage. The Committee further notes that the Office of the Public Prosecutor has launched an investigation into the acts of violence that occurred and that, in this context, legal rulings were issued against six cane cutters (Cedano García, Bedoya Muñoz, Valencia Llanor, Ochoa, Bejarano Schess and Chacon Lennis) for aggravated violence against police officers, conspiracy to commit crimes and sabotage. Under these*

conditions, recalling that the sole fact of taking part in picketing and firmly but peacefully inciting other workers to keep away from their workplace cannot be considered unlawful, but that the case is different when picketing is accompanied by violence or coercion of non-strikers and that the principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike [see ***Digest****, op. cit., paras 651 and 667], the Committee requests the Government to keep it informed of pending legal proceedings on this matter.*

677. *With regard to the allegations that the sugar refineries and ASOCAÑA, the association representing the refineries, refused to negotiate the list of claims submitted by SINALTRAINAL as the representative of subcontracted sugar cane cutters, which gave rise to the stoppage by subcontracted workers and its consequences, as examined above, the Committee notes first that the Government, refers to the information provided by the refineries and by ASOCAÑA, which indicates that the latter does not have the capacity to engage in collective bargaining, and that the refineries negotiate individually with the unions. The Government adds that collective agreements are in force in all the refineries.*

678. *In relation to the refusal to negotiate with SINALTRAINAL, the Committee observes that, as indicated in the report on the situation in the sugar sector resulting from the stoppage by the cane cutters, prepared by the Office of the Ombudsperson, a copy of which was attached by the Government, the cane cutters are contracted through 102 associated labour cooperatives, which conclude commercial contracts with the refineries. According to the report, the management of the refineries do not accept work stoppages and indicate that the workers of the cooperatives are not their direct employees, but provide services to refineries through the cooperatives. The Committee notes that in its communication dated 12 May 2009, the Government indicates that in the case of each of the refineries affected by the blockage, the parties reached a satisfactory agreement and the points giving rise to the conflict were resolved. The Government communicated a copy of one of the agreements and added that, currently, relations are regularized between the refineries and the cooperatives of sugar cane cutters.*

679. *In this respect, the Committee has considered that, mindful of the particular characteristics of the cooperative movement, associated labour cooperatives (whose members are their own bosses) cannot be considered, in law or in fact, as "workers' organizations" within the meaning of Convention No. 87, that is organizations that have as their objective to promote and defend workers' interests, and that workers associated in cooperatives should have the right to establish and join organizations of their own choosing, as the concept of worker includes not only salaried workers, but also independent or autonomous workers [see* ***Digest****,* op. cit., para. 262]. *The Committee considers that, as a logical consequence of this right to organize, the trade union organizations that workers of cooperatives join should be guaranteed the right to engage in collective bargaining on their behalf with a view to defending and promoting their interests. In these circumstances, the Committee requests the Government to ensure that SINALTRAINAL is able to bargain collectively at least on behalf of its members and asks the Government to keep it informed on this matter.*

The Committee's recommendations

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

(a) With regard to the allegations made by SINALTRAINAL relating to the violent repression of a work stoppage by cane cutters starting on 15 September 2008 which resulted in certain workers and members of the

forces of order being injured and which, according to the Government, involved the blockade of the installations of various refineries, the Committee notes, in the context of the investigation initiated by the Office of the Public Prosecutor, legal rulings were issued against six cane cutters for aggravated violence against police officers, conspiracy to commit crimes and sabotage, and requests the Government to keep it informed of the pending legal proceedings in this matter.

(b) With reference to the allegations that the sugar refineries refused to negotiate the list of claims presented by SINALTRAINAL representing the subcontracted cane cutters, the Committee requests the Government to ensure that SINALTRAINAL is able to engage in collective bargaining at least on behalf of its members and asks the Government to keep it informed in this respect.

CASE NO. 2633

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

Complaint against the Government of Côte d'Ivoire presented by the Confederation of Free Trade Unions of Côte d'Ivoire (DIGNITE)

Allegations: The complainant alleges acts of anti-union discrimination and violation of the right to collective bargaining in several Ivorian enterprises, as well as the failure of the authorities to ensure respect for freedom of association and social dialogue

681. The complaint is contained in communications from the Confederation of Free Trade Unions of Côte d'Ivoire (DIGNITE) dated 24 January and 13 March 2008.

682. The Government sent its observations in a communication dated 26 March 2009.

683. Côte d'Ivoire 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

684. In its communications dated 24 January and 13 March 2008, the DIGNITE Confederation alleges acts of anti-union discrimination and violation of the right to collective bargaining in several Ivorian enterprises, as well as the failure of the authorities to ensure respect for freedom of association and social dialogue.

The Operating Company for the Vridi-Abidjan Container Terminal (SETV)

685. The complainant explains that in March 2004, a concession agreement creating and granting operating rights to the Operating Company for the Vridi-Abidjan Container Terminal (SETV) was concluded between the State of Côte d'Ivoire and the Bolloré Group. Under section 5-4 of the Agreement the wages of the workers of various enterprises were to be brought into line and increased substantially three months after the new company was created. However, no effect has been given to this clause.

686. Furthermore, as soon as the company had been created, it was necessary to find a common insurance company. To that end, the workers negotiated and obtained medical coverage from SONARCI (an insurance company). A management committee chaired by the workers was set up to serve as the liaison point between the insurance company and the workers. However, according to the complainant, the company's managers, who were opposed to the insurance company chosen by the workers, imposed two of their colleagues on the management committee, which could meet only with the authorization of those persons.

687. Faced with the workers' desire to see the management committee function in complete freedom, the company's management dissolved the committee and threatened to dismiss its chairman. None of the appeals lodged have resulted in any action being taken. Furthermore, the management then confiscated the cheques intended for the insurance company before terminating the contract with the insurance company concerned against the will of the insured parties. The workers suddenly lost all medical coverage.

688. The workers made it known to the management by means of a petition that they were satisfied with the benefits being provided by SONARCI and definitely wished to continue the contract with the insurance company. Faced with the management's refusal to reconsider its decision, a notice of strike action was given but then withdrawn at the request of the DIGNITE Confederation, which gave preference to dialogue with the company's management. The management not only refused to hold any discussions but also requested and obtained authorization from the labour inspectorate to dismiss the union's General Secretary, Ahonon Anasta, for defiance.

689. Faced with the unfulfilled promises of a wage increase, the lack of medical coverage, the incomprehensible dismissal of the union's General Secretary and above all, the refusal of the company's management to consent to any form of dialogue, the workers observed a work stoppage on 3 March 2006. At the start of the afternoon, at around 2.30 p.m., the workers resumed work at the request of the DIGNITE Confederation, which considered that since the port was the hub of the national economy, it was inconceivable to cripple it by a strike.

690. Having been informed of the situation, the Minister for the Public Service and Employment dispatched the Director of the Abidjan Labour Inspectorate to the scene to discuss the matter with the company's management. However, once again, the management categorically refused to engage in any discussion.

691. On the evening of 3 March 2006, the company appointed a bailiff to draw up the list of workers who had participated in the strike. The workers in turn decided to appoint a bailiff to record the actual resumption of work and to produce an accurate report of the operation of the security doors. However, against all expectations, the bailiff appointed by the workers was bluntly turned away by the port gendarmerie, who had been called in for that purpose by the company's management. On the authorization of the labour inspectorate, all members of the union's executive committee, the staff representatives and a number of

other workers were dismissed. In total, 26 workers were thrown out into the street. Since these dismissals, the management has barricaded itself behind its authority, refusing to engage in any discussion with workers' representatives or the labour administration.

692. The complainant indicates that, following these dismissals, the DIGNITE Confederation referred the matter to the labour court. In November 2007, the court ruled partly in favour of certain workers while the cases of other workers were dismissed. The appeal cases are still pending.

UNIWAX

693. The complainant alleges that on 16 November 2005, the company's management dismissed all the members of the trade union executive in the context of staff cutbacks. The union was in negotiations with the company concerning the terms of a temporary lay-off. The complainant adds that this is the third time since 2000 that the union executive has seen the company make dismissals. According to the complainant, the reason behind the company's dismissal of the trade union members is its desire to smother any industrial action and any possibility of dialogue or even rallying together within the company.

THANRY GUILGLO

694. The complainant alleges that the enterprise dismissed Atse Yapi, a staff representative, on the authorization of the labour inspector but without the preliminary investigation provided for by law. Atse Yapi filed a complaint with the General Labour Directorate, which revoked the decision of the labour inspector. The enterprise then lodged an appeal on 10 October 2005 with the Minister for the Public Service and Employment.

695. The decision of the Minister for the Public Service and Employment, issued on 14 August 2006 and sent by the complainant, confirms the decision of the General Labour Directorate and orders the worker's reinstatement. In his decision, the Minister notes that no prior investigation was carried out and that the reason cited by the employer for the dismissal hides the employer's true intentions. Furthermore, he notes that cutting a single post would not solve the economic difficulties which the employer claims to be facing. The complainant indicates that despite this decision, the enterprise refused to reinstate Atse Yapi.

National Social Insurance Fund (CNPS)

696. The complainant alleges that the enterprise dismissed Krigbo Seiko, the General Secretary of the Independent Union of Employees of the CNPS (SYNTRA-CNPS) as a result of his trade union activities. According to the complainant, the National Social Insurance Fund (CNPS) management did not appreciate the existence of the trade union affiliated to the DIGNITE Confederation alongside another trade union, the SYNA-CNPS, led by the Human Resources Director of the CNPS. The enterprise refused to reinstate Krigbo Seiko despite the decision issued by the Director-General of Labour on 2 October 2007 (attached to the complaint) concluding that the dismissal represented a manoeuvre by the enterprise to interfere with the trade union activities of Krigbo Seiko and ordering his reinstatement.

697. The complainant also sends a communication dated 2 October 2007, from the CNPS management indicating its refusal to reinstate Krigbo Seiko and noting that the enterprise has lodged an appeal with the competent administrative authority against the decision of the Director-General of Labour.

SITARAIL

698. According to the complainant, a number of members of the National Union of Railwaymen (FIESSOU) were the victim of anti-union discrimination following their demands for improved working and living conditions. In particular, the General Secretary of FIESSOU, Dogbo Lazare, and his entire executive committee were transferred to Burkina Faso, without their consent, which put their lives in danger. The complainant adds that, in addition to being transferred, Dogbo Lazare was also demoted from his post as accountant to ordinary salesman. The complainant states that the transfers have had the effect of preventing the trade union from carrying out its activities properly. Furthermore, the complainant notes that these measures infringe section 85(2) of the inter-occupational collective agreement, under which no staff representative may be transferred without his consent.

Fund for the Development and Promotion of the Activities of Coffee and Cocoa Producers (FDPCC)

699. The complainant explains that, in order to improve the management of the coffee and cocoa industry, the Government promoted the creation of entities responsible for its management, such as the Fund for the Development and Promotion of the Activities of Coffee and Cocoa Producers (FDPCC). To guarantee their occupational activity and defend their interests better, the workers involved in these various entities created the Union of Employees of the Management Bodies for the Coffee/Cocoa Industry (SYNASGFICC), led by its General Secretary, N'Goran Kouassi Augustin, an employee of the enterprise since July 2002.

700. The complainant alleges that, shortly after the creation of the SYNASGFICC, the union's General Secretary was demoted and, in violation of section 85(2) of the inter-occupational collective agreement, relocated against his will to a destination far from the trade union's base. Following his refusal to relocate to his new post, he was dismissed for abandoning his post, as indicated in the communication from the enterprise dated 21 September 2007, sent by the complainant.

BIP assistance

701. According to the complainant, the company's workers staged a strike following several refusals by the management to hold discussions with the trade union, which was demanding improved working and living conditions for its members. The national army intervened and around 30 workers, in particular trade unionists, were detained for 11 days. The complainant adds that the company's management ignored the calls from the competent administrative authorities, including from the Minister for the Public Service and Employment, to settle this dispute.

Bureau Veritas

702. The complainant alleges that Meledje Macaire, a staff representative from the Syntras-BV trade union, was transferred without his consent to a lower position by the company's management. He refused to comply with the decision without a written order and was dismissed on the authorization of the labour inspector. Meledje Macaire filed an appeal with the Director-General of Labour who, in a decision of 12 September 2007, revoked the decision of the labour inspector. The employer lodged an appeal with the Minister for the Public Service and Employment which was rejected in a decision of 7 December 2007. The complainant indicates that despite the Minister's decision, Meledje Macaire has not been reinstated.

B. The Government's reply

The Operating Company for the Vridi-Abidjan Container Terminal (SETV)

703. In a communication dated 26 March 2009, the Government states that the employer dismissed 26 of its employees, including 24 staff representatives, following a work stoppage carried out on 3 March 2006. It also states that the company's management refused to engage in any dialogue with the government representative sent by the Minister for the Public Service and Employment, who happened to be the Director of the Labour Inspectorate. The Government adds that both the workers and the complainant referred the matter to the labour courts. A ruling was handed down in favour of some workers while others had their cases dismissed. The workers and the complainant lodged an appeal which is currently pending. The Government considers that it is no longer competent to deal with this matter since the case now falls within the jurisdiction of the courts and it admits that it is powerless to interfere in judicial work. However, the Government undertakes to send the judge's ruling to the Committee.

UNIWAX

704. The Government notes that on 16 November 2005, the company requested authorization to dismiss the following workers for economic reasons: Zanhouo Tié François, Sika Yapo Christophe, Aman Bouadi, Ehouman Kouakou, Goze Nahounou Claude, Kouadio Ol Kouadio, Mamadou Keita, Asseman Koua Eugène, Gbagou Gouédan Hyacinthe, all staff representatives, and N'Depo Anon Aristide, a trade union representative. The Government notes that authorization was granted for the dismissal of Ehouman Kouakou, Aman Bouadi, Asseman Koua Eugène, Kouadio Ol Kouadio, Goze Nahounou Claude and Gbagou Gouédan Hyacinthe, but denied for Mamadou Keita, N'Depo Anon Aristide, Sika Yapo Christophe and Zanhouo Tié François.

705. The Government explains that, to ensure its survival, the company partially laid off the production and administrative staff by means of a 20 per cent reduction in working time. Despite these reforms, the company's financial situation did not improve. The employer therefore decided to implement a restructuring and took steps to dismiss some of its staff for economic reasons. For this reason, the employer requested authorization to dismiss the abovementioned workers.

706. In the context of the investigation required under the legislation of Côte d'Ivoire in the case of the dismissal of workers' representatives, the persons questioned recognized the company's difficult financial situation. However, according to the Government, certain criteria applied by the employer with regard to the dismissals had no link with the employment of the workers. Finally, seven of the 11 (sic) workers dismissed are members of the DIGNITE Confederation. For the Government, this proves that the company dismissed them because of their trade union membership. Furthermore, N'Depo Anon Aristide was replaced by Kouadio Ol Kouadio from the General Union of Workers of Côte d'Ivoire (UGTCI). By dismissing Zanhouo Tié François and recruiting three temporary workers to strengthen its workforce, the employer committed a further abuse. On the other hand, Sika Yapo Christophe had an industrial accident and his post was not cut.

707. Furthermore, the Government provides the following information concerning certain other trade union leaders or staff representatives:

- Koffi Julien, a trade union leader, informed his employer on 14 January 2005, that he would not comply with the decision to reduce his working time and salary by 20 per

cent. The Government explains that workers have the right to refuse a substantial revision of the terms of their contract in accordance with section 16 of the inter-occupational collective agreement. In this case, the employer is regarded as being responsible for a breach of contract. On 4 February 2005, the company requested authorization to record the worker's decision. The requested authorization was granted with payment of all compensation due to the worker for breach of contract.

- Kouame Kouame Kan, Yapi Michel and Ettien Koua Antoine, all trade union leaders, were laid off temporarily for a renewable period. On 24 December 2004, the company requested authorization for the dismissal of these three protected workers for economic reasons but this was denied due to its failure to complete the relevant formalities. The employer was supposed to reinstate these workers but, taking into account that a number of posts had been cut, it was impossible for it to do so immediately. The employer offered these workers other posts which were lower than their original posts but with no change in salary or grade. The workers refused. For that reason, the employer requested authorization for their dismissal. The Government explains that an employer may decide to transfer an employee to a lower position for operational reasons or to avoid unemployment provided that the employee retains the same salary and benefits as in his previous post. By refusing to agree to this transfer, the workers breached their respective employment contracts. Given that this change affected only minor conditions of employment, the employer was able to hold the workers responsible for the breach of contract. Despite this, the employer agreed to pay compensation for breach of contract. These dismissals cannot therefore be regarded as being anti-union in nature.

- Zea Léon Robert, a staff representative, informed the company that he would not agree to be laid off in a letter dated 14 March 2005. The company therefore requested authorization for his dismissal. The authorization was granted because Zea Léon Robert freely refused to be laid off temporarily and even asked the labour inspectorate to expedite its handling of the employer's request so that he would be liberated as soon as possible.

- Bekounoudjo Aka Henri, a staff representative, refused to comply with the extension of his temporary unemployment in a letter dated 25 July 2005. The company therefore requested authorization for his dismissal on 26 July 2005. The authorization was granted since the person concerned had freely refused to be laid off temporarily and even asked the labour inspectorate to expedite the handling of the employer's request so that he would be liberated as soon as possible.

- Abouet Koua Georges, a staff representative, was dismissed for lack of discipline and respect towards the employer. The person concerned denied these allegations and explained that he had intervened at the request of the workers who wished to negotiate the reduction in their wages. According to the employer, the representative stormed into his office and spoke in a disrespectful manner. Due to the clash between two opposing positions, the labour inspector considered that collaboration between this worker and his employer would be difficult and granted the authorization requested with the payment of all compensation linked to the breach of contract.

THANRY GUILGLO

708. The Government indicates that Atse Yapi, a staff representative, was dismissed for economic reasons with the authorization of the labour inspectorate. The Government states that the Director-General of Labour first of all, followed by the Minister for the Public Service and Employment, revoked the decision of the labour inspector and demanded the reinstatement of the worker who had been wrongfully dismissed. They also demanded that

his rights be restored. The employer refused to comply. Faced with the employer's refusal to comply with the decision of the Minister for the Public Service and Employment, which is the highest administrative authority for labour, the Government notes that it can do nothing and suggests that the complainant refer the matter to the competent courts.

National Social Insurance Fund (CNPS)

709. The Government explains that Krigbo Seiko, the General Secretary of the Independent Union of Employees of the CNPS, was dismissed for two reasons: his refusal to abide by the assessment system in use within the enterprise (which consists of a preliminary interview with the superior and an appraisal), on the grounds that this system is random and does not taken into account realities on the job, and his refusal to relocate to Daloa. While revoking the labour inspector's decision to authorize the dismissal, the Director-General of Labour demanded, in accordance with the legislation in force, that the worker be reinstated and his associated rights restored. The employer refused. The Government considers itself to be powerless to deal with the employer's attitude and recommends that the complainant refer the matter to the courts.

SITARAIL

710. The Government indicates that on 28 September 2006, the company requested authorization from the labour inspectorate for the dismissal of Dagbo Lazare, a trade union representative. The company, which had been a victim of the crisis affecting the whole of Côte d'Ivoire, was obliged to cease its entire activities completely for more than one year. After its operations resumed, the company offered Dagbo Lazare a new position based in Ouangolodougou (Burkina Faso). He refused this promotion for reasons of personal safety and asked the company to find him another relocation post. He was then offered a second post in Niangoloko. This time, it was his position as trade union representative and his accounting training which were cited as reasons for again refusing this transfer. His refusal led to a deadlock. Considering the employee to be insubordinate, the company requested authorization for his dismissal. The labour inspectorate launched an investigation, during which it noted that each of the parties was ready and willing to agree to a negotiated breach of contract. Dagbo Lazare sent a letter to that effect to the labour inspectorate on 28 November 2006. The inspector therefore sought to reconcile the two parties based on the standards established under the regulations in force, and the two social partners opted for an amicable settlement of the dispute. After lengthy discussions and negotiations under the auspices of the labour inspector, the parties came to an agreement and reached a settlement. Since the parties clearly expressed their wish to terminate their relationship, the labour inspectorate merely took note of that wish.

Fund for the Development and Promotion of the Activities of Coffee and Cocoa Producers (FDPCC)

711. The Government indicates that it only became aware of this case after a notice of strike action was given to the labour inspectorate. The workers did not turn up for the conciliation proceedings convened by the inspector and the following day, they launched the work stoppage. Other dismissals were made by the employer following this strike, which it deemed to be illegal. The workers brought their cases before the competent courts.

BIP assistance

712. The Government explains that a strike was staged by electronic surveillance workers due to the employer's refusal to increase the hazard pay and company insurance contributions,

as agreed upon by the employer but not implemented. In response, the workers refused to work and confiscated the equipment, including vehicles. The employer immediately implemented a lockout. Following the labour inspector's call for negotiations, the company's management demanded the return of the vehicles and weapons as a condition for opening negotiations. The police intervened at the employer's request to ensure the protection of the company equipment. The company then paid the wages of those who had not participated in the strike. Following the collapse of the negotiations initiated by the General Secretary of the union for the security sectors, the strikers barricaded the entrance to the company on 26 March 2007.

713. The Government indicates that the company suspended the employment contracts of the workers who had participated in the strike from 19 February 2007. It was reported that new people would be recruited in place of these workers.

714. According to the Government, an investigation has confirmed that nine staff representatives were questioned and arrested following an investigation carried out by the Abidjan police authorities which was then referred to the public prosecutor. They were charged with the seizure of company property, violence and assault, forcible entry, verbal death threats, interfering with the freedom to work, kidnapping and theft. On 2 May 2007, the persons concerned were released. The company's director was asked to report to the labour inspectorate for the purposes of amicable conciliation on 9 August 2007, but did not attend. To date, no solution has been found to put an end to the suffering of these numerous workers who are without employment. The personal involvement of the Minister for the Public Service and Employment with the company, did not produce the expected results and the referral of the matter to the courts remains the only option available to the workers and the complainant.

Bureau Veritas

715. According to the Government, Meledje Macaire, a staff representative, was dismissed for refusing to comply with a mission ordered by his employer. The Minister for the Public Service and Employment ordered the employer to reinstate the worker without loss of rights. The Minister considered that the employer's order was not a mission but rather an outright transfer which had to comply with a number of rules which the employer had not observed. Despite the Minister's decision, the company has not reinstated Meledje Macaire. The Government recommends that the worker and the complainant refer the matter to the labour courts.

C. The Committee's conclusions

716. *The Committee notes that the complainant alleges acts of anti-union discrimination, in the form of transfers, demotions and dismissals, and violation of the right to collective bargaining in several Ivorian enterprises, as well as the failure of the authorities to ensure respect for freedom of association and social dialogue. The Committee notes in particular the following alleged acts of anti-union discrimination:*

- *SETV: 26 employees were dismissed following a notice of strike action (withdrawn at the request of the DIGNITE Confederation) and a work stoppage for several hours. Following these dismissals, the DIGNITE Confederation referred the matter to the Labour Court. In November 2007, the Court ruled partially in favour of certain workers while the cases of other workers were dismissed. The appealed cases are still pending.*

- *UNIWAX: several members of the union's executive were dismissed during negotiations with the company.*

- *THANRY GUILGLO: one staff representative was dismissed on the authorization of the labour inspector but without the preliminary investigation provided for by law. The enterprise lodged an appeal with the Minister for Public Service and Employment who confirmed the decision of the General Labour Directorate and ordered the worker's reinstatement. Despite this decision, the enterprise refused to reinstate the staff representative.*

- *CNPS: the general secretary of the SYNTRA-CNPS was dismissed. The enterprise refused to reinstate him despite the decision issued by the Director-General of Labour concluding that the dismissal represented a manoeuvre by the enterprise to interfere with the trade union activities of the worker concerned and ordering his reinstatement. The enterprise has lodged an appeal with the competent administrative authority against the decision of the Director-General of Labour.*

- *FDPCC: the union's general secretary was dismissed following his refusal to accept a demotion and transfer to a post located far from the union's base.*

- *Bureau Veritas: a staff representative was dismissed following his refusal to accept a transfer to a lower post. The Director-General of Labour revoked the decision of the labour inspector. The employer lodged an appeal with the Minister for Public Service and Employment. Despite the Minister's decision, the staff representative has not been reinstated.*

- *BIP assistance: refusal to bargain collectively and detention of workers by the national army following a strike.*

717. *The Committee notes the detailed reply from the Government. In particular, it notes that the Government confirms that the management of the SETV dismissed 26 of its employees including 24 staff representatives following a work stoppage carried out on 3 March 2006. It also states that the company's management refused to engage in any dialogue with the director of the labour inspectorate. The Government adds that both the workers and the complainant referred the matter to the labour courts. A ruling was handed down in favour of some workers while others had their cases dismissed. The workers and the complainant lodged an appeal which is currently pending. Moreover, the Government confirms that ten workers were dismissed from UNIWAX because of their trade union membership. The Government further refers to four cases of breach of contract with payment of all compensation due, two cases where the staff representative asked to be released and one case where a staff representative was dismissed for lack of discipline and lack of respect for the employer. In the latter case, due to the clash between two opposing positions, the labour inspector considered that collaboration between this worker and his employer would be difficult and granted the authorization requested with the payment of all compensation linked to the breach of contract. With regard to the THANRY GUILGLO, CNPS and Bureau Veritas, the Government confirms the allegations of the complainant organization and declares itself "powerless" to deal with the employers' attitude and recommends that the complainant refer the matters to the competent courts. With regard to the FDPCC, the Government indicates that the workers did not turn up for the conciliation proceedings convened by the inspector and the following day, they launched the work stoppage. Other dismissals were made by the employer following the strike which it deemed to be illegal. The workers brought their cases before the competent courts. Finally, the Government indicates that a number of workers have been dismissed by the BIP Assistance for having exercised the right to strike and that the personal involvement of the Minister for Public Service with the company did not produce the expected results and the*

referral of the matter to the courts remains the only option available to the workers and the complainant.

718. *The Committee notes the Government's overall confirmation that these dismissals, transfers and demotions took place and that in some instances they were illegal and/or anti-union in nature. The Committee also notes that, in some cases, the employers refused to reinstate the employee(s) concerned despite decisions to that effect by the competent authorities. In respect of some of these matters, the Government admits having little influence over the situation and defers to the national judiciary, recommending that the workers concerned and the complainant representing them refer the matter to the competent courts.*

719. *The Committee recalls that anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 769]. No person should be prejudiced in employment by reason of trade union membership or legitimate trade union activities, such as a strike. Protection against acts of anti-union discrimination should cover not only dismissal, but also any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker [see* ***Digest****, op. cit., para. 781]. Furthermore, the Committee considers that 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 considers 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. It further draws attention to the Workers' Representatives Convention, 1971 (No. 135), ratified by the Government, and Recommendation (No. 143), 1971, in which it is expressly established that workers' representatives in the undertaking shall 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 [see* ***Digest****, op. cit., paras 799 and 800].*

720. *Furthermore, the Committee emphasizes that the Government is responsible for preventing all acts of anti-union discrimination and that, if there is discrimination, the Government should take all necessary steps to eliminate it, irrespective of the methods normally used [see* ***Digest****, op. cit., paras 816 and 817]. The Committee requests the Government to take the necessary steps to ensure that, those trade union leaders and members who were dismissed because of their legitimate trade union activities and who have not concluded an agreement with the enterprise concerned terminating their respective employment contracts, are reinstated without loss of salary and to impose the relevant legal sanctions on the enterprises. In the event that the reinstatement of the trade union leaders and members would be impossible for objective and compelling reasons, the Committee requests the Government to ensure that the workers concerned are paid adequate compensation which would constitute a sufficiently dissuasive sanction for anti-union dismissals and requests it to keep it informed of any developments in this regard.*

721. *Noting that a number of cases of dismissal are in the process of being examined by the courts (dismissals which were made by the SETV, CNPS and FDPCC), the Committee requests the Government to keep it informed of the final rulings. While waiting for these cases to be examined, the Committee requests the Government to take the necessary steps to enable the trade union leaders and members concerned to be reinstated without loss of pay. In the event that the judicial authority finds, in a final ruling, that the reinstatement of*

the dismissed workers would be impossible, the Committee requests the Government to ensure that the workers concerned are paid adequate compensation which would constitute a sufficiently dissuasive sanction for anti-union dismissals and requests it to keep it informed in this regard.

722. *With regard to SITARAIL, the Committee notes that, according to the complainant, the General Secretary of FIESSOU, Dagbo Lazare and his entire executive committee, were transferred to Burkina Faso without their consent and in violation of the collective agreement. The Government confirms that, faced with a financial crisis, the company took the decision to change the place of work of Dagbo Lazare. The trade union leader refused to comply with this decision and chose instead to leave the company, which was confirmed by the labour inspector. The Committee notes the information provided by the Government that, following conciliation efforts led by the labour inspector, the parties reached a settlement.*

723. *The Committee further notes that the violations of trade union rights stem, to some degree, from the refusal by some companies to engage in dialogue. In particular, the complainant and the Government refer to the refusal of the SETV management to engage in any dialogue with the Director of the Labour Inspectorate, who was given responsibility by the Minister for the Public Service and Employment for finding a solution to the dispute between the management and the trade union; the refusal of the management of BIP Assistance to participate in the conciliation organized by the labour inspectorate; and the refusal of the employers to comply with the decisions of the competent labour authorities ordering the reinstatement of the workers' representatives illegally dismissed (THANRY GUILGLO, the CNPS and the Bureau Veritas). The Committee notes with regret that the Government declares itself incapable of ensuring respect for freedom of association and collective bargaining within some of the enterprises concerned. The Committee recalls that the ultimate responsibility for ensuring respect for the principles of freedom of association lies with the Government [see* ***Digest****, op. cit., para. 17]. The Committee urges the Government to take steps, in consultation with the social partners concerned, including through the adoption of legislative measures, to protect the right to organize by workers and their right to collective bargaining and to ensure comprehensive protection against anti-union discrimination in the future, providing for swift recourse to mechanisms that may impose sufficiently dissuasive sanctions for such acts. The Committee encourages the Government to seek technical assistance from the Office.*

724. *With regard to the alleged detention of 30 trade unionists for 11 days following a strike, the Committee notes that the Government indicates that the investigation carried out to examine these allegations noted that nine persons were questioned and arrested following an investigation carried out by the Abidjan police authorities which was then referred to the public prosecutor, and that they were charged with the seizure of company property, violence and assault, forcible entry, verbal death threats, interfering with the freedom to work, kidnapping and theft. According to the Government, the persons concerned were released on 2 May 2007. The Committee requests the Government and the complainant to indicate whether the trade unionists in question have been prosecuted and, if so, to provide a copy of the rulings handed down, or whether the charges initially brought against them have been dropped.*

The Committee's recommendations

725. ***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 ensure that those trade union leaders and members who were dismissed

because of their legitimate trade union activities, and who have not concluded an agreement with the enterprise concerned terminating their respective employment contracts, are reinstated without loss of salary and to impose the relevant legal sanctions on the enterprises. In the event that the reinstatement of the dismissed workers concerned would be impossible for objective and compelling reasons, the Committee requests the Government to ensure that the workers concerned are paid adequate compensation which would constitute a sufficiently dissuasive sanction against anti-union dismissals and requests it to keep it informed of any developments in this regard.

(b) The Committee requests the Government to keep it informed of the final rulings handed down by the courts in the cases of the trade union leaders and members. While waiting for these cases to be examined, the Committee requests the Government to take the necessary steps to ensure that the trade union leaders and members concerned are reinstated without any loss of salary. In the event that the judicial authority notes in a final ruling that the reinstatement of the dismissed workers would be impossible, the Committee requests the Government to ensure that the workers concerned are paid adequate compensation which is a sufficiently dissuasive sanction for anti-union dismissals and requests it to keep it informed in this regard.

(c) The Committee urges the Government to take steps, in consultation with the social partners concerned, including through the adoption of legislation, to protect the right to organize of workers and their right to collective bargaining and to ensure comprehensive protection against anti-union discrimination in the future, providing for swift recourse to mechanisms that may impose sufficiently dissuasive sanctions for such acts.

(d) The Committee encourages the Government to seek technical assistance from the Office.

(e) The Committee requests the Government and the complainants to indicate whether the trade unionists detained by the Abidjan police authorities have been brought before a competent court and, if so, to provide a copy of the rulings handed down, or whether the charges initially brought against them have been dropped.

CASE NO. 2684

INTERIM REPORT

Complaints against the Government of Ecuador presented by

- **the National Federation of Workers of the State Petroleum Enterprise of Ecuador (FETRAPEC)**
- **Public Services International (PSI)**
- **the Single Trade Union Organization of Health Ministry Workers (OSUNTRAMSA) and**
- **the Ecuadorian Confederation of Free Trade Union Organizations (CEOSL)**

Allegations: Legislation contrary to trade union independence and the right of collective bargaining; dismissals of trade unionists

726. The complaint is contained in communications from the National Federation of Workers of the State Petroleum Enterprise of Ecuador (FETRAPEC), Public Services International (PSI) and the Single Trade Union Organization of Health Ministry Workers (OSUNTRAMSA) dated, respectively, 20 November 2008, 22 December 2008 and 24 February 2009. FETRAPEC sent additional information in a communication dated 28 January 2009. Subsequently, recent communications from the Ecuadorian Confederation of Free Trade Union Organizations (CEOSL) dated 16 March and 20 May 2009 have been received and were transmitted to the Government.

727. The Government sent its observations in communications dated 9 January, 16 February and 19 March 2009.

728. Ecuador 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 complainants

729. In its communications dated 20 November 2008 and 28 January 2009, FETRAPEC recalls that the principle of collective autonomy to which ILO Convention No. 98 refers is based on the need to respect agreements or understandings adopted by employers and organized workers on conditions of work. It is based on the development of contract law in social affairs and, specifically, is crystallized in the right to collective bargaining of labour, an institution recognized by practically every country in the world.

730. FETRAPEC explains that late in 2007, in Ecuador, the Constituent National Assembly was installed and is carrying on its activities. The Assembly is the body designated by the people at the ballot box to draw up a new political constitution and reform the institution of the State. Its powers are set out in the statute issued by the constituent power itself.

731. It is essential to recognize that this Assembly has legislative powers, that is, the power to reform existing secondary laws through, of course, the procedures established in the respective laws. However, the majority of its members decided, in at least 20 cases, to issue so-called "Constituent Resolutions" *(mandatos constituyentes)* which are instruments, sui generis, not subject to the rules for the formation of a law and, thus, are considered as bodies of law not subject to reform or challenge, which has no acceptable legal basis. They are a kind of decree or resolution issued by the majority of the members of the Assembly, allied to the Government, which reform existing legislation in various areas including labour law.

732. In this regard, the Constituent Assembly received a mandate from the Ecuadorian people, the original constituent, as constituent power to elaborate a new political constitution and change the country's institutional framework. Then there would be no reason for issuing these resolutions which could even become immutable instruments by virtue of the fact that they do not exist in the Ecuadorian legal system.

733. Thus, for example, Resolutions Nos 002, 004 and 008 of the Constituent Assembly re-establish the anti-democratic and authoritarian principle of annulling, by decree, existing laws on collective bargaining, which nullifies intangible labour gains, in accordance with the Political Constitution of the State (article 35, paragraphs 3 and 4). Official

pronouncements have arisen with more drastic violations of the principle of collective autonomy enshrined in ILO Convention No. 98. The declarations, for example, of the member of the Government party, then Vice-President of the Constituent Assembly, who then assumed the presidency of the body, that unionization and collective bargaining in the public sector should be abolished, is clear evidence of the reactionary, anti-worker and anti-trade union position of the government authorities, ignoring the fact that all around the world and in Ecuador there are international Conventions in force such as Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise, for all workers, without any discrimination, both blue and white collar, rural or urban, private or public sector, etc. and Convention No. 98 on the Right to Organise and to Bargain Collectively.

734. FETRAPEC states that the so-called "Constituent Resolution No. 002", apart from setting an upper limit on the unified remuneration without, on the other hand, establishing a minimum remuneration which in some way compensates for the high cost of living, provides in article 8 that compensation for abolition of posts or termination of employment "agreed in collective agreements, contracts, settlements and any agreement howsoever called …" shall have a limit.

735. In other words, the public authority decrees reforms to collective agreements and contracts legally concluded, ignoring the parties to the labour relation, breaching the fundamental principle of "collective autonomy", in violation of Conventions Nos 87 and 98.

736. In Constituent Resolution No. 004, these violations are compounded by the express affirmation that they also refer to compensation for unfair dismissal set out in legally concluded collective agreements, giving rise to the possibility of mass dismissals of workers in the public sector by the arbitrary and discretionary use of this provision and thereby affecting, in particular, the right to stability of employment.

737. Constituent Resolution No. 008 provides:

> That for the sake of fairness in work, it is necessary to revise and regulate the clauses of collective agreements concluded by public sector institutions, state enterprises, sectional bodies and entities subject to private law in which, under any name, nature or legal structure, the State or its institutions have a majority shareholding and/or direct or indirect contributions of public resources, which contain unreasonable and excessive privileges and benefits of minority groups which run counter to the general interest and the workers themselves …

738. While it is true that rules are being imposed on the public sector, i.e. State institutions or enterprises, it is their representatives which have concluded collective agreements, contracts which must be respected, and it is essential to wait before legislating so that in the future such "excesses" or "abuses" which may exist may be prevented through subsequent collective bargaining.

739. Furthermore, the general provisions of Resolution No. 008 openly provide for interventionism:

> Four: Collective bargaining in public sector institutions is guaranteed ... adjusted to the terms established in the Constituent Resolutions and in the regulations of the Ministry of Labour and Employment.

The transitional provisions provide:

> Three: Clauses of collective agreements which are in force and which were signed by public sector institutions ... shall be automatically adjusted to the provisions of the Constituent Resolutions and regulations issued by the Ministry of Labour and Employment within a period of 180 days.

> The process of revision of the collective agreements to which this transitional provision refers, in which employers and workers shall participate, shall be done publicly and shall establish clear restrictions on all clauses which contain excesses and privileges such as: transfer and transmission of posts to family members on retirement or decease of the worker, additional hours and overtime not worked and paid to trade union officials, payment of holidays and recognition of other benefits for the worker's family group, additional gratuities and bonuses for voluntary retirement, free supply of the company's goods and services, among other clauses of that kind.
>
> Clauses of collective agreements which are not adjusted to the parameters to which this transitional provision refers and which contain unreasonable and excessive privileges and benefits which run counter to the general interest are void in law. Judges, courts and administrative authorities shall enforce this provision.
>
> Four: The executive authority, in the course of social dialogue, within a period of one year, shall establish the principles governing collective agreements in all public sector institutions ... which may not be modified.

740. FETRAPEC states that it does not deny that there may be excesses in certain extravagant compensation and bonuses, but these must be amended in accordance with normal and reasonable practice, through collective bargaining, i.e. according to its nature by free and voluntary bilateral agreement of the contracting parties (employer and workers) but in no way through the subjective and arbitrary intervention and imposition by the Government, through civil servants who are known to engage in irregular and suspect practices aimed at generally harming workers' interests.

741. These now notorious resolutions not only nullify clauses of legally concluded collective agreements, but also refer to settlements which are also final and binding, which is also extraordinary, since what moderately intelligent person would enter into a contract or settlement in the Ecuadorian public sector if later some assembly members or legislators could nullify such instruments legally and freely concluded by the parties?

742. FETRAPEC requests the Committee on Freedom of Association to send a mission to Ecuador as a matter of urgency.

743. In its communication of 28 January 2009, FETRAPEC mentions that the third paragraph of the third transitional provision of Constituent Resolution No. 008 states that the revision of collective agreements is to establish clear restrictions on all clauses which contain excesses and privileges such as: transfer and transmission of posts to family members on retirement or death of the worker, additional hours and overtime not worked and paid to trade union officials, payment of holidays and recognition of other benefits for the worker's family group, additional gratuities and bonuses for voluntary retirement, free supply of the company's goods and services, among other clauses of that kind.

744. It should be clarified that the collective agreements of the State Petroleum Company of Ecuador (Petroecuador) do not contain any such clauses. However, the last sentence has perverse intentions and clearly leaves open the possibility that not only one or more of the clauses but the entire content of the collective agreement might be qualified as a privilege or excess by those who have the power to decide the matter.

745. Under the said Constituent Resolutions Nos 002, 004 and 008, the regulations for the application of Constituent Resolution No. 008, issued by the President of the Republic by Executive Decree No. 1121, published in the Official Journal *(Registro Oficial)* No. 353 of 25 June 2008, basically reproduce the text of the resolution but, in the part referring to the revision of public sector agreements (third transitional provision) among the clauses qualified as excesses or privileges, in addition to those indicated in Resolution No. 008, additionally includes: compensation for change or substitution of employer, contributions by the entity or company to extra-statutory or personal pension funds, contributions by the

entity or company to trade union activities, holidays additional to those laid down by law and other clauses of that kind.

746. The Minister of Labour, relying on the power conferred by Resolution No. 008 to define regulations, on 8 July 2008 issued Ministerial Order No. 00080, published in the Official Journal No. 394 of 1 August 2008, article 8 of which mentions as clauses which must be considered excesses or privileges (in the subjective opinion of the Minister) the suspension of work to hold meetings and other trade union activities without the prior authorization of the corresponding authority, adding the familiar phrase "and other clauses of that kind".

747. The same authority issued Ministerial Order No. 00155A of 2 October 2008, published in the Official Journal No. 445 of 14 October 2008, setting out rules of procedure for the unilateral revision of collective agreements – *repudiating the sense, including grammatical, of revision of contracts, which must be done by the contracting parties, without that constituting a rejection or diminishing of the rights acquired by collective bargaining, law or custom, as enshrined in the Political Constitution of 1998 and that in force in 2008* – and proceeded to declare in some cases nullity in law with the consequent abolition of rights and benefits, and in other cases reducing or diminishing them, as can be seen from the minutes of the revision of the sixth collective agreement between Petroecuador and the Single Enterprise Committee of Workers of Petroecuador (CETAPE) of 16 October 2008; the fourth single collective agreement between Petroproducción and the National Enterprise Committee of Petroproducción Workers (CENAPRO) of 13 October 2008; the sixth collective agreement of Petrocomercial between Petrocomercial and the National Enterprise Committee of Petrocomercial Workers (CENAPECO) of 9 October 2008, and the sixth single collective agreement between Petroindustrial and the National Enterprise Committee of Petroindustrial Workers (CETRAPIN) of 8 October 2008.

748. It is essential to carry out a brief analysis of the above Ministerial Order No. 00155A, as its content breaches ILO Conventions Nos 87 and 98, certain universal human rights, as well as contravening constitutional provisions, and even common sense. Thus, the relevant part of paragraph 2 states: "this revision process by the commission establishes that from the procedural standpoint, clauses of a collective agreement may be declared void in law, amended partially or fully, in the exercise of the discretionary power granted to this body under Constituent Resolution No. 008, the regulations in application thereof and Ministerial Order No. 00080".

749. Nowhere does Constituent Resolution No. 008 provide that the revising commission should be made up solely of officials of the Ministry of Labour and Employment. This was defined arbitrarily by the Minister in article 1 of Ministerial Order No. 00080, which shows the absence or elimination of the parties to the labour relation in bargaining and signing, including the revision, which is likewise being negotiated and signed, of collective agreements. Likewise, the "discretionary powers" granted to the commission to declare void in law, or amend in part or in full, the clauses of collective agreements defies legal logic. This commission even violates the third transitional provision of Resolution No. 008 which expressly rules that the revision shall be carried out with the participation of employers and workers.

750. Paragraph 3 of the order states that the parties (employers and workers) may express principles, opinions and proposals, contributions which will be appraised by the commission applying the principle of healthy criticism, wrongly interpreted by the commission, since in practice it meant that workers are invited merely as observers before the Ministry of Labour and Employment acting as judge and party for collective bargaining in the public sector.

751. Paragraph 4 states, among other matters: "the minute of revision of the collective agreement shall not be open to complaint, challenge, action for protection *(amparo)*, demand, claim by the company or workers, or any administrative or judicial opinion or judgement, which shall be expressly stated in the said document". This text demands comment and, in itself, proves the violation, among other universal human rights, of the effective protection of the rule of law, i.e. that any person has the right to assert his rights and interests in the courts and the right to defence in its most widely accepted sense.

752. Paragraph 7, in a nutshell, indicates that the revision shall be carried out with or without the presence and participation of one or both parties. This means that the revision is carried out by a third party even without the presence and, even worse, without the consent of the parties to the labour relationship. This process of revision, an exclusive prerogative of the commission consisting of the Ministry of Labour and Employment, prohibits the parties from negotiating or challenging the nullity or amendment of the contractual clauses as stated absurdly in paragraph 15.

753. Paragraph 17 defies common sense and is an insult to intelligence, when it prescribes that if one of the parties (workers or employers) leaves the session, this act will mean tacit acceptance of the work of the revising commission. Anywhere in the world, if in a meeting or bargaining process, one of the parties leaves, it means an expression of rejection, opposition, a contrary assertion and not acceptance or approval as is indicated so absurdly in that paragraph.

754. The Ministry of Labour and Employment is in breach of Resolution No. 008, itself challenged by the trade union organization, which set a period of 180 days for the process of revision of collective agreements in the public sector. Precisely, in the referendum to approve the new Political Constitution of 28 September 2008, as recently as 2 October 2008, it issued Ministerial Order No. 00155A, that is 28 days before the end of the time limit and carried out the unilateral revision of approximately 120 collective agreements at national level.

755. Faced with the reality of this extremely tight period for the revision, the President of the Republic issued Executive Decree No. 1396 of 16 October 2008 which amends No. 1121 and extends the period of 180 days to one year, omitting the time limit set out in Resolution No. 008, and without the constitutional or legal authority or power to do so.

756. Merely as examples of violations of the ILO International Conventions, therefore, and the rights of labour and workers' organizations, it should be noted, among other things, that there is now no paid trade union leave nor the possibility of holding meetings in working hours. These are clear evidence of the curtailment of freedom of association and endanger its very existence.

757. All the foregoing, and especially the actions of the Minister of Labour, constitute abuse of the law and usurpation of authority.

758. It should be added, as one of the latest acts of aggression against the rights of workers, that Executive Decree No. 1001 of 1 April 2008, published in the Official Journal No. 317 of 16 April 2008, article 2, prohibits the authorization of new contributions of public funds to entities and organizations in the public sector which are employer's and personal pension funds, and in Executive Decree No. 1406 of 24 October 2008, published in the Official Journal No. 462 of 7 November 2008, the President of the Republic states that: "With effect from 1 January 2009, no resources of the General Budget of the State shall be paid for any reason to finance employer's and personal pension funds in the public sector". This decree was apparently corrected by Decree No. 1493 of 19 December 2008, published in the Official Journal No. 501 of 7 January 2009. However, we should clarify that the

correction was a matter of form rather than substance, and the benefit of an employer's pension for workers covered by the Labour Code is longstanding, and even pre-dates the appearance of this regulatory body, and that our collective agreement and that of other sectors in the public sector, enjoys this benefit economically enhanced. Thus it cannot be ignored as it is sought to be.

759. The legal justification, the abovementioned Constituent Resolutions, brandished by the Minister of Labour and the authorities of that Ministry, is a brittle one, and at least demands some pause for thought, in that the very body which issued them, in Constituent Resolution No. 23, published in the supplement to Official Journal No. 458 of 31 October 2008, in the first paragraph of the single general provision, states: "Resolutions issued by the Constituent Assembly are in full force. Their reform requires the adoption of the procedure set out in the Constitution of the Republic of Ecuador for constitutional acts". The foreseeable uncertainty appears from the text in question in that it contradicts the universally accepted legal axiom that in law, things are undone as they are done. It would not be permissible, for example, for an ILO Convention to be amended by a body and procedure other than the one which approved it.

760. FETRAPEC reports that the infringements of the freedom of association and collective bargaining recognized and guaranteed in Conventions Nos 87 and 98 of the ILO were brought to the attention of the Andean Labour Advisory Council, an organ of the Andean Community of Nations to which Ecuador belongs, the presidency of which is held for the time being by the President of Ecuador. This Council, in a meeting held in the Ecuadorian city of Salinas on 22 January 2009, resolved "to urge the Constitutional President of the Republic of Ecuador to respect labour rights".

761. FETRAPEC also alleges that on 13 June 2008 the following trade union officials were given written notice of summary dismissal: Mr Edgar de la Cueva, Chairman of the Single Enterprise Committee (CENAPRO); Mr Ramiro Guerrero, Chairman of the National Enterprise Committee (CENAPECO); Jhon Plaza Garay, General-Secretary of the National Enterprise Committee (CETAPE) and Diego Cano Molestina, President of FETRAPEC. This arbitrary act by the employing authority, apart from depriving them of the right to work and stability guaranteed by collective agreement, affects the trade unions they represent in two ways: first, because it is an assault on the right to organize, specifically the right of workers freely to elect their representatives, and, secondly, because it seeks, by stealth, to destabilize and frighten organized workers. (Enterprise committees are "trade union organizations" in Ecuador.)

762. In its communication of 22 December 2008, PSI, on behalf of the National Federation of Provincial Council Workers of Ecuador (FENOCOPRE) and the Federation of Free Municipal Workers of Ecuador (FETRALME), organizations affiliated to PSI in Ecuador, submitted a complaint against the Government of Ecuador for violation of ILO Conventions Nos 87 and 98, ratified by the Ecuadorian State, and submits for examination by the Committee on Freedom of Association, the text of the following provisions:

- Constituent Resolution No. 002;
- Constituent Resolution No. 004;
- Constituent Resolution No. 008;
- Regulations on the application of Constituent Resolution No. 008;
- Ministerial Order No. 00080;
- Ministerial Order No. 00155A (automatic adjustment clause).

763. The PSI states that its complaint is also in support of the complaints on these matters by the National Coordinating Body of Ecuadorian Public Sector Trade Unions, which was created to present a united front in the complex process currently faced by labour in Ecuador. The organizations are: the Andinatel Workers Enterprise Committee; the Cementos Guapán Workers Enterprise Committee; the Cementos Chimborazo Workers Enterprise Committee; the EMAAP-Q Workers Enterprise Committee; FETRALME; FENOCOPRE; the Federation of University and Polytechnic Workers' Unions; FETRAPEC; the Federation of Municipal and Provincial Workers; OSUNTRAMSA; and the Single Workers' Union of the Institute of Social Security (IESS).

764. The PSI points out that the actions taken by the Government of Ecuador endanger the right to organize and collective bargaining in the public sector, marking a backward step in the guarantee of fundamental rights at work, for which reason the Committee is requested to examine the complaint in order to restore the full exercise of freedom of association in the Ecuadorian public sector, and to treat this case as a matter of urgency as the Ecuadorian Government is threatening the existence of the entire trade union movement in the public sector of Ecuador.

765. In its communication of 24 February 2009, OSUNTRAMSA states that its complaint contains the same concerns as presented by FETRAPEC and PSI in relation to the legal texts to which those organizations object. It also reproduces a considerable part of the text of the complaint by FETRAPEC.

766. OSUNTRAMSA indicates that the collective agreement concluded with the Ministry of Public Health did not contain any "privilege" clause of a kind mentioned in Constituent Resolution No. 008. Despite this, the Ministry of Labour declared some clauses void and curtailed or diminished others when unilaterally revising the collective agreement.

767. OSUNTRAMSA states that, due to the dependent relationship of its members with the Ministry of Public Health, we should emphasize that essentially our work or service is, to a large extent, care in healthcare units at various levels (health centres, general hospitals, specialist hospitals), i.e. in work aimed at preventive healthcare and permanent and continued treatment of patients, a humanitarian activity in itself but not without risk, contingency or proximity to injury. However, perhaps the greatest risk is stress, increased during emergencies, surgical operations and post-operative care and other critical areas. In consideration of that, the ILO itself, some decades ago, adopted specific conventions on work with ionizing radiation and nursing, with specific regulations to be observed by States, taking into account the peculiarities and risks of such activities. Thus, Convention No. 115 concerning the protection of workers against ionizing radiation, in general, is designed to safeguard the health of exposed workers, and it is not hard to see that the least exposure is a reflection of working time. Convention No. 149 concerning employment and conditions of work and life of nursing personnel, in article 1, states that the term "nursing personnel" includes all categories of persons providing nursing care and nursing services. The Convention applies to all nursing personnel, wherever they work. In article 2, paragraphs 2(a) and (b) it is stated that the State shall take the necessary measures to provide nursing personnel with education and training appropriate to the exercise of their functions; and employment and working conditions, including career prospects and remuneration, which are likely to attract persons to the profession and retain them in it. Article 6 provides, verbatim, that "Nursing personnel shall enjoy conditions at least equivalent to those of other workers in the country concerned in the following fields: (a) hours of work, including regulation and compensation of overtime, inconvenient hours and shift work; (b) weekly rest; (c) paid annual holidays; (d) educational leave; (e) maternity leave; (f) sick leave; (g) social security"; and article 8, likewise: "The provisions of this Convention, in so far as they are not otherwise made effective by means of collective agreements, works rules, arbitration awards, court decisions, or in such other

manner consistent with national practice as may be appropriate under national conditions, shall be given effect by national laws or regulations".

768. Conventions Nos 115 and 149 are international instruments signed and ratified by Ecuador. However, in the impugned revision order for the revision of the ninth collective agreement of the Ministry of Public Health, a unilateral revision carried out by the Ministry of Labour and Employment, clause 27 (working hours and working days) of the collective agreement and the application order of that clause signed by the parties on 18 September 2007 is declared void, in violation of the aforementioned international conventions.

769. Similarly, by way of example, the bonus when workers take the employer's pension to which they are entitled, as set out in clause 14 of the collective agreement, is abolished. That clause stipulates that where a worker takes the employer's pension or the IESS pension, the Ministry of Public Health will pay a bonus equivalent to 30 months of standard monthly remuneration.

770. In trade union matters, there is now no paid trade union leave as agreed in clause 31 of the collective agreement. This is clear evidence of the restriction of freedom of association and restrictive interference in the exercise of that right.

B. The Government's replies

771. In its communications of 9 January and 16 February 2009, the Government states that by a national popular referendum on 15 April 2007, the Ecuadorian people approved the convocation of the Constituent Assembly. On 30 September 2007, Ecuadorians elected 130 representatives to form the Constituent Assembly. Article 22 of the "Statute on the election, installation and functioning of the Constituent Assembly" provides that it shall be installed ten days after the date of proclamation of the final election results. The Constituent Assembly assumed the constituent power invested with full powers, and exercised it by the issue of resolutions, laws, decisions and resolutions. The Constituent Assembly is the legitimate representative of the sovereign will of the people, and thus, on its behalf and in representation thereof, it embarked on the legal reform which is described below.

772. The Government refers first to Constituent Resolution No. 008 of 30 April 2008, published in the Supplement to Official Journal No. 330 of 6 May 2008 and its regulations in application contained in Executive Decree No. 1121, published in the Supplement to Official Journal No. 353 of 5 June 2008.

773. This resolution abolished and prohibited the outsourcing of supplementary services, employment agencies, hourly contracting of labour and provided for the automatic adjustment of collective agreements in the public sector to the provisions of the Constituent Resolutions, and the revision of those collective agreements by the Ministry of Labour and Employment, with the participation of employers and workers, with clear restrictions on all clauses containing excesses and privileges.

774. The revision of collective agreements in the public sector was an aspiration and desire of large sections of the Ecuadorian population for many years, and the Constituent Assembly was formed from co-opted assembly members who tackled this problem with great integrity and seriousness, of course in harmony and accord with the policies and principles of the National Government under the Presidency of economist Rafael Correa Delgado. The response of the public at large has been total approval and acceptance of the revision process being undertaken by the Ministry of Labour and Employment.

775. The legal basis of the process of revision of collective bargaining in the public sector is as follows: article 3 of Constituent Order No. 001 of 29 November 2008, states: *"dignitaries, authorities, officials and civil servants in general who by commission or omission fail to comply with decisions adopted by the Constituent Assembly shall be subject to sanction, including dismissal, without prejudice to any criminal, civil and administrative responsibility"*. The Rules of Procedure of the Constituent Assembly, published in the supplement to the Official Journal, No. 236 of 20 December 2007, state in article 2 that: *"Decisions: In the exercise of its powers, the Constituent Assembly shall approve: ... 2. Constituent Resolutions: decisions and laws issued by the Constituent Assembly for the exercise of its full powers …"*. Article 3 continues: *"Supremacy of decision of the Constituent Assembly: No decision of the Constituent Assembly shall be subject to review or challenge by any of the constituted powers ... All public authorities are obliged to comply therewith on pain of constraining measures or dismissal"*.

776. From the laws cited above, it can be seen that officials and public servants are under a moral and legal obligation to comply with decisions adopted by the Constituent Assembly.

777. The third transitional provision of Constituent Resolution No. 008 provides:

> Clauses of collective agreements which are in force and which were signed by public sector institutions, state enterprises, sectional bodies and entities subject to private law in which, under any name, nature or legal structure, the State or its institutions have a majority shareholding and/or direct or indirect contributions of public resources, shall be automatically adjusted to the provisions of the Constituent Resolutions and regulations issued by the Ministry of Labour and Employment within a period of 180 days. Collective agreements to which this transitional provision refers shall not protect those persons who exercise management, executive and representative and managerial duties generally, or staff who by the nature of their functions or work are subject to public order acts, especially the Organic Act on the Civil Service and Administrative Profession, Approval and Unification of Public Sector Remuneration. The process of revision of the collective agreements to which this transitional provision refers, in which employers and workers shall participate, shall be done publicly and shall establish clear restrictions on all clauses which contain excesses and privileges such as: transfer and transmission of posts to family members on retirement or decease of the worker, additional hours and overtime not worked and paid to trade union officials, payment of holidays and recognition of other benefits for the worker's family group, additional gratuities and bonuses for voluntary retirement, free supply of the company's goods and services, among other clauses of that kind. Clauses of collective agreements which are not adjusted to the parameters to which this transitional provision refers and which contain unreasonable and excessive privileges and benefits which run counter to the general interest are void in law. Judges, courts and administrative authorities shall enforce this provision.

778. Transitional provision five of Resolution No. 008 provides that: "This Constituent Resolution shall be regulated by the President of the Republic". The regulations for the application of Constituent Resolution No. 008, which abolishes the outsourcing of supplementary services, employment agencies and hourly contracting, in transitional provision three, paragraphs four and five states:

> The process of revision of the collective agreements to which this transitional provision refers, in which employers and workers shall participate, shall be done publicly within 180 days from the date of entry into force of Constituent Resolution No. 008, and shall establish clear restrictions on all clauses which contain excesses and privileges such as: transfer and transmission of posts to family members on retirement or decease of the worker, additional hours and overtime not worked and paid to workers and trade union officials, compensation for change or substitution of employer, contributions by the entity or company to extra-statutory or private pension funds, payment of holidays and recognition of other excessive benefits for the worker's family group, additional gratuities and bonuses for voluntary retirement, free supply of the company's goods and services, payment of holidays and the thirteenth and fourteenth month remuneration in amounts greater than those laid down

> by law, contributions by the entity or company to trade union activities, holidays additional to public holidays established by law, among other clauses of that kind. The Minister of Labour and Employment shall issue regulations and procedures for the revision of the collective agreements concerned. The highest authorities in the various public and private sector institutions charged with applying this provision shall be personally liable in civil law for their application.

779. From the provisions transcribed, both Resolution No. 008 and the regulations in application clearly and unequivocally show that the list of clauses which are considered to contain excesses and privileges is only indicative and not exhaustive, as indicated by the expressions "such as" and "among other clauses of that kind", thus the clauses indicated as an example by the Constituent Assembly itself and the President of the Republic as void in law, are guidelines and examples which we were obliged to follow in the process of revision to determine other clauses which also contained excesses and privileges and were contrary to the general interest and which must also be included in the category of void in law.

780. Executive Decree No. 1396 of 16 October 2008, amending Executive Decree No. 1121, states in its single article:

> In paragraph three of transitional provision three of the Regulations for the application of Constituent Resolution No. 008 which abolishes and prohibits the outsourcing of supplementary services, employment agencies, hourly contracting of labour, ... replace the phrase "within 180 days" by the phrase "within one year".

781. In Ministry of Labour and Employment Orders Nos 00080 of 8 July 2008 and 00155A of 2 October of that year, issued strictly in compliance with, and in application of Constituent Resolution No. 008 and its regulations, set out the regulations and rules for the process of adjustment and revision of collective agreements in the public sector.

782. Decisions of the Constituent Assembly are hierarchically superior to any other legal rule, including the Constitution, i.e. they have a supra-constitutional hierarchy and supremacy which remains over time, even with the new Constitution, given that its resolutions must be complied with beyond the period in which the Constituent Power functioned, as occurs, for example, with regulations on maximum remuneration and compensation in Resolutions Nos 002 and 004, and, of course, those set out in Resolution No. 008 on supplementary activities, civil contracting of specialist services, part-time work for those who were working on hourly contracts and teachers in private establishments, time limits under the resolution and regulations which continue beyond the entry into force of the new Constitution, such as the one granted to the President of the Republic (one year) to implement a process of social dialogue in order to establish the principles governing collective bargaining in the public sector.

783. Officials of the Ministry of Labour and Employment who make up the commission on the revision of collective agreements in the public sector are obliged, as they have been doing, to comply with the decisions of the Constituent Assembly, on pain of being subject to sanction, including dismissal, without prejudice to any criminal, civil and administrative responsibility as applicable, as set out in Constituent Resolution No. 001 and the Rules of Procedure of the Assembly.

784. Constituent Resolution No. 008 of 30 April 2008, in its transitional provision three, orders that clauses of collective agreements which are in force and which were signed by public sector institutions, public state enterprises, sectional bodies and entities subject to private law in which, under any name, nature or legal structure, the State or its institutions have a majority shareholding and/or direct or indirect contributions of public resources shall be automatically adjusted to the provisions of the Constituent Resolutions and regulations

issued by the Ministry of Labour and Employment within a period of 180 days, at the same time providing for a process of revision of those collective agreements which *"establish clear restrictions on all clauses which contain excesses and privileges"*.

785. The last two sentences of this provision prescribe that: *"clauses of collective agreements which are not adjusted to the parameters to which this transitional provision refers and which contain unreasonable and excessive privileges and benefits which run counter to the general interest are void in law"* and that *"judges, courts and administrative authorities shall enforce this provision"*.

786. For its part, final provision three states: *"compliance with this resolution is mandatory and therefore it shall not be open to complaint, challenge, action for protection* (amparo), *demand, claim, or any administrative or judicial opinion or judgement"*.

787. Transitional provision five of Resolution No. 008 empowers the President of the Republic to issue, within sixty days, the regulations for its application, and this was done by Executive Decree No. 1121, published in the supplement to the Official Journal, No. 353 of 5 June 2008, transitional provision three of which provides: *"The process of revision of the collective agreements to which this transitional provision refers, in which employers and workers shall participate, shall be done publicly within 180 days from the date of entry into force of Constituent Resolution No. 008, …"*. This time limit was extended by Executive Decree No. 1396 of 16 October 2008, the single article of which states: *"In paragraph three of transitional provision three of the regulations for the application of Constituent Resolution No. 008 which abolishes and prohibits the outsourcing of supplementary services, employment agencies, hourly contracting of labour, ... replace the phrase 'within 180 days' by the phrase 'within one year'"*.

788. The Government clarifies that the regulations and rules of procedure were issued by the Ministry of Labour and Employment, in Order No. 00080 of 8 July 2008 and Order No. 00155A of 2 October of the same year.

789. Article 1 of Order No. 00080 provides that the direction and coordination of the process of automatic adjustment and revision of the clauses of collective agreements to which transitional provision three of Constituent Resolution No. 008 and its regulations for application refer, will be the responsibility of commissions made up of officials of the Ministry of Labour, chaired by the undersecretary of Labour and Employment of Sierra and Amazonia for the Sierra and Amazonia region and by the undersecretary of Labour and Employment for the Coast and Galápagos region.

790. It should be emphasized that the revising commission of the Ministry of Labour and Employment has respected the parameters of fair remuneration and the principle of stability of employment.

791. In short, the revising commission has acted in accordance with Constituent Resolutions Nos 001 and 008 and its regulations for application, respecting constitutional provisions concerning the right of freedom to contract through the participation of the parties, as set out in Ministerial Orders Nos 00080 and 00155A of 8 July and 2 October 2008. This, indeed, is shown by the presence and participation of representatives of workers, employers and the State, through the revising commission, in public hearings, the said commission being obliged to give precedence in its decisions to the general interest over the particular in promoting the common good, as set out in article 83, paragraph 7, of the current Constitution.

792. It has been shown that there is no violation of constitutional or legal rights and thus the revision of collective agreements in the public sector will continue in accordance with the

provisions of transitional provision three of Constituent Resolution No. 008 and its regulations for application and Ministerial Orders Nos 00080 and 00155A.

793. In addition, the Plenary of the Legislative and Control Commission issued the Organic Act to amend Constituent Resolution No. 002, published in the Official Journal of 29 January 2009, where the legislative and executive functions jointly state that the Constituent Resolutions have the category of organic laws, since the single general provision of this organic amending Act states, verbatim:

> Resolutions issued by the Constituent Assembly are in full force, and their amendment shall require the procedure set out in the Constitution of the Republic for organic laws.

794. From the point of view of constitutional law, it should be emphasized that there is no legal possibility of derogating from Constituent Resolutions, since the Constituent Assembly, with full powers, in issuing these constituent acts, and especially Resolution No. 008, drew a clear distinction between the other laws and resolutions which it issued. In other words, it gave the Constituent Resolutions a constitutional legal category of a special character which did not admit a claim for unconstitutionality of a Constituent Resolution which had been ratified by the commission on reception and qualification of the former Constitutional Tribunal, now the Constitutional Court, signed under number 0043-07-TC of 4 January 2008. The commission of the highest constitutional organ of the Ecuadorian State, by so pronouncing, argued in law that it was not admissible to hear a claim of unconstitutionality of the resolutions. Thus, their legal category has the special characteristic of supra-constitutionality because the Constituent National Assembly, with full powers, assumed the powers of the various functions contemplated in the legal system of the Ecuadorian State as a product of the referendum which approved it.

795. The corollary of this legal analysis of the constitutional basis is that the National Assembly alone, in the exercise of its powers enshrined in the current Constitution, has the power to amend resolutions issued by itself, in the exercise of its full constituted powers. This confirms, without a shadow of a doubt, that Constituent Resolution No. 008, which legislated and regulated the process of revision of collective bargaining in the public sector, is fully in force and does not violate any constitutional or legal provision of the current legal system of the Ecuadorian State, and all and each of the provisions on the subject are applicable.

796. The Government summarizes below the result of the process of revision of the collective agreement to date.

797. The state enterprise Petroecuador and its subsidiaries Petroproducción, Petroindustrial and Petrocomercial, concluded collective agreements with their respective workers' organizations. Basically, these collective agreements have the same structure and are similar concerning the claims and obligations of the workers. The commission on the revision of public sector collective agreements carried out a detailed analysis of these four agreements, in a process which was hardly attended by the workers' delegates who walked out of the relevant meetings with the intention of boycotting the revision.

798. Against this background, and in application of the provisions of paragraph 17 of Ministerial Order No. 00155A, which contains rules of procedure for the revision of collective agreements in the public sector, the walkout was noted in the respective minutes and the process continued and was completed with the presence of the employers' side.

799. As a matter of policy of this Ministry, clauses referring to guarantees of stability and fair and unified remuneration were not amended.

800. Against this background, the revision of those collective agreements continued, and the following clauses warranted special attention due to their content:

– **Compensation for change of employer.** In the case of transfer, disposal or sale, by any means, of the companies of Petroecuador, they must compensate the worker with large sums, whether or not they go on to work in the new companies, for which reason it was declared void in law.

– **Contribution for voluntary separation.** Whereby workers who voluntarily separated from the company received large contributions ranging from US$150,000 to US$600,000, which was public knowledge, for which it was declared void in law, pursuant to Resolution No. 008. Furthermore, it was the Constituent Assembly itself which found itself obliged to limit the amount of such benefits, with the issue of Constituent Resolution No. 002, which set a maximum of 210 times the standard minimum basic wage of private workers (US$42,000) in the case where the separation was to take a retirement pension.

– **Special employer's pension.** Provides that it is compulsory for all workers of Petroecuador and its subsidiaries and will protect them for old age, disability and death, by means of a pension separate from that established by the IESS. Payment of the special employer's pension under article 219 and following of the Labour Code is assumed as an obligation of the special employer's pension fund of each subsidiary, in accordance with their respective statutes and regulations. For that purpose, the company and the workers undertake to contribute 8.37 per cent of their basic salary monthly to the special employer's pension fund. This clause, had it been allowed to remain in force, would have allowed Petroecuador and its subsidiaries to allocate monthly actuarial reserves to a future and uncertain event, since the employer's pension of workers in the state petroleum company is subject to fulfilment of a condition under the Labour Code. This condition is that they must have completed 25 years service and left the company. Furthermore, State resources were contributed to a private employer's pension fund, which is in violation of the legal order of the State, and thus in breach of Constituent Resolution No. 008 and its regulations for application. The decision adopted by the commission to abolish this employer's contribution is fully concordant with the decision of the Constitutional President of the Republic in issuing Executive Decree No. 1406 of 24 October 2008, which provides that State resources must not be contributed to such funds of a private nature with effect from 1 January 2009. The commission made it clear that the workers could continue to contribute voluntarily to that fund.

– **Pension contribution.** This clause stated that "For those workers who join the IESS pension scheme and/or the special employer's pension scheme regulated by the rules of the Petroecuador and subsidiaries pension fund, the company will grant a contribution equivalent to 30 times the worker's remuneration which will be paid directly to him when he retires. This benefit is an entitlement to workers who have worked for at least ten years continuously in Petroecuador or its subsidiaries. The grant of this benefit excludes the payment of the contribution for voluntary separation in clause 14 of this agreement". To maintain harmony with Constituent Resolution No. 002, the text of this clause was replaced by the following: "For those workers who join the IESS pension scheme, the company will grant a contribution equivalent to 30 times the worker's remuneration which will be paid direct to him when he retires and which in no case may exceed the maximum amount established in paragraph two of article 8 of Constituent Resolution No. 002".

– **Trade union leave and company contributions to trade union organizations.** Whereby the company undertook to grant the following paid trade union leave: 80 days of leave per month to the recognized trade union organization, but not more

than eight consecutive days per month for each official. The company granted officials or delegates travelling to places other than their normal place of work, while on trade union leave, a payment of US$25 per day and US$20 per day where the company provided transport. In the case of institutional assignments, the company granted significant economic assistance to trade unions. In the light of this situation, the commission decided that trade union leave with pay could be granted for up to ten days per month, solely to principal trade union officials and declared void in law the contributions to trade unions, in accordance with transitional provision three of the regulations under Resolution No. 008.

– **Excessive and unjustified payments for shift work, length of service, social welfare benefits and expenses for ophthalmic and dental treatment.** Abolished as void in law because they involved unjustified increases which, in several cases, amounted in less than eight years to 1,000 per cent, while the wage increase was only 40 per cent over eight years.

– **Christmas bonuses and long-service incentives to the worker.** These were abolished as they contravened Constituent Resolution No. 008, since they included payment in cash, meals and travel of families with all expenses paid, in the first case, and in the second, cash payments up to US$2,000 and gold rings for years of service.

– **Feast Days.** Feast days not recognized as such in the Labour Code were abolished, which resulted in significant cost savings, by avoiding the payment of replacements, substitutions and overtime, and achieving improved labour productivity.

801. For all the above reasons, it must be concluded that the revision of the collective agreements is supported by Constituent Resolution No. 008 for the regulation of agreements which contain excesses, privileges and arbitrary provisions which conflict with the general interest. It is clear that the properly acquired rights of workers, especially those relating to stability and remuneration, are absolutely respected in this revision. Not so the special contributions to trade unions, and unreasonable gratuities and benefits other than remuneration. The resolution contains the mandatory provision that such clauses which contain excesses are void in law.

802. According to the Government, everything was analysed through healthy criticism in the revising commission with the participation of employers and workers. The resolution granted the Minister of Labour the powers to implement the regulation concerned and, if some of the parties chose to absent themselves, the revision had to continue.

803. This shows the transparency of the action of the national Government concerning the matter which is the subject of complaint presented by the President of FETRAPEC. It should further be pointed out that the international principles on freedom of association and the right of collective bargaining contained in Conventions Nos 87 and 98 of the ILO were respected.

804. In conclusion, in accordance with the legislation of the ILO itself and the abovementioned international conventions, the Government also recalls that collective bargaining in the public sector is subject to the existence of economic resources which can finance it and the specific case of the collective agreements of Petroecuador, maintaining the inaptly named "labour gains" would have resulted in its liquidation, to the detriment of 13 million Ecuadorians.

805. In its communication of 19 March 2009, the Government refers to the complaints of FETRAPEC relating to dismissals.

806. The Government states that under no circumstances can the Government and, ultimately, the Ministry of Labour and Employment, accept the views expressed by Mr Diego Cano Molestina, who acts as President of the National Federation of Petroecuador Workers despite the fact that he no longer works for Petroecuador or any of its subsidiaries. He therefore lacks any legal representative status to act and make assertions that are far from the truth, on alleged new acts in violation of freedom of association and the right to collective bargaining by the Ecuadorian State against public sector workers, especially those in Petroecuador.

807. The Government adds that by reproducing the assertions of the "alleged" trade union official who, as indicated above, no longer workers in Petroecuador or its subsidiaries, it is sought to draw attention to the fact that he assumes a legal status which he no longer possesses, in formulating a complaint of this nature, asserting the alleged existence of acts which affect freedom of association and collective bargaining of all unionized workers in the public sector.

808. The Government confirms that Mr Cano has not, and has made no attempt to, send documentary evidence of his accreditation in due legal form that he is representative of all unionized workers in the public sector subject to public employment, for which reason his complaint accompanied by the signature of other alleged trade union officials is absolutely null and void.

809. With regard to the alleged violations against the workers of Petroecuador and its subsidiaries, which referred to the unfair dismissal of trade union officials, specifically the cases of: Edgar de la Cueva, Ramiro Guerrero, Jhon Plaza and Diego Cano, the Government states that at no time did the complainants bring to their knowledge the appointments that accredit them as *trade union officials*. Thus, as they did not provide evidence of that legal status, from no standpoint can the Government of Ecuador, or the Ministry of Labour and Employment, accept this complaint.

810. Furthermore, we request you to declare this complaint as undue, illegal and not receivable, in accordance with the rules applied by the ILO for the purpose of qualifying and applying the procedure for substantiation, since it does not satisfy the requirements of the case and, in particular, is not supported by a national federation of Ecuadorian workers duly constituted and registered in accordance with the constitutional and legal provisions which allow such recognition. Thus, this new complaint suffers from errors as to substance and form because the complainants lack representative status, as they have not proved that legal condition with the respective documentary accreditation, and are not supported by any workers' representation of a national character recognized by the Ecuadorian State.

811. On the assumption, which is not accepted, that the complainants could prove their condition of "trade union officials" and also had the support of a national federation of workers legally recognized by the Government of Ecuador, the Government declares that the termination of its employment relations is not an arbitrary act by the management of the State enterprise (Petroecuador) and its subsidiaries, since it is supported in law by the constitutional principle of freedom to contract, set out in paragraph 18 of article 23 of the Political Constitution of the State, in force at the time when the management decisions were taken fully in accord with article 188 of the Labour Code.

812. The Political Constitution of the State (1998), in "Chapter II, Civil Rights, article 23 provides that: Without prejudice to the rights established in this Constitution and applicable international instruments, the State shall recognize and guarantee to persons the following: ... 18. Freedom to contract, subject to the law". The Labour Code, for its part, provides:

Compensation for unfair dismissal. The employer who unfairly dismisses a worker shall be ordered to compensate him, in accordance with his length of service and applying the following scale:

Up to three years service, the equivalent of three months remuneration, and,

Over three years, the equivalent of one month's remuneration for each year of service, which in no case shall exceed 25 months' remuneration.

A fraction of a year shall be considered a whole year.

This compensation shall be calculated on the basis of the remuneration which the worker would have received at the time of dismissal, without prejudice to payment of the bonuses to which in this case article 185 of the Code refers.

In the case of piecework, the monthly remuneration shall be fixed on the basis of the average received by the worker in the year preceding his dismissal, or during the time he has worked if less than one year.

In the case of a worker who has completed 20 years and less than 25 years service, continuously and without interruption, he will additionally be entitled to a proportion of the employer's pension, in accordance with the provisions of this Code.

The compensation for dismissal set out in this article may be enhanced by mutual agreement between the parties but not by conciliation and arbitration tribunals.

When the employer gives written notice of his intention to terminate unilaterally an individual contract of employment, i.e., unfairly, the labour authority which is apprised of the dismissal, shall summon the employer to appear and, if he confirms the dismissal, he must deposit within 48 hours the total amount of compensation due to the dismissed worker.

If the employer at the indicated hearing does not confirm the dismissal contained in the relevant notice, alleging that the letter containing the dismissal was not written by him or by representatives of the company authorized to terminate labour relations, an order shall be made for the immediate reinstatement of the worker in his job.

813. The Government further indicates, having adopted this management decision and in compliance with the legal order in effect in Ecuador, the labour rights of the presumed trade union officials were respected in full, since on termination of their employment relationship with the company through the various subsidiaries, they were paid all the amounts to which they were entitled including the benefits of the collective agreement and all the compensation legally due to them.

814. The compensation legally due to them and the monies already received were paid in accordance with Constituent Resolutions Nos 002 and 004 issued by the Constituent Assembly with full powers, being supra-constitutional acts, thus their legal effects persist in time and continue to apply up to the present, pursuant to the provisions of Resolution No. 0023 of the Commission on Legislation and Control of the National Assembly, published in the Official Journal, No. 458 of 31 October 2008, i.e. they enjoy the status of organic laws and thus any derogation or amendment is the exclusive prerogative of the National Assembly which exercises the legislative power of the Ecuadorian State.

815. The decision adopted by Petroecuador and its subsidiaries to terminate the relations with the *alleged trade union officials* was not only based on constitutional and legal provisions, but also involved the application of clause fifteen of the collective agreement in force applicable to the cases mentioned in subparagraphs (e) and (f) of article 19 of the regulations substituting the general regulations under the Special Act concerning Petroecuador and its subsidiaries. Article 18 of these regulations provides that the powers and responsibilities of executives of the various subsidiaries of Petroecuador include the management and safeguarding of the interests of the subsidiary, to evaluate the management performance of their institution and its employees, all in relation to the activities specific to the fields of professional activity.

816. Considering the rule invoked, this regulation empowers the employer and the worker to terminate the employment relationship at any time, unilaterally, and in the cases concerned here, the company having taken its decision, paid all the compensation determined by the Labour Code and the collective agreement in strict compliance with the provisions of article 188 of the Labour Code.

817. The decision taken by Petroecuador and its subsidiaries to terminate the employment of the complainants, who had not provided evidence of their status as trade union officials, are not unlawful acts of the various vice-presidents of the subsidiaries of Petroecuador, since each of them is the competent authority exercising legal representation thereof, as set out in their appointments (attached hereto) for which reason they are acts which derive from contracts of employment, thereby observing the legal order established in the collective agreement in each of the subsidiaries, namely: Petroproducción, Petrocomercial, Petroindustrial and Petroecuador.

818. Likewise, the management decisions adopted by Petroecuador, through the legal actions of the vice-presidents of the subsidiaries of which they are the legal representative, are not acts contrary to the Political Constitution of the Ecuadorian State, collective agreement, the Labour Code, or, which would be worse, the conventions signed by the Government of Ecuador with the ILO, as alleged by the complainants.

819. The assertion in the previous paragraph was confirmed by the Constitutional Judge in the Tenth Civil Court of Pichincha, Dr José Martínez Naranjo, who in a judgement dated 21 August 2008 (documentation for which is attached) decided to reject the appeal for constitutional protection filed by one of the presumed dismissed trade union officials, Mr Edgar Ramiro de la Cueva Yánez.

820. In conclusion, the Ecuadorian Government and the Ministry of Labour did not violate the labour rights of the complainants, for which reason in setting out the due observations in this document, the Government is quite certain that the ILO, through the Committee on Freedom of Association, will reject them and archive them.

821. Finally, the Government of Ecuador, through the Secretariat of State, reserves the legitimate right prior to the legal analysis of the case, to submit a request to the Governing Body of the ILO for violation of the rules contemplated in Conventions Nos 87 and 98, since it will not escape your notice that the clauses contained in the collective agreements of the State Petroleum Company and its subsidiaries violated the basic principles of the concept of collective bargaining set out in those legal instruments, as well recognized by the complainants, is determined. This is determined by article 4, which states verbatim "in consequence if article 4 of Convention No. 98 on collective bargaining only has the object of regulating conditions of employment". The Government refers to the excesses of that contract of employment detailed in its two previous communications.

C. The Committee's conclusions

822. *The Committee observes that the complainant organizations (FETRAPEC, PSI and OSUNTRAMSA) allege, on the one hand, the arbitrary and unfair dismissal of four trade union officials in the petroleum sector (Messrs Edgar de la Cueva, Ramiro Guerrero, Jhon Plaza Garay and Diego Cano Molestina) and, on the other, the issue of "Constituent Resolutions" and legal instruments derived therefrom which gave rise to various limitations on collective bargaining and the declaration of nullity or unilateral amendment by the authorities of clauses of collective agreements in the public sector through procedures in which the trade unions were merely heard and in which the administrative authority decided without any possibility of administrative or judicial appeal.*

823. *The Committee observes that the Government objects to the receivability of the complaint presented by FETRAPEC on the basis that: (1) the complainants – the five signatories of the complaint by FETRAPEC – did not submit evidence of the appointments accrediting them as trade union officials; (2) Mr Diego Cano Molestina who, according to the complaint, acts as President of the National Federation of Petroecuador Workers, no longer works for the Petroecuador company; (3) this person has not shown that he is a representative of all the unionized workers in the public sector, for which reason his complaint accompanied by the signature of the other three supposed trade union officials is null and void; (4) the complaint is not supported by a national federation of Ecuadorian workers constituted and registered pursuant to the constitutional and legal provisions that allow such registration; (5) the termination of the employment relations of the four supposed trade union officials is not arbitrary because it is supported in law in the constitutional principle of freedom to contract and it was in accordance with the Labour Code, the collective agreement and the General Regulations pursuant to the Special Act concerning Petroecuador and its subsidiaries, from which it can be concluded that at any time the employment relation may be terminated unilaterally, and all the legal compensation due to those four persons had been paid; (6) those regulations attribute to the Petroecuador company responsibility for the management and safeguarding of the interests of the subsidiary, to evaluate the management performance of their institution and its employees, all in relation to the activities specific to the fields of professional activity; and (7) the court refused the appeal for constitutional protection filed by one of the alleged trade union officials, Mr Edgar de la Cueva (the Government attaches the judgement).*

824. *The Committee wishes to point out that in any case the question of receivability of FETRAPEC's complaint has been overtaken by events with regard to the allegations relating to the Constituent Resolutions and the legal instruments derived from them, since the other complainant organizations (PSI and OSUNTRAMSA) support FETRAPEC's complaint or explicitly express the same concerns and ask the Committee to pronounce on the texts in question.*

825. *As regards the question of the receivability of FETRAPEC's complaint concerning the dismissal of four (alleged according to the Government) trade union officials, the Committee observes that in the judgement sent by the Government on the application for protection* (amparo) *filed by one of those persons (Mr Edgar de la Cueva, one of the signatories of the complaint to the Committee) with respect to his unfair dismissal, his status of trade union official is mentioned on several occasions without the defendant, the Petroproducción company, denying or objecting to it. Furthermore, the application mentions anti-trade union reprisals as a consequence of a press release in the name and representation of the trade union organization establishing guidelines for the definition of petroleum policy and complaints against the Ministry of Mines and Petroleum. The application was refused for reasons of form (failure previously to exhaust the ordinary legal remedies). Nevertheless, given that the Government has raised the question of the receivability of the complaint, making it subject to evidence of the status of trade union official of the signatories of the complaint (four of them dismissed), the Committee requests FETRAPEC to confirm the status of trade union official of the signatories of the complaint, including the dismissed persons, for example, by sending the minutes of the general meeting in which they were elected by their trade union organization, grass-roots union or federation. In turn, the Committee requests the Government to indicate: (1) whether the consideration that the four dismissed persons were not trade union officials was related to their dismissal, which might have made them lose that status under Ecuadorian legislation, and (2) the "specific facts" which motivated the dismissal of those four persons, as it would appear from the Government's reply that they were dismissed unilaterally and without any indication of the grounds. The Committee also requests the Government to communicate the sanctions set out in the legislation in the case of arbitrary*

and unjustified dismissals of trade unionists. The Committee recalls paragraph 33 of its procedures, whereby the Committee has not regarded any complaint as being irreceivable simply because the government in question had dissolved, or proposed to dissolve, the organization on behalf of which the complaint was made, or because the person or persons making the complaint had taken refuge abroad.

826. *Returning to the question of the Constituent Resolutions and the legal instruments derived from them, to which the complainant organizations object, in that they allege they declare the nullity or impose amendments of clauses of collective agreements in force in the public sector through procedures in which the complainant organizations are merely "heard" and in which decisions are taken by the administrative authority without the possibility of any administrative or legal appeal, the Committee indicates that the relevant provisions of the texts in question, attached by the complainant organizations and the Government, are reproduced in the annex to the present report.*

827. *The Committee notes the Government's statements according to which: (1) the revision of the collective agreements in the public sector, which contained excesses and privileges, was an aspiration and desire of large sections of the population and the response of the public at large was total approval and acceptance of the revision process being undertaken by the Ministry of Labour and Employment in relation to clauses which contain unreasonable and excessive privileges which conflicted with the general interest; the Government gives specific examples relating to collective agreements in the petroleum sector, amply described in its reply, for example, the voluntary separation of the worker in the Petroecuador company gave rise to contributions ranging from US$150,000 to US$600,000; (2) these clauses (of the nature indicated in Constituent Resolution No. 008 and its regulations for application) are merely indicative; (3) the Constituent Resolutions have a supra-constitutional character and may not be derogated or the subject of claims of unconstitutionality in the Constitutional Court; (4) collective bargaining in the public sector is subject to the existence of the economic resources to finance it and, had the collective agreements of Petroecuador been maintained, that would have led to its liquidation to the detriment of 13 million Ecuadorians; and (5) the reforms concerned were carried out in full respect for the legal order.*

828. *The Committee observes that the complainant organization FETRAPEC does not deny that there may be excesses and considers it essential that there will be legislation to ensure that in the future certain "excesses" of "abuses" are avoided, but questions whether the amendments have been in accordance with normal and rational practice, i.e. through collective bargaining, and that resort was made instead to the subjective and arbitrary government authority through public officials. The Committee observes that the complainant organization emphasizes that nowhere in Constituent Resolution No. 008 does it state that the revising commission (of collective agreements) is composed solely of officials of the Ministry of Labour and Employment. That was defined, emphasizes FETRAPEC, by the Ministry of Labour and Employment in Ministerial Order No. 00080, which grants discretionary powers to that commission and excludes any administrative or judicial appeal; the "contributions" of workers' organizations and the employer, according to that order, will be appraised by the commission applying the principle of "healthy criticism".*

829. *To the extent that this case involves legal instruments (Constituent Resolutions, regulations, ministerial orders) which affect conditions of work, the Committee wishes to emphasize the importance of prior consultation of employers' and workers' organizations before the adoption of any legislation in the field of labour law [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, para. 1073]. The Committee highlights that it is important that consultations take place in good faith, confidence and mutual respect, and that the parties have sufficient time to express their*

*views and discuss them in full with a view to reaching a suitable compromise [see **Digest**, op. cit., fifth edition, 2006, para. 1071]. In the present case, nothing indicates either the Government's statements or the content of the legal texts to which the complainants object, that in-depth consultations were held in advance and allowing sufficient time with the workers' organizations concerned (which deplore the unilateral nature of the legal instruments in question) and for that reason, the Committee requests the Government in future to take into account the aforementioned principles in order, as far as possible, to reach shared solutions.*

830. *As regards the provisions in the Constituent Resolutions which set a cap on remuneration in the public sector (No. 002), compensation for unfair dismissal and other causes of termination of the employment relation (No. 002 and No. 004) or prohibit supplementary private pension schemes which involve contributions of State resources (Executive Decree No. 1406 of 24 October 2008, which provides that State resources shall not be contributed to funds of a private nature), the Committee does not doubt the expressed will of the Government to look after the general interest, ensure equality, avoid unreasonable excesses in collective agreements and ensure financial and budgetary balance, but wishes to emphasize that these are permanent and unalterable limitations on the right of collective bargaining of workers' organizations incompatible with Convention No. 98, which provides for free and voluntary bargaining of conditions of work and if the Government wishes to pursue a policy which seeks those objectives which, moreover, are legitimate, it can do so in the framework of collective bargaining without resorting to impositions which limit the content of bargaining by the parties to that bargaining. The Committee recalls that limitations on the free determination of wages in collective bargaining are only acceptable in exceptional circumstances. In this respect, the Committee has indicated that "If, as part of its stabilization policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards" [see **Digest**, op. cit., para. 1024]. Furthermore, the Committee has taken the view that the parties involved in collective bargaining can improve the legal provisions on pensions [see 353rd report, Case No. 2434, para. 538].*

831. *Furthermore, the Committee recalls the principle that repeated recourse to legislative restrictions on collective bargaining can only, in the long term, prejudice and destabilize the labour relations climate if the legislator frequently intervenes to suspend or terminate the exercise of rights recognized for unions and their members. Moreover, this may have a detrimental effect on workers' interests in unionization, since members and potential members could consider useless joining an organization, the main objective of which is to represent its members in collective bargaining, if the results of such bargaining are constantly cancelled by law [see **Digest**, op. cit., para. 1019]. The Committee also recalls that the right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent. The public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof. Any such interference would appear to infringe the principle that workers' and employers' organizations should have the right to organize their activities and to formulate their programmes [see **Digest**, op. cit., para. 881].*

832. *The Committee has considered that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with Convention No. 98; tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining are a particularly appropriate method of resolving these difficulties [see **Digest**, op. cit., para. 912].*

833. *In particular, the Committee also emphasizes the principle that the reservation of budgetary powers to the legislative authority should not have the effect of preventing compliance with collective agreements entered into by, or on behalf of, that authority [see* ***Digest****, op. cit., para. 1033].*

834. *The Committee requests the Government to restore the right of collective bargaining on conditions of work and living standards of workers and to inform it accordingly.*

835. *With respect to the alleged declaration of absolute nullity or the imposition of the revision of clauses of collective agreements by administrative means (in those cases where the administrative authority considers that the clauses of such agreements contain excesses and unreasonable privileges which conflict with the general interest in the numerous cases listed indicatively in Constituent Resolution No. 008 and its regulations for application), the Committee observes that the administrative procedure is regulated by Ministerial Order No. 00080 and Order No. 00155A, both of the Ministry of Labour. The Committee emphasizes that control of clauses of public sector agreements for possible abuse should not be up to the administrative authority, since it cannot be both judge and party, but a matter for the judicial authority, and then only in extremely serious cases, and not for just any significant benefit which has been agreed. The Committee therefore requests the Government that control of allegedly abusive clauses of collective agreements should only be carried out through the courts, so as to ensure impartiality, the right of defence and due process. The Committee observes that in the present case, the decisions of the administrative authorities are not subject to any appeal whatsoever, whether administrative or judicial and considers that the current regulations, especially the instruments of the Ministry of Labour and Employment, which allow it unilaterally to declare void or reduce a wide range of clauses of collective agreements, is a serious violation of the principle of free and voluntary bargaining. Therefore, the Committee requests the Government to annul those ministerial texts and their effects and to indicate whether Constituent Resolution No. 008 is compatible with exclusively judicial control (not administrative) of the possible abusive character of certain clauses of collective agreements in the public sector. The Committee requests the authorities that, if it is wished to amend the result of collective bargaining, it should wait until the expiry of the collective agreements and the respective employers should renegotiate their content with the trade union organizations.*

836. *More specifically, with respect to the revision of the clauses of the collective agreements of the Petroecuador company and its subsidiaries and the health sector, by decision of the commission on the revisions of collective agreements in the public sector, the Committee notes the excesses of some of the clauses highlighted by the Government, and that the complainant organization FETRAPEC implicitly recognizes some excesses in certain clauses. The Committee considers that, in conformity with the principles and considerations expressed in the foregoing paragraphs, the revisions made by the Ministry of Labour and Employment should be cancelled. The Committee understands that the FETRAPEC organizations would be disposed to engage in renegotiation with their employers and that this would probably also be the case in the health sector, where, for example, the clause on working hours and days, and other clauses, were declared void.*

837. *The Committee requests the Government to take steps to ensure that these collective agreements are renegotiated if the trade union organizations confirm the wish to do so.*

838. *The Committee requests the Government to keep it informed of measures taken to give effect to its recommendations and, noting the request of the complainant organizations, invites the Government to accept an ILO mission to assist in solving the problems observed in this case.*

839. *Finally, the Committee requests the Government to send its observations on the recent communications from the CEOSL dated 16 March and 20 May 2009.*

The Committee's recommendations

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

(a) The Committee requests the complainant organization FETRAPEC to confirm the status of trade union official of the signatories of the complaint, including the dismissed persons, for example, by sending the minutes of the general meeting in which they were elected by their trade union organization, grass-roots union or federation. In turn, the Committee requests the Government to indicate: (1) whether the consideration that the four dismissed persons were not trade union officials was related to their dismissal, which might have made them lose that status under Ecuadorian legislation; and (2) the "specific facts" which motivated the dismissal of those four persons as it would appear from the Government's reply that they were dismissed unilaterally and without any indication of the grounds. The Committee also requests the Government to communicate the sanctions set out in the legislation in the case of arbitrary and unjustified dismissals of trade unionists.

(b) The Committee requests the Government and the authorities competent for issuing labour legislation to hold in-depth consultations in advance and allowing sufficient time with the workers' organizations concerned in order, as far as possible, to reach shared solutions.

(c) The Committee observes that Constituent Resolutions Nos 002, 004 and Executive Decree No. 1406 set a permanent cap on remuneration in the public sector, compensation for termination of the employment relation and prohibit supplementary private pension schemes which involve contributions of State resources. To the extent that these are permanent limitations on collective bargaining, the Committee requests the Government to restore the right of collective bargaining on conditions of work and living standards of workers and to inform it accordingly.

(d) As regards the imposition of the revision of clauses of public sector collective agreements by administrative means (declaration of nullity or amendment) which contain excesses and unreasonable privileges (Constituent Resolution No. 008) by unilateral decision of a commission (Ministerial Order No. 00080 and Order No. 00155A) the Committee emphasizes that control of allegedly abusive clauses of collective agreements should not be up to the administrative authority (which in the public sector is both judge and party), but the judicial authority, and then only in extremely serious cases. Therefore, the Committee requests the Government to annul those ministerial texts and their effects since they seriously violate the principle of free and voluntary collective bargaining consecrated in Convention No. 98, and to indicate whether Constituent Resolution No. 008 is compatible with exclusively judicial control of the possible abusive character of certain clauses of collective agreements in the public sector.

The Committee requests the competent authorities that, if it is wished to amend the result of collective bargaining, that they should wait until the expiry of the collective agreements and the respective employers should renegotiate their content with the trade union organizations.

(e) The Committee requests the Government to take steps to ensure that the collective agreements, which were revised by administrative process, are renegotiated if the trade union organizations confirm the wish to do so.

(f) The Committee requests the Government to keep it informed of measures taken to give effect to the various recommendations formulated in this report and, noting the request of the complainant organizations, invites the Government to accept an ILO mission to assist in solving the problems observed in this case.

(g) The Committee requests the Government to send its observations on the communications from the CEOSL dated 16 March and 20 May 2009.

Annex

Provisions criticized by the complainant organizations

– ***Constituent Resolution No. 001***

Decisions of the Constituent Assembly are hierarchically superior to any other legal rule and compliance is mandatory for all natural and legal persons and other public authorities without any exception whatsoever. No decision of the Constituent Assembly shall be subject to review or challenge by any of the constituted powers.

– ***Constituent Resolution No. 002***

Article 1. Maximum remuneration. *The standard monthly remuneration is set at an amount equivalent to 25 times the standard basic wage of the private sector worker for dignitaries, judges, authorities, officials, delegates or representatives to collegiate bodies, members of the armed forces and police, civil servants and public sector workers, both financial and non-financial.*

The following are not considered part of the standard monthly wage: the 13th and 14th month salary or remuneration, travel and subsistence, overtime and additional hours, subrogation of functions or duties, housing allowance, employer's contribution to the Ecuadorian Social Security Institute and reserve funds.

Article 2. Scope. *This Resolution shall be of immediate and mandatory application to the following entities:*

(a) institutions, organizations, dependent and autonomous entities and special programmes, appointed, devolved and decentralized which are or form part of the executive, legislative and legal functions;

(b) control and regulatory bodies: National Audit Office, Attorney General's Office, Public Prosecutor's Office, Civil Corruption Control Commission, superintendencies, National Telecommunications Council, National Telecommunications Secretariat, Public Ombudsman, Supreme Electoral Tribunal, provincial electoral tribunals, Internal Revenue Service and Constitutional Court, National Electricity Council, National Energy Control Centre and National Radio and Television Council;

(c) entities which make up the autonomous sectional system, its enterprises, foundations, companies or entities, dependent, autonomous, devolved, decentralized or appointed to them, whose budget is financed 50 per cent or more from State resources;

(d) public financial institutions;

(e) financial institution in the process of restructuring or liquidation;

(f) the Ecuadorian Social Security Institute (IESS);

(g) the port authorities and the Ecuadorian Customs Corporation;

(h) bodies and institutions created to exercise State powers, the provision of public services or to carry on economic activities assumed by the State;

(i) legal persons created by sectional legislative act for the provision of public services;

(j) public universities and polytechnics and public educational institutions at any level;

(k) the police, comprising the three branches of the armed forces and the polices;

(l) the Transit Commission of Guayas province;

(m) public and private enterprises whose capital or assets are funded 50 per cent or more from public resources and public sector institutions or bodies;

(n) legal persons under private law or commercial companies, irrespective of the purpose, whether corporate, public, profit or not-for-profit, whose share capital, assets or tax participation are funded 50 per cent or more from public resources;

(o) non-governmental organizations: civil societies and foundations, whose assets, capital, assets or financing are funded 50 per cent or more from public resources;

(p) autonomous estates, investment funds or commercial trusts with 50 per cent or more of public resources; and

(q) in general, other institutions, bodies, institutions, executive entities, programmes and projects which are financed 50 per cent or more from State resources.

Article 3. Exceptions. *Excepted from the application of the limit on remuneration fixed in this Resolution are foreign service officials, members of the armed forces or other State institutions who are permanently assigned to diplomatic or consular functions or military operations abroad, representing Ecuador.*

The remuneration of dignitaries, judges, authorities, officials, administrative staff, civil servants and public sector workers who work in public institutions and who live in the island province of Galápagos may be increased by up to 100 per cent of the said remuneration.

Article 8. Settlements and compensation. *The amount of compensation, for abolition of posts, voluntary resignation or voluntary pensionable retirement of officials, public servants and teachers in the public sector, with the exception of those in the armed forces and national police, shall be up to seven times the standard basic minimum wage of a private sector worker for each year of service up to a maximum amount of 210 times the standard basic minimum wage of a private worker in total. To that end, public sector institutions shall establish on a planned basis the maximum number of resignations to be processed and financed each year, at the same time establishing the corresponding budgets, in coordination with the Ministry of Finance, if applicable.*

The employment authorities shall supervise the right to stability of employment of workers. Except in the case of unfair dismissal, compensation for abolition of posts or termination of employment relations of staff of the institutions contemplated in article 2 of this Resolution, agreed in collective agreements, transactions, settlements and any other agreement however called, which stipulates the payment of compensation, bonuses or contributions for the termination of any type of individual employment relationship, shall be seven times the standard basic minimum wage of the private worker for each year of service up to a maximum amount of 210 times the standard basic minimum wage of a private worker in total.

All officials, public servants, teachers and public sector workers who receive the benefits of the compensation or bonuses indicated in this article may not re-enter the public sector, with exception of dignitaries elected in popular elections or freely appointed.

Article 9. Prohibition. *Compliance with the provisions contained in this Constituent Resolution shall be mandatory and they shall not be open to complaint, challenge, action for protection* (amparo), *demand, claim or any other legal or administrative action.*

No authority, judge or court shall recognize or declare as an acquired right a total monthly income which exceeds the limits indicated in this Constituent Resolution.

Transitional provisions

One. *By 29 February 2008, all the entities indicated in article 2 shall be adjusted to the principles of fairness established by the National Technical Secretariat for Human Resources Development and Public Sector Remuneration (SENRES), or by the relevant regulatory authorities. The new remuneration scales shall enter into force on 1 March 2008.*

Remuneration that is less than the maximum standard monthly remuneration established in article 1 of this Resolution at the date of issue of this Resolution shall not be liable to reduction.

– ***Constituent Resolution No. 004***

Article 1. *The State guarantees stability for all workers, collective bargaining and freedom of association, in compliance with the universal principles of social law which guarantees equality of citizens in work, and prevention of economic and social inequality.*

Compensation for unfair dismissal of staff of the institutions contemplated in article 2 of this Resolution No. 2, approved by the Constituent Assembly on 24 January 2008, agreed in collective agreements, transactions, settlements and any other agreement however called, which stipulates the payment of compensation, bonuses or contributions for unfair dismissal, may not exceed 300 times the standard basic minimum wage of a private worker.

No authority, judge or court shall declare as an acquired right, or order the payment, of compensation for termination of employment relations which constitutes unfair dismissal greater than the amount established in the previous paragraph.

Article 2. *Compliance with the provisions contained in this Constituent Resolution shall be mandatory and they shall not be open to complaint, challenge, action for protection* (amparo), *demand, claim or any other legal or administrative action.*

Article 3. *All provisions which oppose or conflict with this Resolution are repealed.*

– ***Constituent Resolution No. 008***

The Plenary of the Constituent Assembly, considering that for the sake of fairness in work, it is necessary to revise and regulate the clauses of collective agreements concluded by public sector institutions, state enterprises, sectional bodies and entities subject to private law in which, under any name, nature or legal structure, the State or its institutions have a majority shareholding and/or direct or indirect contributions of public resources, which contain unreasonable and excessive privileges and benefits of minority groups which run counter to the general interest and the workers themselves; and in the exercise of its attributions and powers, decides as follows:

General provisions

…

Four: *Collective bargaining is guaranteed in public sector institutions, public state enterprises, sectional bodies and entities under private law in which, under any name, nature or legal structure, the State or its institutions have a majority shareholding and/or direct or indirect contributions of public resources, in accordance with the terms established in the Constituent Resolutions and regulations of the Ministry of Labour and Employment.*

Transitional provisions

…

Three: *Clauses of collective agreements which are in force and which were signed by public sector institutions, state enterprises, sectional bodies and entities subject to private law in which, under any name, nature or legal structure, the State or its institutions have a majority shareholding and/or direct or indirect contributions of public resources, shall be automatically adjusted to the provisions of the Constituent Resolutions and regulations issued by the Ministry of Labour and Employment within a period of 180 days.*

Collective agreements to which this transitional provision refers shall not protect those persons who exercise management, executive and representative and managerial duties

generally, or staff who by the nature of their functions or work are subject to public order acts, especially the Organic Act on the Civil Service and Administrative Profession, Approval and Unification of Public Sector Remuneration.

The process of revision of the collective agreements to which this transitional provision refers, in which employers and workers shall participate, shall be done publicly and shall establish clear restrictions on all clauses which contain excesses and privileges such as: transfer and transmission of posts to family members on retirement or decease of the worker, additional hours and overtime not worked and paid to trade union officials, payment of holidays and recognition of other benefits for the worker's family group, additional gratuities and bonuses for voluntary retirement, free supply of the company's goods and services, among other clauses of that kind.

Clauses of collective agreements which are not adjusted to the parameters to which this transitional provision refers and which contain unreasonable and excessive privileges and benefits which run counter to the general interest are void in law.

Judges, courts and administrative authorities shall enforce this provision.

Four: *The executive function, in the course of social dialogue, within a period of one year, shall establish the principles governing collective agreements in all public sector institutions, state enterprises, sectional bodies and entities subject to private law in which, under any name, nature or legal structure, the State or its institutions have a majority shareholding and/or direct or indirect contributions of public resources, which may not be modified.*

Five: *This Constituent Resolution shall be regulated by the President of the Republic within 60 days.*

Final provisions

…

Three: *Compliance with this Resolution is mandatory and therefore it shall not be open to complaint, challenge, action for protection* (amparo), *demand, claim, administrative or judicial opinion or judgement and shall enter into force immediately, without prejudice to its publication in the Constituent Journal and/or the Official Journal.*

– ***Regulations for the application of Constituent Resolution No. 008***

(Constitutional President of the Republic)

…

Transitional provisions

…

Three: *Clauses of collective agreements which are in force and which were signed by public sector institutions, state enterprises, sectional bodies and entities subject to private law in which, under any name, nature or legal structure, the State or its institutions have a majority shareholding and/or direct or indirect contributions of public resources, shall be automatically adjusted to the provisions of the Constituent Resolutions and regulations issued by the Ministry of Labour and Employment within a period of 180 days from 1 May 2008. [This time limit was subsequently extended to one year by Decree No. 1396 of the Constitutional President of the Republic.]*

Collective agreements to which this transitional provision refers shall not protect those persons who exercise management, executive and representative and managerial duties generally, or staff who by the nature of their functions or work are subject to public order acts, especially the Organic Act on the Civil Service and Administrative Profession, Approval and Unification of Public Sector Remuneration.

The process of revision of the collective agreements to which this transitional provision refers, in which employers and workers shall participate, shall be done publicly within a period of 180 days from the entry into force of Constituent Resolution No. 008 and shall establish clear restrictions on all clauses which contain excesses and privileges such as: transfer and transmission of posts to family members on retirement or decease of the worker, additional hours and overtime not worked and paid to workers or trade union officials, compensation for change or substitution of employer, contributions by the entity or company to extra-statutory

or personal pension funds, payment of holidays and recognition of other excessive benefits for the worker's family group, additional gratuities and bonuses for voluntary separation or retirement, free supply of the company's goods and services, payment of the 13th and 14th months in amounts or values greater than those laid down by law, contribution by the entity or company to trade union activities, holidays in addition to public holidays established by law, among other clauses of that kind.

The Minister of Labour and Employment shall issue regulations and procedures for the revision of the collective agreements concerned. The highest authorities in the various public and private sector institutions charged with applying this provision shall be personally liable in civil law for their application.

Clauses of collective agreements which are not adjusted to the parameters to which this transitional provision refers and which contain unreasonable and excessive privileges and benefits which run counter to the general interest are void in law.

Judges, courts and administrative authorities shall enforce this provision.

***Four:** The executive function, in the course of social and employment dialogue, within a period of one year, shall establish the principles governing collective agreements in all public sector institutions, state enterprises, sectional bodies and entities subject to private law in which, under any name, nature or legal structure, the State or its institutions have a majority shareholding and/or direct or indirect contributions of public resources, which may not be modified.*

– ***Ministerial Order No. 00080***

(Minister of Labour and Employment)

…

***Article 1.** The direction and coordination of the process of automatic adjustment and revision of the clauses of collective agreements to which transitional provisions three of Constituent Resolution No. 008 of 30 April 2008 and the Regulations for the application of that Resolution, of 5 June of that year, shall be the responsibility of the following commissions:*

For the Sierra and Amazonia region: Under-secretary for Labour and Employment of Sierra and Amazonia, presiding; Regional Director of Labour of Quito and Technical Director of the Legal Department; and

For the coast and Galapagos region: Under-secretary for the coast and Galapagos, presiding; Regional Director of Labour of Guayaquil, and Legal Adviser.

The legal officer designated by the respective Under-secretary for Labour and Employment shall act as secretary to these commissions.

To accomplish their work, the foregoing commissions, under their responsibility, may designate revising subcommissions which will be composed of officials and advisers of the Ministry of Labour and Employment.

***Article 2.** The work of the revising commissions and subcommissions shall be supervised by the Vice-minister of Labour and Employment, who shall keep the Minister of Labour and Employment constantly informed of progress and results of the revision process.*

***Article 3.** The Ministry of Labour and Employment shall designate legal officers to carry out an analysis prior to the revision work of the commissions and subcommissions of collective agreements and identify cases and clauses which contain the privileges and excesses mentioned in paragraph three of transitional provision three of Constituent Resolution No. 008 and paragraph three of transitional provision three of the Regulations for the application of that Resolution.*

Once the prior reviews have been carried out, the commissions shall commence their activities, immediately drawing up a timetable for the revision of collective agreements in force in the entities and institutions to which this Order refers.

***Article 4.** Three employers' representatives and three workers' representatives, duly accredited to the secretary of the commission, shall participate in the revision process, which shall be public.*

This process shall take place at the place, time and on the date indicated by the commission in the convocation.

On completion of the process of revision of a collective agreements, the secretary of the commission shall prepare and sign with the president of the commission the corresponding revision order, which shall be appended to the collective agreement as an integral part thereof.

Article 5. *The agreed clauses of collective agreements which are in force shall be adjusted to the provisions laid down in Constituent Resolutions Nos 002 and 004, concerning amounts and maximum limits of remuneration and compensation for termination of employment and unfair dismissal.*

Article 6. *The scope of protection and* "amparo" *of collective bargaining shall not depart from the relevant provisions of the current Political Constitution of the Republic and the collective agreements themselves, except in relation to persons who perform or exercise management, executive and functions of representation and management generally, who are expressly excluded by Constituent Resolution No. 008.*

Article 7. *In the revision process, stability, the provisions on the workplace environment and all other clauses which normally form part of collective agreements and which do not contain abuses, excesses and privileges which conflict with the general interest shall be respected.*

Article 8. *This process shall identify all clauses which contain excess and abuses, such as: transfer and transmission of posts to family members on retirement or decease of the worker, additional hours and overtime not worked and paid to workers and trade union officials, compensation for change or substitution of employer, contributions by the entity or company to extra-statutory or private pension funds, payment of holidays and recognition of other excessive benefits for the worker's family group, additional gratuities and bonuses for voluntary retirement, free supply of the company's goods and services, payment of holidays and the 13th and 14th month remuneration in amounts greater than those laid down by law, contributions by the entity or company to trade union activities, holidays additional to those established by law, suspension of work to hold meetings and other trade union activities without the prior authorization of the relevant authority, among other clauses of that kind.*

In accordance with the provisions of paragraph four of transitional provision three of Constituent Resolution No. 008, these clauses are void in law, have no legal validity and effect, and are therefore abolished by effect of declaration of nullity.

Article 9. *In accordance with the provisions of Constituent Resolutions Nos 002, 004 and 008, the previsions and regulations of this Order, and those generated in the revision process, compliance therewith is mandatory and therefore they shall not be open to complaint, challenge, action for protection* (amparo)*, demand, claim, administrative or judicial opinion or judgement whatsoever.*

– ***Ministerial Order No. 00155A***

(Minister of Labour and Employment)

Decides: *To issue the following rules of procedure for the revision of the collective agreements mentioned in transitional provision three of Constituent Resolution No. 008 of 30 April 2008:*

1. *These rules of procedure, which apply to the process of revision of collective agreements in the public sector, shall be known by the participants at the commencement of the meeting of the body responsible for carrying out that task.*

2. *Legally, the process of revision is the act of subjecting a matter to a new examination, to correct, amend or remedy it. In consequence, the present revision process for which the commission is responsible, establishes that from the procedural point of view, the clauses of the collective agreement may be declared void in law, amended in part or in full in the exercise of the discretionary power granted to that body under the provisions of Constituent Resolution No 008, its Regulations for application and Ministerial Order No. 00080.*

3. *In the revision process, the parties (employers and workers) may intervene through a spokesperson who may be designated at the beginning of the meeting where the revision of the collective agreement is to take place. This shall be noted in the minutes and shall allow the*

said representative to express views, opinions and suggestions to enhance the focus of the commission's revision work. These contributions shall be appraised by the members of the commission applying the principle of healthy criticism to the revision of the clauses of the collective agreement.

4. *In accordance with final provision three of Constituent Resolution No. 008, the revision process which is carried out under this procedure is mandatory and the minute of the revision of the collective agreement shall not be open to complaint, challenge, action for protection* (amparo)*, demand, claim by the company or workers, or any administrative or judicial opinion or judgement, and that fact shall expressly stated in the said document.*

5. *The parties involved in the revision process shall be invited by a notice prepared and signed by the president of the commission, and shall convene them indicating the day and time of the meeting for that purpose.*

6. *On receipt of the notice from the president of the commission on the revision of collective agreements in the public sector, the employer must immediately submit within 24 hours, in magnetic form, a copy of the collective agreement subject to revision which shall be delivered to the secretariat of that body in the Ministry of Labour and Employment building, 12th floor.*

7. *If on the day and at the time indicated for the revision process, one of the parties (representatives of the public sector enterprise or workers' organization) does not appear, the fact shall be noted on commencing the revision meeting and shall continue with the party that has appeared. If both parties do not appear, the fact shall likewise be noted and the revision of the collective agreement shall proceed in accordance with the procedure indicated below.*

8. *The process of revision of the collective agreement shall commence with the presentation of the documentation accrediting the designation of the representatives of the employer and workers, which shall be incorporated as accreditation documents in the minutes. Failing this, a period of 72 hours shall be granted to legitimize their participation, and shall be included in the minutes. If such accreditation is not produced by any of the parties, the minute of the revision meeting shall constitute accreditation of their representation and appearance in the process.*

9. *Once these representatives have been accredited or legitimized subsequently, the participants shall be given a folder containing the legal documentation applicable to the process.*

10. *When these documents have been handed out, the president of the commission for the revision of collective agreements in the public sector shall declare the meeting open and shall ask the secretary first to read the rules of procedure for the revision of the collective agreement and that shall be noted in the minute.*

11. *The revision process shall begin with the preparation of the draft minute and shall continue with the reading of all and each of the clauses of the collective agreement subject to revision, content which may be deleted in full or amended in accordance with the opinion of the commission if there are found to be excesses and privileges, independently of the application of the existing rules in Constituent Resolutions Nos 002, 004 and 008 and the Regulations for the application of the latter and Ministerial Order No. 00080.*

12. *Once the reading of the clause being revised has been completed, the president of the commission shall inform the parties whether the clause is void in law and, therefore, non-existent, in which case it is automatically adjusted and no longer forms part of the collective agreement.*

13. *If the clause has to be amended, it shall be amended, and shall form part of the collective agreement.*

14. *The procedure established in paragraphs 4 and 5 shall continue until the revision of the agreement has been completed.*

15. *As the revision process is the exclusive prerogative of the commission, the participants may not negotiate or challenge the nullity or amendment of clauses of the collective agreement. That notwithstanding, the participants may participate with opinions or views which allow the commission to have a better analysis during the revision process.*

16. *The revision process shall be recorded in a minute whose preparation shall commence simultaneously with the revision process, which shall be signed by the participants and shall*

constitute an authorizing document. The revised collective agreement shall be codified so as not to show the clauses declared void in law but shall show the clauses amended based on the opinion of the revising commission and the contributions of the participants, employer and workers, it being clarified that the latter contributions do not bind the commission, which has the discretion to take them into account or not.

17. *If one of the participating parties leaves the meeting in which the revision of the collective agreement is taking place, this act shall be taken as tacit acceptance of the work of the revising commission. The secretary of the revising commission shall note the fact, whereupon the president shall rule that the revision process shall continue.*

18. *The minute of revision process with all the supporting documentation shall be prepared in one original and five copies of equal standing and content, which shall be signed by all the members of the revising commission and the employer's and workers' representatives. If they do not do so, a special note shall be made in the minute, and the secretary of the commission shall certify the validity of the document.*

19. *Once the process of revision of the collective agreement has been completed and the minute signed, the secretary of the body by a separate procedure shall codify the revised clauses, which shall also be checked by the president of the commission on his own responsibility, which codification shall constitute the legal instrument which shall in future regulate the application of the collective agreement in force between the parties and which as an addendum shall form part of the respective collective agreement.*

20. *Notwithstanding the foregoing, the revision of the collective agreement shall have legal effects and its clauses shall be of mandatory application for the parties from the moment when the minute of the revision is signed, copy of which a duly certified by the secretary of the commission shall be delivered to the parties at the end of the process of revision of the collective agreement.*

CASE NO. 2323

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

Complaint against the Government of the Islamic Republic of Iran presented by the International Trade Union Confederation (ITUC)

Allegations: The complainant organization alleges that workers were killed and injured by riot police in the context of a strike and related protests in 2004, and that many other workers were arrested and detained. In another incident during a May Day rally in 2004, several workers were arrested and detained

841. The Committee last examined this case on its merits at its June 2008 session, where it issued an interim report approved by the Governing Body at its 302nd Session [see 350th Report, paras 952–1002].

842. The Government provided its observations in a communication dated 16 March 2009.

843. The Islamic Republic of Iran has not ratified either 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. Previous examination of the case

844. In its previous examination of the case, the Committee made the following recommendations [see 350th Report, para. 1002]:

- The Committee requests the Government to provide full documentation of the measures taken to ensure that the competent authorities received adequate instructions so as to eliminate the use of excessive violence when controlling demonstrations, including copies of the instructions circulated to the police and the provincial security councils.
- The Committee requests the Government to immediately institute independent inquiries into the incidents related to a rally in support of Mahmoud Salehi's release from prison, including the allegations that Mahmoud Salehi's son Samarand Salehi was arrested at the rally, that Jalal Hosseini and Mohammad Abdipour were summoned to the Prosecutor's office to prevent them from attending the gathering, and that the security forces closed down the offices of the Saqez Workers Consumer Cooperative.
- The Committee urges the Government to ensure that any remaining charges against Messrs Hosseini, Divangar, Hakimi and Salehi are immediately dropped and that their sentences are annulled and to keep it informed of developments in this regard.
- The Committee urges the Government to take the necessary measures to institute an independent inquiry into the allegations of the denial of medical treatment to Mr Salehi with a view to fully clarifying the facts, determining responsibility, punishing those responsible, compensating him for any damages suffered and preventing the repetition of such acts.
- The Committee urges the Government to institute without delay an independent inquiry into the complainant's allegation of Mr Divangar's arrest, detention, and alleged severe beating and to provide full particulars in this regard.
- The Committee requests the Government to confirm that all charges against Shis Amani and the other NUUDWI members have been dropped, and their sentences annulled, as well as to ensure that they receive full compensation for any damages resulting from their period of incarceration in connection with the May Day 2007 activities and to keep it informed of developments in this regard.
- The Committee urges the Government to provide a copy of the court judgements relating to Mr Zati and to immediately drop all charges and annul the sentences against him and to keep it informed of developments in this regard.
- The Committee requests the Government to provide full documentation of the independent inquiries carried out into the allegations that the Intelligence Ministry had interrogated, threatened and harassed Shis Amani, Hadi Zarei and Fashid Beheshti Zad, including copies of any reports produced there under.
- The Committee expects that the labour law will soon be amended so as to ensure the freedom of association rights of all workers and, in particular, temporary workers and workers in enterprises hiring less than ten employees, and requests the Government to transmit a copy of the proposed amendments as soon as they are finalized.
- The Committee calls the Governing Body's special attention to the grave situation relating to the trade union climate in the Islamic Republic of Iran and requests the Government to accept a direct contacts mission in respect of the matters raised in the present case, as well as those raised in the other cases concerning the Islamic Republic of Iran pending before the Committee.

B. The Government's reply

Measures to eliminate the use of excessive violence when controlling demonstrations

845. As concerns the Committee's previous recommendation on measures to ensure that the competent authorities receive adequate instructions so as to eliminate the use of excessive violence when controlling demonstrations, which might result in a disturbance of the peace, the Government states that the laws and regulations of the Islamic Republic of Iran have clearly stipulated in numerous instances the need for training and briefing of the disciplinary and security forces in their dealings with demonstrations and possible social unrest.

846. The Government refers to sections of an Executive Code pertaining to the activities of political parties, political and social societies, trade unions, and Islamic societies as well as legally recognized associations of religious minorities, approved by Parliament on 28 October 1981. It states that under article A, paragraph 18: "Disciplinary and police forces are obliged to deploy trained and experienced staff to ensure the safety and security of the demonstrators". Article A, paragraph 23, provides for the need for proper training to maintain the security of demonstrations and assemblies. To avert probable clashes between the police and demonstrators, the law also underscores the briefing of demonstrators by their leaders so as to encourage peaceful demonstrations.

847. The Government indicates that with regard to the "deployment of guns by the military forces in emergency cases", the Executive Code:

- requires the provision of necessary training for armed forces that are likely to deploy guns in the execution of the mission assigned to them (article 2);
- clearly stipulates that the police and disciplinary forces deployed to maintain discipline and security at unlawful demonstrations or having to quell rebellion and social unrest, where such missions cannot be reasonably fulfilled without the deployment of firearms, are obliged to deploy guns only at the direct command of their superior officers, under the following circumstances: only if other means duly deployed in accordance with relevant codes of instruction prove to be failing in the execution of the mission; and only if all peaceful means are tried (by the disciplinary forces) with no success and the rioters and insurgents are given prior warning about the likelihood of the deployment of guns (article 4);
- requires that any member of the operating force who lacks proper instructions for the deployment of guns advise his/her commanding officer of the situation. Once such personnel are found to have deployed guns during missions, their commanding officer will be held liable for the relevant consequences, if the guilty party is found to have acted within the mandate of authority of his commander (article 9);
- requires that the guns placed at the disposal of the police and disciplinary forces match the duties or missions for which they are to deploy those guns (article 10);
- stipulates that if the action of any of the operating forces, while observing the provisions of law and regulations on the deployment of guns, inadvertently leads to injury and death of innocent person(s) or causes financial damages to any person(s), the police or corresponding disciplinary forces are legally obliged to compensate that person(s) for the accrued losses and damages, to any extent ordered in accordance with the ruling of a competent court. The Government is required to stipulate a budget for such expenditures in its annual budget (article 13); and
- stipulates that any member of the police or disciplinary forces who deploys guns in violation of relevant provisions of the applicable laws is subject to legal proceedings and will be punished accordingly, if found guilty (article 16).

848. Annex 3 of article 4 of the Law on the Mission and Responsibilities of the Disciplinary Forces of the Islamic Republic of Iran recalls the mandate of such forces in providing security of gatherings, assemblies, demonstrations and permissible and legal activities of citizens, and in preventing any unlawful assemblies and demonstrations, as well as dealing with any social turmoil or unrest and other subversive and illegal activities.

849. The Government further indicates that the police department, cognizant of the threat of infringement of the fundamental rights of citizens, constantly inquires into alleged cases of violations of citizenship and human rights by its forces. Through the establishment of an independent Inspection and Supervisory Bureau, it impartially addresses any allegations of possible infringement of the civil, trade union and human rights of the subjects of the Islamic Republic of Iran by police personnel. The Chief of the Police Department of the capital, in a press conference of 3 March 2007 acknowledged the need to standardize and correct the code of practice of police personnel in their dealings with the public at large. He said that his inspectors remain vigilant against any misdemeanours by the police forces and are very sensitive about addressing any such wrongdoings. The Chief of Iran's Police Department recently revealed that in the year 2007–08 around 1,500 police officers were dismissed on the ground of failing to meet decent policing criteria. According to official statistics released by the Police Department of the Islamic Republic of Iran, about a month ago 5,469 police personnel were penalized and some of them demoted as a result of genuine complaints lodged against them by the people. Only 1,138 police personnel were subpoenaed to the General Prosecutor's Bureau for different misdemeanours, including rare incidents involving the alleged deployment of excessive force against, or maltreatment of, the suspects. All of these complaints are reported to the police in complete anonymity through a well-established telephone and Internet system under the General Surveillance of Disciplinary Forces scheme. Meanwhile, 17,141 police officers and personnel were also praised and promoted at the request of, and recognition by, the people for their excellent and proper conduct. Any complaint against the misdemeanours of the police may be simply reported to telephone No. 117 or by sending an electronic mail message. Within the last three years, according to the Chief of the Disciplinary Forces, the police managed to decrease the commission of misdemeanours by its personnel by as much as 12 per cent.

850. The Government also refers to the State General Inspectorate Organization, stating that, as an independent supervisory body which employs 1,200 persons deployed in different specialized divisions and independent branches all over the country, it is the most important anti-corruption body in the Islamic Republic of Iran. The Head of the Organization is selected from among the highly qualified senior judges and appointed by the Head of the Judiciary. Established on the basis of article 174 of the Constitution, it has the authority to examine public institutions and organs to ensure their proper functioning and due implementation of legal provisions. The Organization constantly monitors the activities of Ministries, administration, military and police forces and other governmental and public bodies. It benefits from qualified experts as well as judicial inspectors with required judicial competency in relevant fields. The Organization immediately addresses any complaint or allegation of maltreatment of civilians by police or other disciplinary forces and any alleged violations of civil rights. More than 20,000 reports from ordinary citizens were sent to the State General Inspectorate Organization through these two channels in recent years.

851. The Government states that all of the above mechanisms together with the Human Rights Headquarters, the Citizenry Courts, etc., are provided by lawmakers to address probable violations of the rights of citizens by persons holding power. It is evident, according to the Government, that its judiciary impartially addresses any flagrant infringement of the fundamental rights of the subjects of the country inclusively and, perhaps, more attentively of those of workers and the less privileged.

852. The Government states that article 13 of the Law concerning "the assignment of authority of the Minister of the Interior to General Governors for granting permission for holding assemblies and demonstrations" requires the General Governors or District Governors to approve or disapprove requests, as the prevailing circumstances may require, for holding demonstrations and assemblies. Once such permission is granted, they shall advise the relevant disciplinary officials to maintain the discipline, safety and security of the demonstrations and assemblies.

853. The Government indicates that the Ministry of Labour and Social Affairs (MLSA) has drafted a code of practice on the management and control of trade union and labour-related protests, in order to reduce any error and misconception in the treatment by the disciplinary forces of such events, and in compliance with the recommendation of the Committee. Among other things, the code aims at advising and briefing the disciplinary and security forces on the principle of non-violence in their treatment of different forms of labour-related and trade union protests. To give the code more legal power and legitimacy, it has been officially submitted for approval to the Supreme National Security Council and State Security Council by the MLSA.

854. The Government provides a translated copy of the draft code, as well as a copy of cover letters from the MLSA addressed to the Secretariat of the Supreme National Security Council and to the head of the Ministry of the Interior, presenting the draft code and asking that it be considered for "national security services". They are both attached as Annex 1. Notable aspects of the code include the following:

– The Introduction refers to legal procedures, social dialogue and dispute resolution mechanisms as "necessary and indispensable tools for [workers and employers] to seek mutually acceptable agreements to their pending labour-related problems". The collective bargaining mechanism, for instance, "is required to protect the rights and interests of the workers and to ensure the security and sustainability of enterprises". Some of the consequences of the failure to achieve mutually acceptable solutions to labour disputes are labour strikes, pickets, sit-ins, assemblies and peaceful demonstrations, which are "legitimate tools for workers to demonstrate the gravity of their situation". What seems to have aggravated incidents in which worker protests have led to widespread social unrest and political disturbances is "the absence of a code of practice to help police and other disciplinary forces distinguish innocent workers' strikes and protests from potential social unrest and disturbance". The code thus represents a "genuine attempt to help disciplinary and security forces recognize the legitimacy of labour-related protests, demonstrations, sit-ins, etc., so as to distinguish them from other forms of social or political unrest and turmoil". It states that the MLSA prepared the code in order that it "could ensure the ground for workers to freely exercise their very legitimate rights of protest and strikes as stipulated under national and labour laws".

– Section A indicates that the MLSA shall introduce the code and "relevant regulations", while defining "the characteristics and scope of legitimate trade union rights [and] activities arising from the respective international labour standards";

– Section B provides, among other things, that preventing trade union members from pursuing their causes by resorting to the security and intelligence is construed as a violation of the rights of workers. The Ministry of Interior is therefore required to define the criteria for holding peaceful demonstrations and assemblies, while granting workers permission to hold assemblies or to attend labour protests, and the Government shall advise trade unions of the definitions and characteristics of what are considered to be unacceptable practices in the conduct of demonstrations and assemblies.

– Section C provides that the Ministry of Justice, in collaboration with different departments of the judiciary, are required to formulate rules and regulations in respect of possible violations of relevant civil laws by protesters and/or workers on strike. All relevant departments (police, security and other disciplinary forces) shall exercise self-restraint and refrain from resorting to disciplinary or security practices in their dealings with workers' collective industrial actions and labour and trade union-related protests and demonstrations.

– Section D states: "Mindful of the Security Council instructions for maintaining discipline and public security and the need for protecting the rights and property of citizens during workers' demonstrations and in case of unauthorized assemblies, illegal demonstrations, social and civil unrest and urban turmoil, operating police forces are to act with great prudence and self-restraint. Police and security forces are reminded that their tolerance in dealing with trade union demands of workers may prevent the alteration of the course of their protests and help prevent the spread of their labour-related protest to a widespread social commotion and unrest. The approach of the operating forces in controlling collective social disturbances and/or volatile and critical workers' unrest is based on the principle of deployment of non-offensive, anti-riot equipment and non-deployment of excessive force and firearms".

– Section E states: "Recalling the need for adherence to uniform policies and proper coordination among different organizations implicated in any form of labour and trade union protests, be they strikes, pickets, assemblies, demonstrations, etc., at the workplace or elsewhere, and being mindful of the likely occurrence of unforeseen problems at worker events, the relevant authorities are first to contact the General Directorate of the MLSA in the relevant province and to obtain the necessary background information about the event and to seek its assistance for the amicable settlement of the labour dispute by all the tools and means at their disposal".

– Under section E, the Ministry of Justice and Interior "would address the existing legal shortcomings and attempt to provide for the necessary facilities, where appropriate".

855. The MLSA embarked on an extensive briefing of its General Directors and motivated them to introduce the code to other pertinent authorities. The Government provides correspondence dated 5 March 2007, which it states is from its Director-General in Fars Province to the General Governor, through which the former officially introduces the code and asks for its due observance and implementation. A copy of this correspondence was attached to the Government's reply.

Attacks by security forces against a workers' gathering in support of Salehi

856. As regards the allegations that security forces violently disbanded a rally on 16 April 2007 in support of Mahmoud Salehi's release from prison, including allegations that Mahmoud Salehi's son, Samarand Salehi, was arrested at the rally, that Jalal Hosseini and Mohammad Abdipour were summoned to the Prosecutor's office to prevent them from attending the gathering, and that the security forces closed down the offices of the Saqez Workers Consumer Cooperative, the Government states that it learned, through its Director in the Province of Kurdistan, that Samarand Salehi was simply invited by the police to be advised of the ill intentions of the insurgent agents in disrupting the workers' assembly arranged for the same event. He was reported to have left the police station of his free will and was never detained.

857. Messrs Jalal Hosseini and Mohammad Abdipour were both called in for a meeting with officers of the General Prosecutor of the province to discuss their pending cases and to

seek a possible solution to the then-increasing labour-related tensions and disturbances in the province. Apparently neither of the two responded positively to the invitation. The General Prosecutor therefore is reported to have subpoenaed them to appear for that purpose. The Government's Regional Director reported that judicial officials of the province deny the allegations of their detention.

858. According to the Government, the closure of the Saqez Workers Consumer Cooperative was the result of poor management and of some of its board members allegedly being taken advantage of. The cooperative had long been running in the red and had already gone bankrupt. The members and the executive body were long estranged and in conflict. It was reported that the members therefore decided to discontinue their membership and close down the cooperative. The allegation of its closure by a ruling of the court is irrefutably denied.

Saqez

859. As regards the Committee's previous recommendation concerning the charges against Jalal Hosseini, Borhan Divangar, Mohsen Hakimi and Mahmoud Salehi, and its recommendation concerning the denial of medical treatment to the latter, the Government states that presently Mr Salehi may, of his free, will practice, among other things, his free trade union activities and has not filed any complaint relating to this allegation. Borhan Divanger fled the country two years earlier and has sought refuge with a dissident group in the Kurdistan of Iraq. His illegal departure from the country and activities since then are, according to judicial authorities, valid proof of the allegations already placed against him as to his role in illegal activities in the guise of trade union and labour-related affairs. According to judicial officials of Kurdistan, the other trade unionists accused are at large and no legal action will be brought against them either.

860. As regards the Committee's previous recommendation concerning Mr Divangar's arrest, detention and alleged severe beating in August 2005, the Government states that the judiciary, as an independent body, would seriously and impartially look into any case of maltreatment of, or misdemeanour against, civilians by its personnel as well as by Government and disciplinary forces. Like all other subjects of the country, Mr Divanger or his lawyer may also lodge complaints with the judiciary and expect a fair hearing and trial of perpetrators of the alleged violations of his civil, trade union and human rights. They may also have recourse to the Charter of Citizenry Rights which dwells heavily on the protection of suspects and detainees along with arrest, investigation, interrogation and detention. A copy of the "Bylaws" of the Human Rights Headquarters is attached as Annex No. 3. Under the recent amendments of article 18 of the Rules and Procedures of Legal Proceedings, Mr Divangar or his appointed lawyer, may plea for a court re-hearing on the alleged violation of his rights. A few outspoken and telling verdicts and judgments released recently by homicide and penal courts have incidentally addressed the veracity of the infringement of human rights of a small number of civilians by investigators and disciplinary forces. In each of these cases, the court has severely penalized the perpetrators of the alleged violations of law, irrespective of their rank.

Arrest and corporal punishment for trade union activities

861. As regards the allegations concerning Shis Amani and 11 members of the Nationwide Union of the Unemployed and Dismissed Workers of Iran (NUUDWI), who were sentenced to 91 days' imprisonment and to corporal punishment of ten lashes of the whip, after being convicted on charges relating to their participation in 2007 May Day activities, the Government indicates that the 11 members of the NUUDWI may appeal to the Court of

Second Hearing and demand the application of article 18 of the Rules and Procedures of Legal Proceedings, and that any reversal of court action lies, according to law, with the contending party to a conflict and not the Government, unless the Government happens to be a party to the legal proceeding as well.

Teachers' Guild Association

862. As regards the Committee's previous recommendation relating to Mr Ali-Asghar Zati, the spokesperson of the Teachers' Guild Association, the Government states that, according to an official report of the Chief of Judiciary of Kurdistan Province, Mr Zati has no judicial records in that province and no complaints had been lodged against him there. A legal case, however, has been brought against him in Tehran, where he was formally exonerated of charges on some trade union activities. According to the court ruling, he was simply found guilty of some minor misdemeanours that had nothing whatsoever to do with his trade union activities. The Government states that its efforts to obtain a copy of his court verdict are still under way and that it will provide it as soon as it is available.

Sanandaj Textile Factory

863. As concerns the previous allegations that the Intelligence Ministry interrogated, threatened and harassed worker representatives Shis Amani, Hadi Zarei and Fashid Beheshti Zad, the Government indicates that it seriously examines any such charges and maintains that such alleged maltreatment in custody or detention must be addressed immediately by independent bodies. In the cases in question, for instance, the MLSA had pleaded for an autonomous survey to be conducted by the State General Inspectorate Organization, as well as the Human Rights Headquarters of the Islamic Republic of Iran, and has required them to advise the Government of their findings. The latter body is comprised of independent representatives from different bodies, namely legislative, administrative and judicial. Representatives of the Ministries of Justice, Foreign Affairs, Interior, Labour and Social Affairs, and Intelligence, as well as representatives of the police and disciplinary forces, do attend regular meetings addressing any violations of human rights in the different bodies. To date, the Government indicates that it is not in receipt of the findings of their reports.

Amendments to the Labour Law

864. With respect to the Committee's previous recommendation concerning legislative amendments to the Labour Law to ensure organizational multiplicity, including freedom of association rights for workers in enterprises employing fewer than ten employees, the Government indicates, generally, that amending the Labour Law of the Islamic Republic of Iran has been one of the most serious challenges of the Government within the last 20 years. It is a challenge bound up with a complicated and multifaceted social, political and parliamentary procedure. ILO technical cooperation was requested to ensure that amendments would be made in accordance with Conventions Nos 87 and 98. ILO experts were also invited to promote the principles of collective bargaining in the Islamic Republic of Iran by teaching both workers' and employers' organizations. On some occasions drafts of possible amendments to the Labour Law on controversial points were either assisted by ILO experts or brought to their attention for eventual observations or corrections. The Government adds that a draft amendment to the Labour Law is presently under technical examination in the competent Government commission for final approval.

865. The Government states that paragraph 41 of article 101 of the Fourth National Development Plan clearly calls for the amendment of labour laws, social security laws, and regulations to incorporate fundamental rights at work and comply with relevant ILO

Conventions and instruments, as well as to promote social dialogue in industrial relations. To fulfil the objectives of article 101, and particularly the promotion of freedom of association and the right to collective bargaining, a draft amendment was prepared and formulated jointly by the social partners to replace articles 7, 21, 24, 27, 41, 96, 112, 119, 191 and 192 of the current Labour Law. The request for amendments was officially submitted to the Cabinet of Ministers on 30 November 2006. The Secretary of Economic Commission of the Cabinet, upon examination of the submitted text of the proposed amendments to be made to the Labour Law, forwarded the Cabinet's observations on these proposed amendments to the MLSA on 5 August 2007.

866. A series of tripartite and specialized meetings subsequently resulted in a finalized version of the Labour Law amendments, entitled the Bill on the Formulation of Temporary Labour Contracts and the Creation of New Employment. According to the Government, the Bill mainly focuses on proposed policies on insurance, social security, short-term temporary contracts and contracting, as well as amendments to Chapter VI of the Labour Law. The Government states that in drafting the Bill, it gave due care to the considerations and interventions of the ILO – in particular those of the Committee. Under the proposed Bill, and in contrast to the existing law, Government permission is not required to establish a trade union. Additionally the purpose of registering workers' and employers' associations is merely to help the Government to fulfil its obligation to introduce the most representative workers' and employers' delegates to the International Labour Conference (ILC) and other relevant tripartite bodies, such as the High Labour Councils. A copy of the proposed amendments was attached to the Government's reply.

867. The Government further indicates that, on the recommendation of the social partners and, in particular, the employers, on 16 May 2007, Parliament approved the "Plan on the Removal of Obstacles in Production and Industrial Investment", which has now been implemented. Articles 9 and 10 of the Plan also call for amendments to some of the articles of the existing Labour Law. The amendments were attached to the Government's reply. Parliament's Economic Commission is addressing another proposal, submitted by the Ministry of Industry on 24 January 2008, which calls for "Revisiting and Amending the Labour and Social Security Laws for optimizing Production Costs".

868. With regard to the Committee's previous recommendation that the Government accept a direct contacts mission in respect of the matters raised in the present case, as well as those raised in the other cases concerning the Islamic Republic of Iran pending before the Committee, the Government states that it positively considers receiving a mission to review the existing situation and provide guidelines for improvement, where it seems appropriate. Referring to a previous ILO technical mission to the Islamic Republic of Iran in February 2008, when the great interest of Parliament to seriously examine the ratification of Conventions Nos 87 and 98 was made known, the Government states that it enthusiastically looks forward to receiving such missions in the future and pledges to do its utmost to ensure the fulfilment of their objectives. For some time, the Government has been taking preparatory measures for such a mission, and it would soon advise the Committee of the best timetable for the visit. The Government is confident that the constructive measures adopted by the Government and its social partners, among other things, its serious attempts at amending the Labour Law, amendments made in relevant regulations, and initiatives taken to lay the groundwork for ratification of Convention No. 87, might reasonably have paved the way for a constructive mission.

C. The Committee's conclusions

869. *The Committee recalls that this case concerns: allegations of the violent police repression of strikes, protests and the May Day 2004 rally in Saqez; the arrest, detention and conviction of several trade union leaders and activists for their trade union activities; the*

arrest of trade union leaders of the Teachers' Guild Association; intervention in a strike at the Sanandaj Textile Factory and subsequent harassment of the workers' representatives; and the proposal and adoption of legislation that would restrict the trade union rights of a large number of workers.

870. *As regards its previous recommendation concerning adequate instructions to the competent authorities so as to eliminate the use of excessive violence when controlling demonstrations, the Committee notes that the Government reiterates that the laws and regulations of the Islamic Republic of Iran stipulate, in numerous instances, the need for training and briefing of the disciplinary and security forces in their dealings with demonstrations and possible social unrest. The Committee also takes note of the Government's reference to: (1) sections of the Executive Code pertaining to the activities of political parties, political and social societies, trade unions, and Islamic societies, as well as legally recognized associations of religious minorities; (2) an existing code of practice of police personnel and an independent Inspection and Supervisory Bureau of the police department; (3) organs of the judiciary including the State General Inspectorate Organization, Human Rights Headquarters, and the Citizenry Courts; and (4) the draft of a code of practice on the management of trade union demonstrations and protests of the MLSA. The Committee further notes that Annex 1 containing the draft code of practice includes letters from the MLSA addressed to the Secretariat of the Supreme National Security Council and to the head of the Ministry of the Interior, presenting the draft code and asking that it be considered for the "national security services". The Government also provides a copy of a communication dated 5 March 2007 which it states is from its Director-General in Fars Province to the General Governor, through which the former officially introduces the code and asks for its due observance and implementation.*

871. *The Committee appreciates the initiatives taken by the Government through the measures taken by the MLSA to draft and promote a code of practice on the management and control of labour-related and trade union protests and demonstrations. The Committee notes the introduction to the draft code, which emphasizes the role of good industrial relations, collective bargaining, and dispute resolution mechanisms as "necessary and indispensable tools" for workers and employers to achieve mutually acceptable solutions to labour disputes and for protecting workers' rights and interests as well as ensuring the security and sustainability of enterprises. Some of the consequences of the failure to achieve mutually acceptable solutions to labour disputes are labour strikes, pickets, sit-ins, assemblies, and peaceful demonstrations, which are themselves "legitimate tools for workers to demonstrate the gravity of their situation". What seems to have aggravated incidents in which worker protests have led to widespread social unrest and political disturbances is "the absence of a code of practice to help police and other disciplinary forces to distinguish" worker strikes and protests from potential social unrest and public disturbances. The present draft code therefore represents a genuine attempt "to help disciplinary and security forces recognize the legitimacy of labour-related protests, demonstrations, sit-ins, etc., so as to distinguish them from other forms of social and political unrest and turmoil". The code was thus prepared in the hope that the Government could ensure that the ground is laid "for workers to freely exercise their legitimate rights of protest and strikes as stipulated under national and labour laws".*

872. *The Committee further notes from the draft code that:*

– *Under section A, the MLSA is to introduce "relevant regulations", while "defining the characteristics and scope of legitimate trade union rights and activities arising from the respective International Labour Standards".*

– *Section B provides, among other things, that "preventing trade union members from pursuing their causes by resorting to the security and intelligence forces and/or*

limiting their legitimate trade union activities, such as holding meetings and peaceful assemblies, is construed as a violation of the rights of workers". The Ministry of Interior is therefore required to define "the criteria for holding peaceful demonstrations and assemblies", as well as the "definitions and characteristics of what [the Government] considers to be unacceptable practices in holding demonstrations and assemblies", about which trade unions are to be advised by the Government.

– *Under section C, the Ministry of Justice is required to formulate rules and regulations "in respect of possible violations of relevant civil laws by protesters and/or workers on strike". All relevant departments (police, security and other disciplinary forces) shall exercise self-restraint and refrain from resorting to disciplinary or security practices in dealing with workers' collective industrial actions and trade union and labour-related protests and demonstrations.*

– *Under section D, the approach of operating forces in controlling social disturbances and/or volatile and critical worker unrest is based on the principle of deployment of non-offensive anti-riot equipment and non-deployment of excessive force and firearms. Reference is made to "Security Council instructions for maintaining discipline and public security" but the content of those instructions is not specified.*

– *Section E provides that, upon the occurrence of workers' events, the relevant authorities are first to contact the General Directorate of the MLSA in the related province to elicit the necessary background information concerning the incident and to seek its assistance in attempting an amicable settlement of the dispute by using all the tools and means at their disposal.*

873. *The Committee further observes the correspondence of 5 March 2007 from the Chief of the Labour and Social Affairs Organization of Kerman Province addressed to the Governor of Kerman Province (not to Fars Province as indicated in the Government's reply), which, recalling the difficulties that occurred in Shahr-e-babak, sets out a series of four recommendations, including a recommendation to resort as little as possible to police interference during workers' strikes.*

874. *The Committee recalls that it had previously requested the Government to provide documentation on a different set of measures to which the Government had already referred to. These included "strict rules and regulations in controlling demonstrations" implemented through the National Security Council and "very strict instructions" received by police and anti-riot forces; "pertinent regulations", the slightest breach of which would be subject to severe penalties; "relevant strict instructions" which the National Security Council has required disciplinary forces to ensure are communicated to, and meticulously followed by, operating forces; and "instructions and guidelines" recently circulated to governors and chiefs of provincial security councils by the Deputy Minister of Interior for Security and Disciplinary Affairs. The Committee regrets that the Government has not provided the abovementioned documentation, which would have assisted its understanding of the rules, regulations and instructions already existing and which may be the basis upon which the above code of practice was elaborated and would further define its meaning and scope. It once again urges the Government to provide copies of any written documents pertaining to the above referred to regulations, etc., and of the previously referred to code of practice for police personnel. In respect of the MLSA draft code, the Committee further requests that the Government inform it of the progress made concerning its finalization and adoption and to provide full particulars on the matters referred to therein, including the rules, regulations and criteria the various Ministries are apparently required to formulate and introduce that govern the holding of demonstrations and assemblies. The Committee invites the Government to consider the possibility of receiving technical assistance from the ILO in its efforts to finalize the draft code and in the formulation of the*

requisite rules and regulations referred to therein, so as to ensure that workers' organizations may carry out peaceful demonstrations without undue interference from the public authorities.

875. *As concerns the Committee's previous recommendation on the incidents related to a rally in support of Mahmoud Salehi's release from prison, including the allegations that Mahmoud Salehi's son Samarand Salehi was arrested at the rally, that Jalal Hosseini and Mohammad Abdipour were summoned to the Prosecutor's office to prevent them from attending the gathering, and that the security forces closed down the offices of the Saqez Workers Consumer Cooperative, the Committee notes the Government's statement that, through its own internal inquiries, it learned that Samarand Salehi was simply invited to the police station to be advised of the ill intentions of the insurgent agents and was never detained. Messrs Jalal Hosseini and Mohammad Abdipour were both subpoenaed to the General Prosecutor's office in order to discuss their pending cases and to seek a possible solution to labour-related tensions and disturbances in the province, and they were never detained. The Government further indicates that the offices of the Saqez Workers Consumer Cooperative were closed down as a result of poor management and a decision of the members of the cooperative themselves.*

876. *The Committee recalls that it had previously noted the lack of sufficient information to justify the convictions of Messrs Hosseini, Divangar, Hakimi and Salehi for organizing illegal assembly and congregating to conspire to commit crimes, and had expressed deep concern that the suspension of their sentences was subject to a three-year probationary period, during which they were not permitted to organize any "illegal assembly or gathering disturbing the public order, whether union-related or not, or contact anti-revolutionary groups or people electronically, via the Internet or using telecommunication technology". It further recalls that it considered that these conditions were intended to dissuade them from pursuing legitimate trade union activities – particularly the organizing of peaceful rallies and urged the Government to ensure that any remaining charges against these trade unionists were dropped, and their sentences annulled [see 350th Report, para. 992]. In this regard the Committee, while noting the Government's indication that no pending charges remain against Messrs Hosseini, Hakimi and Salehi, deeply regrets that, in respect of Mr Divangar, the Government limits itself to reiterating that he had illegally departed the country and sought refuge with a dissident group in Kurdistan. The Committee deeply regrets, furthermore, that the Government has not indicated whether the four trade unionists' suspended sentences had been annulled. The Committee once again urges the Government to confirm that all charges against Mr Divangar have been dropped and that the suspended sentences of all four trade unionists have no further validity.*

877. *As regards the alleged denial of medical treatment to Mr Salehi during his time in prison, the Committee deeply regrets that the Government has failed to provide any indications in respect of this serious matter, except to say that Mr Salehi may have recourse to the judiciary in this matter, should he so desire. The Committee requests the Government to inform it of any action that might be taken by Mr Salehi in this regard.*

878. *The Committee recalls that it had previously urged the Government to institute without delay an independent inquiry into the allegations of Mr Divangar's arrest, detention, severe beating and court summons in August 2005, and to provide full particulars in this regard. The Committee notes with deep regret that the Government – while indicating that Mr Divangar may lodge complaints with the judiciary, has recourse to the Charter of Citizenry Rights and may also plea for a court re-hearing on the alleged violation of his rights under article 18 of the Rules and Procedures of Legal Proceedings – has failed to institute an independent inquiry into these serious allegations. While observing that Mr Divangar is no longer in the country, the Committee must emphasize that allegations of*

arrest, detention and ill-treatment of trade unionists for the legitimate exercise of trade union activities should immediately be independently investigated so as to ensure that trade unionists' basic civil liberties have not been violated and so as to ensure that trade union rights may be exercised in a climate free from violence and intimidation.

879. *In respect of its previous recommendation relating to 11 members of the NUUDWI, whom the Committee recalls were sentenced to 91 days' imprisonment and to corporal punishment of ten lashes of the whip after being convicted on charges relating to their participation in 2007 May Day activities, the Committee notes with deep regret that the Government confines itself to stating that these trade unionists may appeal to the Court of Second Hearing and demand the application of article 18 of the procedural rules, and that any reversal of court action lies, according to law, with the contending party to a conflict and not the Government, unless the Government happens to be a party to the legal proceeding as well. The Committee once again urges the Government to take steps to review the cases of Mr Amani and the other NUUDWI members so as to ensure that they receive full compensation for any damages resulting from their period of incarceration and to keep it informed of developments in this regard.*

880. *As concerns the allegations relating to the 2004 arrest and conviction of Mr Ali-Asghar Zati, the spokesperson of the Teachers' Guild Association, the Committee notes that the Government reiterates that Mr Zati was formally exonerated of charges relating to trade union activities. According to the court ruling, he was found guilty of some minor misdemeanours that had nothing whatsoever to do with his trade union activities. The Government further states that its efforts to obtain a copy of his court verdict are still under way and that it will provide it as soon as it is available. The Committee once again requests the Government to obtain and transmit a copy of the court ruling it refers to without delay.*

881. *The Committee recalls that it had previously requested the Government to provide full information concerning the independent inquiries carried out into the allegations that, in January 2005, in the aftermath of strike action by workers at the Kurdistan Textile Factory, the Intelligence Ministry had interrogated, threatened and harassed Shis Amani, Hadi Zarei and Fashid Beheshti Zad, including copies of any reports produced thereunder. The Committee notes the Government's statement that, in respect of these matters, the MLSA has pleaded for an autonomous survey to be conducted by the State General Inspectorate Organization, as well as the Human Rights Headquarters of the Islamic Republic of Iran, and has required them to advise the Government of their findings. The Government further indicates that, to date, it is not in receipt of the findings of those reports. The Committee expects that the Government will transmit copies of the reports of the inquiries conducted by the State General Inspectorate Organization and the Human Rights Headquarters of the Islamic Republic of Iran, as requested by the MLSA, and as soon as they become available.*

882. *With regard to its previous recommendation on legislative reform and the need to ensure the freedom of association rights of all workers, in particular part-time workers and workers in enterprises having less than ten employees, the Committee notes that the Government refers to a "finalized version" of the Labour Law amendments, entitled the Bill on the Formulation of Temporary Labour Contracts and the Creation of New Employment. The Government further indicates that the draft amendment to the Labour Law is presently under technical examination in the competent Government commission for final approval. The Committee notes with interest these developments and observes that the draft provided appears to offer the possibility of opening paths for workers to form or join organizations of their own choosing. The Committee further expects that the amendments will ensure that all workers, without distinction whatsoever, will be ensured the right to form or join organizations of their own choosing, and that the Government will*

take all necessary measures in this regard. The Committee requests the Government to keep it informed of developments on the review of the proposed amendments.

883. *In respect of its previous request for a direct contacts mission, the Committee welcomes the Government's statement that such a mission would be viewed positively, in order to review the existing situation and provide guidelines for improvement where appropriate, and that it would soon advise the Committee of the best timetable for the visit. The Committee expects that the mission will be able to visit the country shortly and that it will be in a position to assist the Government in achieving significant results with respect to all the serious outstanding matters and, in particular, as regards the draft labour legislation and principles relating to trade union demonstrations referred to by the Government.*

The Committee's recommendations

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

(a) The Committee once again urges the Government to provide copies of any written documents pertaining to measures taken to ensure that adequate instructions are given to the competent authorities so as to eliminate the use of excessive violence when controlling demonstrations, including those previously referred to, as well as a copy of the previously referred to code of practice for police personnel. In respect of the MLSA code of practice on the management and control of labour-related and trade union protests and demonstrations, the Committee requests that the Government inform it of the progress made concerning its finalization and adoption and to provide full particulars on the matters provided therein, including the rules, regulations and criteria the various Ministries are apparently required to formulate and introduce that govern the holding of demonstrations and assemblies. The Committee invites the Government to consider the possibility of receiving technical assistance from the ILO in its efforts to finalize the MLSA draft code and in the formulation of the requisite rules and regulations referred to therein, so as to ensure that workers' organizations may carry out peaceful demonstrations without undue interference from the public authorities.

(b) The Committee once again urges the Government to confirm that all charges against Borhan Divangar have been dropped, and that the suspended sentences of Mr Divanger, as well as those of Jalal Hosseini, Mohsen Hakimi and Mahmoud Salehi, have no further validity.

(c) With regard to the allegations of the denial of medical treatment to Mr Salehi during his confinement in prison, the Committee requests the Government to inform it of any action that might have been taken by Mr Salehi to seek recourse to the judiciary.

(d) The Committee once again urges the Government to take steps to review the cases of Mr Amani and the other NUUDWI members so as to ensure that they receive full compensation for any damages resulting from their period of incarceration and to keep it informed of developments in this regard.

(e) The Committee once again requests the Government to obtain and transmit without delay a copy of the court ruling it refers to relating to the 2004 arrest and conviction of Mr Ali-Asghar Zati, the spokesperson of the Teachers' Guild Association.

(f) The Committee expects that the Government will transmit, as soon as they become available, copies of the reports of the inquiries conducted by the State General Inspectorate Organization and the Human Rights Headquarters of the Islamic Republic of Iran, as requested by the MLSA, into the allegations that, in January 2005, in the aftermath of strike action by workers at the Kurdistan Textile Factory, the Intelligence Ministry interrogated, threatened and harassed Shis Amani, Hadi Zarei and Fashid Beheshti Zad.

(g) The Committee expects that amendments being made to the labour legislation will ensure that all workers, without distinction whatsoever, will be ensured the right to form or join organizations of their own choosing and that the Government will take all necessary measures in this regard. The Committee requests the Government to keep it informed of developments on the review of the proposed amendments.

(h) The Committee welcomes the Government's acceptance of a mission and expects that this mission will be able to visit the country shortly and that it will be in a position to assist the Government in achieving significant results with respect to all the serious outstanding matters and, in particular, as regards the draft labour legislation and principles relating to trade union demonstrations referred to by the Government.

(i) The Committee calls the Governing Body's special attention to the grave situation relating to the trade union climate in the Islamic Republic of Iran.

CASE NO. 2508

INTERIM REPORT

Complaint against the Government of the Islamic Republic of Iran presented by
– the International Trade Union Confederation (ITUC) and
– the International Transport Workers' Federation (ITF)

Allegations: The complainants allege that the authorities and the employer committed several and continued acts of repression against the local trade union at the bus company, including: harassment of trade unionists and activists; violent attacks on the union founding meeting; the violent disbanding, on two occasions, of the union general assembly; arrest and detention of large numbers of trade union members and

leaders under false pretences (disturbing public order, illegal trade union activities); the mass arrest and detention of workers (more than 1,000) for planning a one-day strike. The complainant organizations also allege the repeated arrest and detention of Mansour Osanloo, chairperson of the union executive committee, as well as his ill-treatment in prison, and the arrests of several other trade union leaders and members

885. The Committee last examined this case on its merits at its June 2008 session, where it issued an interim report approved by the Governing Body at its 299th Session [see 350th Report, paras 1003–1107].

886. The Government provided its observations in a communication dated 16 March 2009.

887. The Islamic Republic of Iran has not ratified either 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. Previous examination of the case

888. In its previous examination of the case, the Committee made the following recommendations [see 350th Report, para. 1107]:

(a) While noting the Government's latest statement of its ongoing efforts to amend the labour legislation, the Committee is bound once again to urge the Government to deploy all efforts as a matter of urgency so as to allow for trade union pluralism and requests the Government to keep it informed of the progress made in this regard. The Committee further reminds the Government once again of the availability of the technical assistance of the Office and urges the Government, in the meantime, to take all measures to ensure that trade unions can be formed and function without hindrance, including through the de facto recognition of the union.

(b) The Committee requests the Government to ensure that a full and independent investigation is carried out into the allegations of various types of workplace harassment during the period of the union's founding from March to June 2005, and to transmit a detailed report in this regard. It further requests the Government, in the light of the information revealed by the investigation, to take the necessary measures to ensure that all employees at the company are effectively protected against any form of discrimination related to their trade union membership or their trade union activities.

(c) The Committee requests the Government to transmit copies of the Dispute Settlement Board's rulings concerning the 43 workers whose contracts were terminated and to take the necessary measures for their reinstatement with back wages should it be found that they were dismissed for their legitimate trade union activity. The Committee also urges the Government to undertake a full and independent inquiry into the allegations of dismissals during the months of February and June 2007, and take the necessary measures to ensure that all trade unionists who have not yet been reinstated and were found to have been the subject of anti-union discrimination are fully reinstated in their previous positions without loss of pay. Finally, it requests the Government to keep it informed of the employment status of all those workers named in the complaint and indicate, for those who have not been reinstated, the precise reasons for their dismissal and the status of any reconsideration of their employment relationship.

(d) The Committee once again urges the Government to institute a full and independent judicial inquiry immediately into the attacks on union meetings held in March and June 2005, in order to clarify the facts, determine responsibilities, prosecute and punish those responsible and thus prevent the repetition of such acts. The Committee requests the Government to keep it informed of developments, as well as of any court judgements rendered in this regard.

(e) The Committee urges the Government to immediately institute an independent inquiry into the allegations of ill-treatment suffered by Mr Osanloo during his period of detention from 22 December 2005 to 9 August 2006, with a view to fully clarifying the facts, determining responsibility, punishing those responsible, compensating Mr Osanloo for any damages suffered and preventing the repetition of such acts.

(f) The Committee urges the Government to take the necessary measures to ensure Mr Osanloo's immediate release and the dropping of any remaining charges. Further noting the disparity between the complainant's allegations and the Government's response concerning Mr Osanloo's health, the Committee also requests the Government to provide full particulars as to his current state of health and to ensure that he is provided all necessary medical attention as a matter of urgency.

(g) The Committee urges the Government to take the necessary measures to ensure Mr Madadi's immediate release and the dropping of any remaining charges brought against him. Additionally, the Committee once again urges the Government to provide full, detailed and precise information respecting his trial, including copies of the court judgement, and to conduct an independent inquiry into the allegations of ill-treatment to which he has been subjected while in detention and, if they are found to be true, to compensate him for any damage suffered and to ensure that he is immediately provided any necessary medical treatment.

(h) The Committee urges the Government to once again take the necessary measures without delay to ensure that trade unionists may exercise their freedom of association rights, including the right to peaceful assembly, without fear of sanction by the authorities, and to ensure in particular that trade unionists are not arrested or detained and that charges are not brought against them for engaging in legitimate trade union activities. The Committee urges the Government to ensure that the charges against the following union members are immediately dropped: Ata Babakhani, Naser Golami, Reza Tarazi, Golamreza Golamhoseini, Golamreza Mirzaee, Ali Zad Hosein, Hasan Karimi, Mr Seyed Davoud Razavi, Yaghob Salimi, Ebrahim Noroozi Gohari, Homayoun Jaberi, Saeed Torabian, Abbas Najand Koodaki and Hayat Gheibi and that if any of these trade unionists are currently being detained that they be immediately released. The Committee further requests the Government to provide any court judgements rendered in respect of these workers.

(i) The Committee calls the Governing Body's special attention to the grave situation relating to the trade union climate in the Islamic Republic of Iran and requests the Government to accept a direct contacts mission in respect of the matters raised in the present case and in the other cases concerning the Islamic Republic of Iran pending before the Committee.

B. The Government's reply

889. In its communication of 16 March 2009 the Government states that, as concerns allowing multiple trade unions and recognizing their legal rights, it is legally obliged to indiscriminately implement the current laws and regulations. As regards the election of trade unions, the Government's role is only to advise other relevant bodies on the due observance of election procedures, including examining the validity of the credentials of the candidates and the electorate. In this role, it is obliged to remain impartial at all times. As implied in the wording and spirit of the relevant law and regulations, the Government's supervision may not in any manner be interpreted as intervention in the internal affairs of the respective associations or as barring or limiting their freedom of association. The Government alleges that the incontrovertible ruling of the State Administrative Justice

Tribunal exonerating the Government of the charges of intervention in the election of the employers' confederation in November 2009 is the best token of its commitment to the principle of non-intervention and impartiality in the affairs of the social partners' associations.

890. With respect to the Committee's recommendation concerning legislative amendments to ensure trade union multiplicity, the Government indicates generally that amending the Labour Law of the Islamic Republic of Iran has been one of the most serious challenges of the Government within the last 20 years. It is a challenge bound up with a complicated and multifaceted social, political and parliamentary procedure. ILO technical cooperation was requested to ensure that amendments would be made in accordance with Conventions Nos 87 and 98. ILO experts were also invited to promote the principles of collective bargaining in the Islamic Republic of Iran by teaching both workers' and employers' organizations. On some occasions drafts of possible amendments to the Labour Law on controversial points were either assisted by ILO experts or brought to their attention for eventual observations or corrections. The Government adds that a draft amendment to the Labour Law is presently under technical examination in the competent government commission for final approval.

891. The Government states that paragraph 41 of article 101 of the Fourth National Development Plan clearly calls for the amendment of labour laws, social security laws, and regulations to incorporate fundamental rights at work and comply with relevant ILO Conventions and instruments, as well as to promote social dialogue in industrial relations. To fulfil the objectives of article 101, and particularly the promotion of freedom of association and right to collective bargaining, a draft amendment was prepared and formulated jointly by the social partners to replace articles 7, 21, 24, 27, 41, 96, 112, 119, 191 and 192 of the current Labour Law. The request for amendments was officially submitted to the Cabinet of Ministers on 30 November 2006. The Secretary of Economic Commission of the Cabinet, upon examination of the submitted text of the proposed amendments to be made to the Labour Law, forwarded the Cabinet's observations on these proposed amendments to the Ministry of Labour and Social Affairs (MLSA) on 5 August 2007.

892. A series of tripartite and specialized meetings subsequently resulted in a finalized version of the Labour Law amendments, entitled the Bill on the Formulation of Temporary Labour Contracts and the Creation of New Employment (the amendments are attached to the Government's reply). According to the Government, the Bill mainly focuses on proposed policies on insurance, social security, short-term temporary contracts and contracting, as well as amendments to Chapter VI of the Labour Law. The Government states that in drafting the Bill it gave due care to the considerations and interventions of the ILO – in particular those of the Committee. Under the proposed Bill, and in contrast to the existing law, government permission is not required to establish a trade union. Additionally the purpose of registering workers' and employers' associations is merely to help the Government to fulfil its obligation to introduce the most representative workers' and employers' delegates to the International Labour Conference (ILC) and other relevant tripartite bodies, such as the High Labour Councils.

893. The Government further indicates that, on the recommendation of the social partners and in particular the employers, on 16 May 2007 Parliament approved the "Plan on the removal of obstacles in production and industrial investment", which has now been implemented. Articles 9 and 10 of the Plan also call for amendments to some of the articles of the existing Labour Law. Parliament's Economic Commission is addressing another proposal, submitted by the Ministry of Industry on 24 January 2008, which calls for "Revisiting and amending the labour and social security laws for optimizing production costs." (The proposal was attached to the Government's reply.)

894. The Government states that it is willing to receive further ILO technical assistance as regards the legislative amendments. As regards the Committee's request for full and independent investigations into the allegations of workplace harassment, according to the Government, conducting independent investigations falls within the mandate of the judiciary only. The Government notes that it also informally examines any such charges and maintains that the violation of fundamental rights and alleged maltreatment of the suspects at the time of the arrest or while in custody or detention must be addressed immediately by independent investigators. The Government states that the MLSA has requested an autonomous review by the State General Inspection Organization (SGIO) as well as the Headquarters for the Protection of Human Rights (Headquarters) and has required them to advise the Government of their findings. According to the Government, the Headquarters is the single biggest body in the Islamic Republic of Iran for the protection of human rights and is very strict in ensuring the observance of and respect for citizens and their fundamental rights. The Government adds that the Headquarters is comprised of representatives from the legislative, administrative and judiciary bodies; representatives of the police and disciplinary forces attend meetings addressing any alleged violation of human rights by different bodies or government organizations. The Government further states that the complainants may lodge a complaint with the SGIO, an independent supervisory and monitoring body that examines public bodies to ensure proper functioning and correct implementation of legal provisions and receives complaints of mistreatment by police or other disciplinary forces.

895. Regarding the Committee's request concerning the 43 workers whose contracts were terminated, the Government provided information on the rulings of the Dispute Settlement Boards of the Tehran's province and the Administrative Justice Tribunal for the dismissed workers of the Sherkat Vahed Autobusrani Tehran va Homeh (SVATH). The Government explains that both the Board of First Instance and Dispute Settlement Board are tripartite and any decision or ruling to dismiss a worker must be supported by the union or Islamic Labour Council representative. The District Dispute Settlement Board hears complaints of dismissals that did not follow proper procedure; dismissals that do not follow correct procedure are not binding. A worker may contest the Dispute Settlement Board or Board of the First Instance ruling before the Administrative Justice Tribunal, which may quash any ruling by the Boards and, if it does so, then the Dispute Settlement Board will hear the case anew. Article 27 of the Labour Law stipulates that:

> … if, upon delivery of written notifications as to the negligence in the due performance of an assigned work or violation of respective disciplinary codes of the workshop, a worker continues his faulty practice, the employer may dismiss him after having obtained the approval of the members of the Islamic Labour Council of the related enterprise. If such council does not exist the existing trade union is mandated to approve the dismissal. Under any situation, the employer, however, is obliged to pay to the dismissed worker, in addition to his legal dues, wages and benefits in arrears, also for at least one month's salary for each of his years of employment at the enterprise.

In either of the above cases, if the conflicting parties do not reach an agreement on dismissal, the case may be referred to the Board of the First Instance. If the latter fails to address the case properly, it may then be referred to the Dispute Settlement Board. In the meantime the employment contact is suspended. In enterprises or workshops that are not subject to the Labour Law and where Islamic labour councils or workers' representations do not exist, the final ruling of the tripartite Board of First Instance is required for the cancellation of an employment contract (subject to article 185 of the Labour Law).

896. The Government provides copies of the rulings of the disciplinary committees, together with Dispute Settlement Board and State Administrative Tribunal verdicts.

Rulings of Tehran's Dispute Settlement Board

897. The Government states that the Tehran Dispute Settlement Board ruled for the reinstatement of Masoud Fouroghi Nejad, Homayon Jaberi, Hassan Saiedi, Gholamreza Hassani, Gholamreza Mirzaie, Hamid Reza Rezaifard, Asghar Mashadi, Mohammad Sadegh Khandan, Yousef Moradi, Hassan Mohammadi, Gholamreza Khoshmaram and Mahmood Hajiri. The Board further ruled that their dismissals did not comply with the provisions of article 27 of the Labour Law and therefore they should be duly compensated for the lay-off period and should receive the accrued salary and benefits.

Approval of dismissal for the absence of an amicable and collaborative employment environment

898. Tehran's Dispute Settlement Board upheld the dismissals of Hassan Karimi, Ali Akbar Pirhadi, Davoud Nourozi, Mohammad Ebrahim, Nourozi Gohari, Soltan ali Shekari Seyed Biglou, Syed Reza Nematipour, Hadi Kabiri, Ataollah Babakhani, Hossein Karimi, Hassan Mohammadi and Amir Takhiri. The Board found the dismissals violated article 27 of the Labour Law but given the absence of an amicable and collaborative employment environment between the workers and the employer and noting that the dismissal was beyond the workers' will, the Board ordered reimbursement of all pending wages, benefits, compensation years of employment, etc., and entitled them to the unemployment fund as a source of revenue until they find new jobs.

Dismissals in conformity with article 27 of the Labour Law

899. The Board concluded that the dismissals of Golamreza Fazeli, Gholamreza Khani, Ali Hosseinzadehe, Vahab Mohamadi, Yaghob Salimi, Seyed Mansour Hayat Ghaybi, Ebrahim Madadi, Nasser Gholam, Saied Torabian, Syed Davod Razavi and Abass Najan Kodaki were carried out in conformity with article 27 of the Labour Law; therefore the Board upheld the dismissals and ordered the employer to settle all the workers' legal dues, wages and benefits.

Rulings of the State Administrative Tribunal and referrals back to the Dispute Settlement Board

900. The Government states that the following workers referred their final dismissal rulings by the Dispute Settlement Board to the State Administrative Tribunal: Ebrahim Madadi, Saied Torabian, Seyed Mansour Ghaybi, Mohammad Ebrahim Nourouzi Gohari, Amir Takhiri, Seyed Reza Nemati Pour, Yaghob Salimi, Gholamreza Fazeli, Safar Alirad, Gholamreza Khanin and Ali Akbar Pirdi. The Tribunal upheld only Mr Ebrahim Madadi's complaint; it overturned his dismissal and referred his case to a parallel Dispute Settlement Board. The Government notes that Mr Hossein Dehghan's appeal concerned his premature retirement; the Board of First Instance of the MLSA Directorate of Shar Ray dated 1386/3/29 (20 July 2007) concluded the case did not fall in the Dispute Settlement Board's jurisdiction.

901. On the Committee's request for an independent investigation into the attacks on union meetings in March and June 2005, the Government affirms that it seriously examined any such charges and maintains that the alleged mistreatment or unfair proceedings must be addressed immediately by independent bodies but that the incident was the result of trade union internal clashes. The Government states that it and the judiciary, as impartial bodies, may not, therefore, intervene on behalf of either party to the contentions unless such a request is deposited with the judiciary. The complainants may, therefore, call for the

implementation of article 615 of the Islamic Penal Code which calls for proportionate punishment against all parties to a fight; article 65, paragraph 65 of the Islamic Penal Code stipulates that any survey or examination of the legal case is subject to the complaint of the complainant. In respect of the attacks by Workers' House affiliates, the Syndicate of Workers of Tehran and Suburbs Bus Company (the union) had in fact lodged an official complaint with the General Prosecutor of Tehran. Also, union board member Ebrahim Nourouzi Gohari had filed a complaint with the General Prosecutor of the judicial organization of the military forces against the arresting officers for the use of excessive force; the first hearing of Gohari's action was held and the court ruled for the examination of the alleged physical injuries. The Government pledges to pursue a more speedy examination by the independent judiciary investigation team.

902. Regarding the Committee's request for an independent investigation addressing the allegations of ill-treatment suffered by Mr Osanloo, the Government states that Mr Osanloo or his lawyers may lodge a new complaint with the judiciary for infringement of his citizen and human rights. The latter organization has been very strict in addressing such cases, the Government alleges, and has recently severely penalized some of the perpetrators of the alleged violations. The Government also alleges that the Bill on the Protection of the Citizenry Rights is an indication that violation of the rights of the citizen is not tolerable and the judiciary is gravely concerned to protect against such violations. The Bill was attached to the Government's reply.

903. Regarding the Committee's request for Mr Osanloo's full particulars as to his current state of health and urgent provision of all necessary medical attention, the Government claims Mr Osanloo had constant access to the best medical services available in the Islamic Republic of Iran when necessary. The Government further claims that, while he was in detention, his eye received intensive care and he received eye surgery from the best eye surgeons in the most advanced hospitals of the Islamic Republic of Iran; he also indiscriminately had a thorough physical examination, where appropriate. A 5 November 2007 memorandum from the director of Evin prison indicating that Mr Osanloo had received medical treatment since his transfer to Evin prison was attached to the Government's reply. The Government further states that it would willingly examine any possible cases of alleged violations of his civil and human rights in detention and would immediately bring any violations to the attention of the respective authorities for corrective measures.

904. As regards the Committee's request for Mr Osanloo's immediate release and the dropping of charges against him, the Government states that it is seriously seeking legal avenues for his pardon and release. The Government adds that it strongly believes that workers should not be confined behind bars and should fulfil their share in the development and prosperity of the society. The Government alleges that maintaining imprisonment is not the most appropriate punishment, and that the judiciary is also seriously looking into replacing imprisonment with another reasonable substitute.

905. On the immediate release of Mr Madadi and withdrawal of the charges against him, the Government states that it is entirely in the judiciary's mandate to alter court rulings, drop charges, or exonerate any accused or sentenced person. The Government states it may not in any manner meddle with the affairs and rulings of the judiciary. The Government adds Mr Osanloo has every right to resort to the mechanism envisaged in the law to alter the court's decision. In compliance with the Committee's recommendation, however, the MLSA has officially sought the pardon of Mr Osanloo and Mr Madadi and is following the case seriously with the judiciary and the Ministry of Justice.

906. As concerns the right of workers to exercise their right to peaceful assembly, the Government states that the MLSA has drafted a code of practice on the management and

control of trade union and labour-related protests, in order to reduce any error and misconception in the treatment by the disciplinary forces of such events, and in compliance with the recommendation of the Committee. Among other things, the code aims at advising and briefing the disciplinary and security forces on the principle of non-violence in their treatment of different forms of labour-related and trade union protests. To give the code more legal power and legitimacy, it has been officially submitted for approval to the Supreme National Security Council and States Security Council by the MLSA.

907. The Government provides a translated copy of the draft code, as well as a copy of cover letters from the MLSA addressed to the secretariat of the Supreme National Security Council and to the head of the Ministry of the Interior, presenting the draft code and asking that it be considered for "national security services".

908. The MLSA embarked on an extensive briefing of its general directors and motivated them to introduce the code to other pertinent authorities. The Government provides with its reply a copy of a correspondence dated 5 March 2007, which it states is from its director-general in Fars Province to the general governor, through which the former officially introduces the code and asks for its due observance and implementation.

909. On the Committee's request that the Government receive a technical mission, the Government states that many of the Islamic Republic of Iran's industrial relations and labour problems may best be addressed through constructive interactions with the ILO technical teams and it regards such encounters as constructive steps to implementing Conventions Nos 87 and 98. The Government recalls the ILO technical mission to the Islamic Republic of Iran in February 2008, in which the ILO representative saw social partners' associations and ranking government officials and learned about the great interest of the Parliament to seriously examine the ratification of Conventions Nos 87 and 98. The Government, therefore, enthusiastically looks forward to receiving such missions in the future as well and pledges to do its utmost to ensure the fulfilment of their mission objectives. The Government states that it will soon advise the Committee of the best timetable for a technical mission and it is confident that the constructive measures adopted by the Government and its social partners, such as attempts to amend the Labour Law and relevant regulations as well as initiatives to prepare the ground for the ratification of Convention No. 87, may have paved the way for a more constructive mission.

910. Finally, as concerns the 3 December 2006 arrest of Seyed Davoud Razavi, Abdolreza Tarazi, and Golamreza Golam Hosseini, the Government states that their arrest was due to their participation in an unlawful assembly held by dissident groups, and bore no relation with their trade union activities.

C. The Committee's conclusions

911. *The Committee recalls that the present case concerns acts of harassment against members of the union, including: demotions, transfers, and suspensions without pay of union members; acts of violence against trade unionists; and numerous instances of the arrest and detention of trade union leaders and members.*

912. *The Committee recalls that it had previously urged the Government to deploy all efforts as a matter of urgency to amend the labour legislation so as to bring it into full conformity with the principles of freedom of association, particularly as concerns the right of workers and employers to form and join the organization of their own choosing, regardless of the pre-existence of another type of representation in the same workplace, sector or at national level. In this regard the Committee takes note of the Government's indications on the ongoing reforms to the labour legislation. In particular, the Committee notes with interest the proposed amendments to the Labour Law contained in the draft Bill on the*

Formulation of Temporary Labour Contracts and the Creation of New Employment. The proposed amendment to article 131 of the Labour Law would appear to permit trade union multiplicity by providing for the right of workers to "establish guild societies and/or elect work representatives" at the workplace level, and note 1 of the proposed amendment to article 131 further states that in case two workers' associations exist in a workplace, the "most representative association" shall be considered as the legal workers' representative. The Committee also notes that note 4 of the proposed amendment to article 131 appears to allow for organizational multiplicity at the national level, in providing that workers' representatives to various councils shall be elected by the "most representative high workers' organization". The Committee requests the Government to keep it informed of the progress made in adopting these amendments and firmly expects that the legislation will be brought into conformity with freedom of association principles in the very near future.

913. *The Committee recalls that it had also urged the Government to take all measures to ensure that trade unions can be formed and function without hindrance pending the passage of new legislation, including through the de facto recognition of the union – the Sandikaye Kargarane Sherkate Vahed Otobosrani Tehran va Hoomeh (Independent Syndicate of Workers of Tehran Bus Company) (SVATH). In this regard, the Committee deeply regrets that the Government confines itself to reiterating that it is obliged to apply the laws and regulations impartially and indiscriminately – and has once again failed to provide any indication that it has taken effective measures to ensure that workers and employers may exercise their fundamental rights to freedom of association without sanction. The Committee once again urges the Government to deploy all efforts as a matter of urgency so as to allow for trade union pluralism, including through the de facto recognition of the SVATH pending the introduction of the legislative reforms.*

914. *With respect to its previous request for a full and independent investigation into the allegations of workplace harassment during the period of the union's founding, from March to June 2005, the Committee notes that, according to the Government, the Ministry of Labour and Social Affairs (MLSA) has requested an autonomous review by the State General Inspection Organization (SGIO) as well as by the Headquarters for the Protection of Human Rights, and has required them to advise the Government of their findings. The Committee requests the Government to transmit a detailed report of those bodies' findings as soon as they are produced and once again requests the Government, in the light of the information revealed by these investigations, to take the necessary measures to ensure that all employees at the company are effectively protected against any form of discrimination related to their trade union membership or their trade union activities.*

915. *The Committee recalls that it had previously requested copies of the Dispute Settlement Board's rulings concerning the 43 workers whose contracts were terminated between March to June 2005 and in March 2006. It had also urged the Government to undertake a full and independent inquiry into the allegations of dismissals during the months of February and June 2007. In this connection, the Committee notes the Government's indication that the Tehran Dispute Settlement Board ordered the reinstatement of 12 workers, and ordered compensation – including the payment of wages and benefits in arrears – without reinstatement in the case of 13 others, due to the absence of an "amicable and collaborative employment environment" between the workers and the employer. The Tehran Dispute Settlement Board also upheld the dismissals of 11 trade unionists dismissed in February 2007; several of these individuals appealed the Board's rulings to the State Administrative Tribunal, which upheld all of the decisions except that relating to Ebrahim Madadi, which was overturned and referred to a parallel dispute settlement board.*

916. *The Committee notes that, of the rulings provided by the Government, three are translated into English: a ruling of the Dispute Settlement Board for the reinstatement and payment of compensation to Masoud Foroghi Nejad, and rulings of the Labour Disciplinary Committee relating to Mansour Hayat Gheibi and Gholamreza Fazeli, respectively, in which the latter were found to have been dismissed with cause on grounds inter alia of obstruction, spreading baseless rumours, participation in illegal sit-ins and demonstrations, exerting pressure to seek illegal advantages, inciting others to achieve illegal objectives, and disrupting the discipline of the workplace. The Committee observes, furthermore, that the rulings are brief, one-page summaries that do not contain the material facts for the Committee to determine whether the individuals concerned were dismissed for reasons of anti-union discrimination. The Committee once again urges the Government to take the necessary measures to ensure that the 13 trade unionists found to have been wrongfully dismissed by the Tehran Dispute Settlement Board – and all other trade unionists who have not yet been reinstated and were found to have been the subject of anti-union discrimination – are fully reinstated in their positions without loss of pay. It further requests to be kept informed of the case concerning Mr Madadi, which was referred by the State Administrative Tribunal to a parallel dispute settlement board.*

917. *As concerns its previous request that the Government immediately institute a full and independent judicial inquiry into the attacks on union meetings in May and June 2005, the Committee deeply regrets that the Government merely reiterates that the union had filed a complaint with the General Prosecutor of Tehran, while pledging to pursue a speedier examination of the case by the independent judiciary investigation team. Recalling that it had previously regretted that no judgement had yet been rendered in this case [see 350th Report, para. 1093], which concerns acts which now took place four years ago, the Committee is bound to deplore the lack of progress in respect of this serious matter. In light of the gravity of these allegations, the Committee once again urges the Government to institute a full and independent judicial inquiry immediately into these attacks, in order to clarify the facts, determine responsibilities, prosecute and punish those responsible and thus prevent the repetition of such acts. The Committee requests the Government to keep it informed of developments in this regard, including a copy of the court's judgement once it is handed down.*

918. *With respect to its previous recommendation for an independent inquiry into the allegations of ill-treatment suffered by Mr Osanloo during his period of detention from 22 December 2005 to 9 August 2006, the Committee deeply regrets that the Government indicates only that Mr Osanloo may lodge a complaint with the judiciary for infringements of his civil rights. Recalling that it had previously concluded that Mr Osanloo's detention from 22 December 2005 to 9 August 2006 and the treatment received during this period constitute not only interference with his trade union activities, but a grave violation of his civil liberties as well [see 350th Report, para. 1097], and observing the importance which the Government itself places on the rapid institution of independent investigations, the Committee requests the Government to ensure that the necessary independent investigation is carried out in this regard as a matter of urgency.*

919. *As concerns its previous recommendation that the Government ensure Mr Osanloo's immediate release from prison, provide full particulars as to his state of health and ensure that he is provided all necessary medical attention, the Committee notes the director of Evin prison's memorandum of 5 November 2007 provided by the Government, which indicates that Mr Osanloo had received regular treatment since his transfer to Evin prison, including three outside visits to medical clinics. The Government further states that Mr Osanloo was given access to the best medical services available in the Islamic Republic of Iran, including treatment from the nation's best eye surgeons. The Committee, while noting the efforts which the Government states it is making for Mr Osanloo's release, must once again urge the Government to take the necessary measures to ensure*

his immediate release and the dropping of any charges. As for the allegations concerning the lack of proper medical attention, the Committee requests the Government to provide full particulars as to the current state of Mr Osanloo's health.

920. *The Committee had previously urged the Government to ensure Ebrahim Madadi's immediate release and the dropping of any remaining charges brought against him. It had additionally urged the Government to provide full, detailed and precise information respecting his trial, including copies of the court judgement, and to conduct an independent inquiry into the allegations of ill-treatment to which he had been subjected while in detention. The Committee regrets that the Government, while stating that it was seeking a pardon for Mr Madadi and following the case with the judiciary and the Ministry of Justice, has failed to indicate any measures relating to Mr Madadi's release or provide any information concerning his case, including the Revolutionary Court's judgement of October 2007 that found him guilty of acting against national security. It furthermore deplores that the Government has not provided any information respecting the allegations of Mr Madadi's mistreatment during his period of detention. Recalling that in that decision the Revolutionary Court had sentenced Mr Madadi to a two-year prison term, the Committee further deplores that in spite of its previous recommendation Mr Madadi will have completed his sentence in October of this year. The Committee once again urges the Government to take the necessary measures to ensure Mr Madadi's immediate release. Deeply regretting that the Government has not provided any indications concerning the allegations of ill-treatment to which he had been subjected while in detention, the Committee once again urges the Government to institute an independent investigation into this serious matter.*

921. *Previously the Committee, recalling that workers should enjoy the right to peaceful demonstration to defend their occupational interests, and that the police authorities should be given precise instructions so that, in cases where public order is not seriously threatened, people are not arrested simply for having organized or participated in a demonstration [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, paras 133 and 151], had urged the Government to take the necessary measures without delay to ensure that trade unionists may fully exercise their freedom of association rights, including the right to peaceful assembly, without fear of sanction by the authorities, and to ensure in particular that trade unionists are not arrested or detained and that charges are not brought against them for engaging in legitimate trade union activities. The Committee notes in this respect the draft code of practice on the management of trade union demonstrations and protests of the MLSA. The Committee further notes that the draft code of practice includes letters from the MLSA addressed to the secretariat of the Supreme National Security Council and to the head of the Ministry of the Interior, presenting the draft code and asking that it be considered for the "national security services". The Government also provides a copy of a communication dated 5 March 2007 from Kernan Province (not Fars, as indicated by the Government) to the General Governor, through which the former officially introduces the code and asks for its due observance and implementation.*

922. *The Committee notes the initiatives taken by the Government through the measures taken by the MLSA to draft and promote a code of practice on the management and control of labour-related and trade union protests and demonstrations. The Committee notes the introduction to the draft code, which emphasizes the role of good industrial relations, collective bargaining, and dispute resolution mechanisms as "necessary and indispensable tools" for workers and employers to achieve mutually acceptable solutions to labour disputes and for protecting workers' rights and interests as well as ensuring the security and sustainability of enterprises. Some of the consequences of the failure to achieve mutually acceptable solutions to labour disputes are labour strikes, pickets, sit-ins, assemblies, and peaceful demonstrations, which are themselves "legitimate tools for*

workers to demonstrate the gravity of their situation". What seems to have aggravated incidents in which worker protests have led to widespread social unrest and political disturbances is "the absence of a code of practice to help police and other disciplinary forces to distinguish" worker strikes and protests from potential social unrest and public disturbances. The present draft code, according to the Government, therefore represents a genuine attempt "to help disciplinary and security forces recognize the legitimacy of labour-related protests, demonstrations, sit-ins, etc., so as to distinguish them from other forms of social and political unrest and turmoil". According to the Government, the code was thus prepared in the hope that it could ensure that the ground is laid "for workers to freely exercise their legitimate rights of protest and strikes as stipulated under national and labour laws".

923. *The Committee further notes from the draft code that:*

– *under section A, the MLSA is to introduce "relevant regulations", while "defining the characteristics and scope of legitimate trade union rights and activities arising from the respective international labour standards";*

– *section B provides, among other things, that "preventing trade union members from pursuing their causes by resorting to the security and intelligence forces and/or limiting their legitimate trade union activities, such as holding meetings and peaceful assemblies, is construed as a violation of the rights of workers". The Ministry of Interior is therefore required to define "the criteria for holding peaceful demonstrations and assemblies", as well as the "definitions and characteristics of what [the Government] considers to be unacceptable practices in holding demonstrations and assemblies", about which trade unions are to be advised by the Government;*

– *under section C, the Ministry of Justice is required to formulate rules and regulations, "in respect of possible violations of relevant civil laws by protesters and/or workers on strike". All relevant departments (police, security and other disciplinary forces) shall exercise self-restraint and refrain from resorting to disciplinary or security practices in dealing with workers' collective industrial actions and trade union and labour-related protests and demonstrations;*

– *under section D, the approach of operating forces in controlling social disturbances and/or volatile and critical worker unrest is based on the principle of deployment of non-offensive anti-riot equipment and non-deployment of excessive force and firearms. Reference is made to "Security Council instructions for maintaining discipline and public security" but the content of those instructions is not specified;*

– *section E provides that, upon the occurrence of workers' events the relevant authorities are first to contact the General Directorate of the MLSA in the related province to elicit the necessary background information concerning the incident and to seek its assistance in attempting an amicable settlement of the dispute by using all the tools and means at their disposal.*

924. *The Committee requests the Government to inform it of the progress made concerning the finalization of the draft code and its adoption and to provide full particulars on the matters referred to therein, including the rules, regulations, and criteria the various ministries are apparently required to formulate and introduce that govern the holding of demonstrations and assemblies. The Committee urges the Government to receive technical assistance from the ILO to finalize the draft code and in the formulation of the requisite rules and regulations referred to therein, so as to ensure that workers' organizations may carry out peaceful demonstrations without fear of arrest, detention or indictment by the authorities for engaging in such activity, in accordance with the principles of freedom of association.*

925. *The Committee had previously deplored the fact that several other trade unionists had been arrested, detained, and tried – or were awaiting trial – on the same charges for which Mr Osanloo and Mr Madadi were convicted, and had urged the Government to ensure that the charges were dropped against these union members, namely: Ata Babakhani, Naser Gholami, Abdolreza Tarazi, Golamreza Golam Hosseini, Gholamreza Mirzaee, Ali Zad Hosein, Hasan Karimi, Seyed Davoud Razavi, Yaghob Salimi, Ebrahim Noroozi Gohari, Homayoun Jaberi, Saeed Torabian, Abbas Najand Koodaki and Hayat Gheibi. It further urged the Government to ensure that if any of these trade unionists were still being detained that they be immediately released, and to provide any court judgements rendered in respect of these workers. The Committee deplores that the Government provides no information in this respect, other than to state that the 3 December 2006 arrest of Seyed Davoud Razavi, Abdolreza Tarazi and Golamreza Golam Hosseini was due to their participation in an unlawful assembly held by dissident groups, and bore no relation with their trade union activities. The Committee once again urges the Government to ensure that the charges against these union members are immediately dropped and that, if any of them are currently being detained, that they be immediately released. Furthermore the Committee once again urges the Government to provide any court judgements rendered in respect of these workers.*

926. *Finally, in respect of its previous request for a direct contacts mission, the Committee welcomes the Government's statement that such a mission would be viewed positively, in order to review the existing situation and provide guidelines for improvement where appropriate, and that it would soon advise the Committee of the best timetable for the visit. The Committee expects that the mission will be able to visit the country shortly and that it will be in a position to assist the Government in achieving significant results with respect to all the serious outstanding matters and, in particular, as regards the draft labour legislation and principles relating to trade union demonstrations referred to by the Government, as well as in relation to the trade unionists remaining in detention.*

The Committee's recommendations

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

(a) Noting with interest that the proposed amendments to article 131 of the Labour Law would appear to permit trade union multiplicity, including at the workplace and national levels, the Committee requests the Government to keep it informed of the progress made in adopting these amendments and firmly expects that the legislation will be brought into conformity with freedom of association principles in the very near future.

(b) The Committee once again urges the Government to deploy all efforts as a matter of urgency so as to allow for trade union pluralism, including through the de facto recognition of the SVATH union pending the introduction of the legislative reforms.

(c) The Committee requests the Government to transmit a detailed report of the findings of the State General Inspection Organization (SGIO) and the Headquarters for the Protection of Human Rights into the allegations of workplace harassment during the period of the union's founding, from March to June 2005, as soon as they are produced. It once again requests the Government, in the light of the information revealed by these investigations, to take the necessary measures to ensure that all employees at

the company are effectively protected against any form of discrimination related to their trade union membership or their trade union activities.

(d) The Committee once again urges the Government to take the necessary measures to ensure that the 13 trade unionists found to have been wrongfully dismissed by the Tehran Dispute Settlement Board – and all other trade unionists who have not yet been reinstated and were found to have been the subject of anti-union discrimination – are fully reinstated in their positions without loss of pay. It further requests to be kept informed of the case concerning Mr Madadi, which was referred by the State Administrative Tribunal to a parallel dispute settlement board.

(e) The Committee once again requests the Government to immediately institute a full and independent judicial inquiry into the attacks on union meetings in May and June 2005, in order to clarify the facts, determine responsibilities, prosecute and punish those responsible and thus prevent the repetition of such acts. The Committee requests the Government to keep it informed of developments in this regard, including a copy of the court's judgement in the action initiated by the union concerning these attacks once it is handed down.

(f) Recalling that it had previously concluded that Mr Osanloo's detention from 22 December 2005 to 9 August 2006 and the treatment received during this period constitute not only interference with his trade union activities, but a grave violation of his civil liberties as well, and observing the importance which the Government itself places on the rapid institution of independent investigations, the Committee requests the Government to ensure that the necessary independent investigation is carried out in this regard as a matter of urgency.

(g) The Committee, while noting the efforts which the Government states it is making for Mr Osanloo's release, must once again urge the Government to take the necessary measures to ensure his immediate release and the dropping of any remaining charges. As for the allegations concerning the lack of proper medical attention, the Committee requests the Government to provide full particulars as to the current state of Mr Osanloo's health.

(h) The Committee once again urges the Government to take the necessary measures to ensure Mr Madadi's immediate release and to institute an independent investigation into the allegations of ill-treatment to which he had been subjected while in detention.

(i) The Committee requests the Government to inform it of the progress made concerning the finalization of the draft code of practice on the management and control of trade union and labour-related protests and its adoption and to provide full particulars on the matters referred to therein, including the rules, regulations, and criteria the various ministries are apparently required to formulate and introduce that govern the holding of demonstrations and assemblies. The Committee urges the Government to receive technical assistance from the ILO to finalize the draft code and in the formulation of the requisite rules and regulations referred to therein, so as to ensure that workers' organizations may carry out peaceful demonstrations without fear

of arrest, detention or indictment by the authorities for engaging in such activity, in accordance with the principles of freedom of association.

(j) The Committee once again urges the Government to ensure that the charges against Ata Babakhani, Naser Gholami, Abdolreza Tarazi, Golamreza Golam Hosseini, Gholamreza Mirzaee, Ali Zad Hosein, Hasan Karimi, Seyed Davoud Razavi, Yaghob Salimi, Ebrahim Noroozi Gohari, Homayoun Jaberi, Saeed Torabian, Abbas Najand Koodaki and Hayat Gheibi are immediately dropped and that, if any of them are still being detained, that they be immediately released. Furthermore the Committee once again urges the Government to provide any court judgements rendered in respect of these workers.

(k) The Committee welcomes the Government's acceptance of a mission and expects that this mission will be able to visit the country shortly and that it will be in a position to assist the Government in achieving significant results with respect to all the serious outstanding matters and, in particular, as regards the draft labour legislation and principles relating to trade union demonstrations referred to by the Government, as well as in relation to the trade unionists remaining in detention.

(l) The Committee calls the Governing Body's special attention to the grave situation relating to the trade union climate in the Islamic Republic of Iran.

CASE NO. 2567

INTERIM REPORT

Complaint against the Government of the Islamic Republic of Iran presented by the International Organisation of Employers (IOE)

Allegations: The complainant organization alleges Government interference in the elections of the Iran Confederation of Employers' Associations (ICEA), the subsequent dissolution of the ICEA by administrative authority and the official backing of a new and parallel employers' confederation

928. The Committee last examined this case on its merits at its June 2008 session, where it issued an interim report approved by the Governing Body at its 302nd Session [see 350th Report, paras 1108–1166].

929. The Government provided its observations in a communication dated 16 March 2009.

930. The Islamic Republic of Iran has not ratified either 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. Previous examination of the case

931. In its previous examination of the case, the Committee made the following recommendations [see 350th Report, para. 1166]:

(a) Considering that the Government's presence and conduct during the Iran Confederation of Employers' Associations (ICEA) elections on 1 November 2007 amounts to interference in the right of employers' organizations to elect their representatives in full freedom contrary to the principles of freedom of association, the Committee urges the Government to refrain from such interference in the future.

(b) The Committee considers the favouritism shown by the Government to be a breach of the ICEA's freedom of association rights and calls on the Government to remedy past discriminatory acts, to desist from those acts which are continuing, and to refrain from such interference in the future.

(c) The Committee urges the Government to take the necessary measures to amend the existing legislation, including the Council of Ministers' Rules and Procedures on the Organization, Functions, Scope and Liabilities of Trade Unions, so as to ensure that employers' and workers' organizations may fully exercise their right to elect their representatives freely and without interference by the public authorities.

(d) The Committee requests the Government to take measures as a matter of urgency to amend the Labour Law so as to ensure the freedom of association rights of all workers and employers and, in particular, the right of workers and employers to establish more than one organization, be it at enterprise, sectoral or national level, in a manner consistent with freedom of association and that this be done in a manner that does not prejudice the rights formerly held by the ICEA. It requests the Government to transmit a copy of the proposed amendments as soon as they are finalized and firmly expects that the legislation will be brought into conformity with the abovementioned principle in the very near future.

(e) Noting that the ICEA has appealed the 2 March 2008 decision of the Administrative Justice Court's Appellate Branch, which ruled that the ICEA had been dissolved by operation of article 42 of its Articles of Association, the Committee expects that the appeal will, as per the ICEA's request, be heard by the Ultimate Appeals Branch of the Administrative Justice Court in the very near future, and that the latter body will take into full consideration all of the Committee's conclusions set out above. The Committee requests the Government to keep it informed of developments in this regard and to provide a copy of the final judgement once it is handed down.

(f) Pending the decision of the Ultimate Appeals Branch of the Administrative Court, the Committee urges the Government to immediately take the necessary measures to re-register the ICEA, as constituted following its General Assembly of 5 March 2007 and to ensure that it can exercise its activities without hindrance. Upon such re-registration, the Committee further urges the Government to adopt a position of non-interference and neutrality in the exercise of freedom of association employers must have in relation to membership of the ICEA, and to provide no formal or informal preference or favouritism to other organizations. It requests the Government to keep it informed of the steps taken in this regard.

(g) The Committee expresses its deep concern with the seriousness of the situation prevailing in the country and calls the Governing Body's special attention to the grave situation relating to the freedom of association climate in the Islamic Republic of Iran. It requests the Government to accept a direct contacts mission in respect of the matters raised in the present case, as well as those raised in the other cases concerning the Islamic Republic Iran pending before the Committee.

B. The Government's reply

932. In its communication of 16 March 2009, the Government states that article 131 of the Labour Law and article 19 of the Council of Ministers' Rules and Procedures on the

Organization, Functions, Scope and Liabilities of Trade Unions provide, inter alia, for governmental supervision of an organization's elections and that, until those laws are amended by Parliament, it is obliged to implement those, and all laws, indiscriminately. In any event, the relevant legislation does not provide for interference in an organization's internal affairs but rather permits the Government to ensure the proper holding of elections in an impartial and objective manner. Moreover, a November 2008 decision of the Administrative Justice Tribunal had exonerated the Government of charges of interfering in the ICEA's elections.

933. As concerns the allegation of favouritism, the Government maintains that it does not see any point or advantage in taking side with one employers' group against another. All Iranian employers, irrespective of their confederation's orientation, are equally and indiscriminately respected and recognized. As evidence of this, the Minister of Labour and Social Affairs, despite his very tight schedule, received the respectable Secretary-General of the International Organisation of Employers (IOE) and issued a statement recommending the holding of an independent employers' confederation election, in which guests from the IOE and the ILO may be invited to witness how freedom of association is actually practiced in the Islamic Republic of Iran.

934. With respect to the Committee's Recommendation concerning legislative amendments to ensure organizational multiplicity, the Government indicates generally that amending the Labour Law of the Islamic Republic of Iran has been one of the most serious challenges of the Government within the last 20 years. It is a challenge bound up with a complicated and multifaceted social, political and parliamentary procedure. ILO technical cooperation was requested to ensure that amendments would be made in accordance with Conventions Nos. 87 and 98. ILO experts were also invited to promote the principles of collective bargaining in the Islamic Republic of Iran by teaching both workers' and employers' organizations. On some occasions, drafts of possible amendments to the Labour Law on controversial points were either assisted by ILO experts or brought to their attention for eventual observations or corrections. The Government adds that a draft amendment to the Labour Law is presently under technical examination in the competent Government commission for final approval.

935. The Government states that paragraph 41 of article 101 of the Fourth National Development Plan clearly calls for the amendment of labour laws, social security laws, and regulations to incorporate fundamental rights at work and comply with relevant ILO Conventions and instruments, as well as to promote social dialogue in industrial relations. To fulfil the objectives of article 101, and particularly the promotion of freedom of association and right to collective bargaining, a draft amendment was prepared and formulated jointly by the social partners to replace articles 7, 21, 24, 27, 41, 96, 112, 119, 191 and 192 of the current Labour Law. The requests for amendments were officially submitted to the Cabinet of Ministers on 30 November 2006, as well as on 30 May and 27 October 2008, (a copy of the request was attached to the Government's reply). A further amended text, which took into account the contributions made by an ILO expert invited to the Islamic Republic of Iran to review the draft, was later sent to the Cabinet. The Secretary of Economic Commission of the Cabinet, upon examination of the submitted text of the proposed amendments to be made to the Labour Law, forwarded the Cabinet's observations on these proposed amendments to the Ministry of Labour and Social Affairs (MLSA) on 5 August 2007.

936. A series of tripartite and specialized meetings subsequently resulted in a finalized version of the Labour Law amendments, entitled the Bill on the Formulation of Temporary Labour Contracts and the Creation of New Employment (the amendments are attached to the Government's reply). According to the Government, the Bill mainly focuses on proposed policies on insurance, social security, short-term temporary contracts and contracting, as

well as amendments to Chapter VI of the Labour Law. The Government states that, in drafting the Bill it gave due care to the considerations and interventions of the ILO – in particular those of the Committee. Under the proposed Bill, and in contrast to the existing law, government permission is not required to establish a trade union. Additionally, the purpose of registering workers' and employers' associations is merely to help the Government to fulfil its obligation to introduce the most representative workers' and employers' delegates to the International Labour Conference (ILC) and other relevant tripartite bodies, such as the High Labour Councils.

937. The Government further indicates that, on the recommendation of the social partners and, in particular, the employers, on 16 May 2007, Parliament approved the "Plan on the removal of obstacles in production and industrial investment", which has now been implemented. Articles 9 and 10 of the Plan also call for amendments to some of the articles of the existing Labour Law. Parliament's Economic Commission is addressing another proposal, submitted by the Ministry of Industry on 24 January 2008, which calls for revisiting and amending the labour and social security laws for optimizing production costs" (the proposal was attached to the Government's reply).

938. As concerns the ICEA's appeal of 2 March 2008 decision of the Administrative Justice Court's Appellate Branch, which found the ICEA to have been dissolved as of 4 November 2006, by virtue of article 42 of its Articles of Association, the Government indicates that the Administrative Justice Court was approached in order to expedite the ICEA's appeal proceeding. The chief of the relevant bureau in the Administrative Justice Court, moreover, had stated that the Court was looking into the possibility of applying "article 18" to the ICEA's complaint against the Government and that until a final decision was handed down, the Court's latest ruling would be valid and binding to all contending parties. A translated copy of a communication from the Director-General of the Presidency Domain of the Administrative Justice Court to the MLSA was attached to the Government's reply. The communication, with apparent reference to the ICEA's appeal proceeding, indicates that the application of article 18 to the said proceeding was under consideration and that the decision of March 2008 remains valid.

939. As concerns the registration of the ICEA, the Government indicates that, in July 2008, the ICEA had filed a complaint against the MLSA before Branch 86 of the Tehran Legal Public Court, requesting the nullification of the ICE as a parallel employers' organization possessing the same registration number as its own. The plaintiff ICEA's action was later withdrawn, and subsequently nullified by the court in November 2008. The Government further states that it is bound to abide by the court's ruling and that, due to a heavy backlog of cases, the case concerning the legitimacy of the ICEA's General Assembly elections in November 2006 and March 2007 still awaits hearing by the relevant competent court. Attached to the Government's reply is a translated copy of the verdict.

940. As concerns the Committee's previous Recommendation concerning non-interference in the affairs of employers' organizations, the Government indicates that the existence of the legal proceedings initiated by the ICEA, and pending before the Administrative Justice Court, demonstrates the Government's policy of non-interference in the affairs of the social partners. The Government further maintains that under its Constitution and laws it is legally obliged to ensure equal treatment for all; no privilege, priority or preference is given to one employers' organization over another.

941. With respect to the Committee's request that the Government receive a direct contacts mission, the Government states that many of the Islamic Republic of Iran's industrial relations and labour problems may best be addressed through constructive interactions with the ILO technical teams, which it views as important to the implementation of Conventions Nos 87 and 98. The Government indicates that during ILO technical mission to the Islamic

Republic of Iran, held in February 2008, an ILO official met with social partners' associations and ranking Government officials and learned about the great interest of Parliament to seriously examine the ratification of those Conventions. The Government expresses enthusiasm for the receipt of such a mission in the future as well and pledges to do its utmost to ensure the fulfilment of their mission objectives; it would soon advise the Committee of the best timetable for a technical mission and expressed confidence that the constructive measures adopted by itself and the social partners, such as attempts to amend the Labour Law and relevant regulations as well as initiatives to prepare the ground for the ratification of Convention No. 87, have paved the way for a constructive mission.

C. The Committee's conclusions

942. *The Committee recalls that the present case concerns allegations of Government interference in the elections of the ICEA, the subsequent dissolution of the ICEA by administrative authority and the official backing of a new and parallel employers' confederation (the ICE).*

943. *The Committee recalls that it had previously considered the Government's presence and conduct during the 1 November 2007 ICEA elections as amounting to interference in the right of employers' organizations to elect their representatives in full freedom, contrary to the principles of freedom of association, and had urged the Government to refrain from such interference in the future. It had also urged the Government to take the necessary measures to amend the existing legislation, including the Council of Ministers' Rules and Procedures on the Organization, Functions, Scope and Liabilities of Trade Unions, so as to ensure that employers' and workers' organizations may fully exercise their right to elect their representatives freely and without interference by the public authorities. In this respect, the Committee notes with regret the Government's reiteration that, until amendments are passed by Parliament, it is obliged to implement the laws providing for governmental supervision of organization elections – namely article 131 of the Labour Law and article 19 of the Council of Ministers' Rules and Procedures on the Organization, Functions, Scope and Liabilities of Trade Unions – and that, until those laws are amended by Parliament, it is obliged to implement those and all laws indiscriminately. The Government further states that the relevant legislation does not provide for interference but rather permits the Government to ensure that elections are held in an impartial and objective manner, and that furthermore a November 2008 decision of the Administrative Justice Tribunal had exonerated the Government of charges of interfering in the ICEA's elections.*

944. *These indications notwithstanding, the Committee must once again recall that the national legal formalities referred to must be considered in the light of freedom of association principles. A number of the legal requirements concerning the holding of elections, particularly the Government's role in their sanctioning, are contrary to the principle that workers' and employers' organizations should be guaranteed the right to elect their officers without interference by the public authorities [see 350th Report, para. 1156]. Moreover, the Committee once again recalls that the fundamental idea of Article 3 of Convention No. 87 is that workers and employers may decide for themselves the rules which should govern the administration of their organizations and the elections which are held therein. For this right to be fully acknowledged, it is essential that the public authorities refrain from any intervention which might impair its exercise, whether it be in determining the conditions of eligibility of leaders or in the conduct of the elections themselves. The Committee further recalls that the presence during trade union elections of the authorities is liable to infringe freedom of association and, in particular, to be incompatible with the principle that workers' and employers' organizations shall have the right to elect their representatives in full freedom, and that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise*

thereof. [See ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, paras 392, 391 and 438.] With reference to the principles cited above, the Committee once again urges the Government to refrain from interfering in the right of employers' organizations to elect their representatives in full freedom and, in the absence of any specific information related to legislative proposals to ensure this right, to take the necessary measures to amend the existing legislation, including the Labour Law and the Council of Ministers' Rules and Procedures on the Organization, Functions, Scope and Liabilities of Trade Unions, so as to ensure that employers' and workers' organizations may fully exercise their right to elect their representatives freely and without interference by the public authorities.*

945. *As concerns its previous recommendation on favouritism, the Committee notes the Government's statement that all Iranian employers' groups are equally and indiscriminately respected and recognized. The Government further indicates that the Minister of Labour and Social Affairs had met with the Secretary General of the complainant organization (IOE) and issued a statement recommending the holding of an independent employers' confederation election, in which guests from the IOE and the ILO may be invited as witnesses. The Committee notes this information and expects that the Government will continue to desist from any acts of favouritism and refrain from such acts in the future. The Committee recalls, however, that it considered the Government to have demonstrated de facto favouritism towards the ICE by registering it as the replacement for the ICEA, and had called upon the Government to remedy the effects of this favouritism. The Committee regrets that the Government provides no information respecting this matter; it once again calls upon the Government to remedy past discriminatory acts arising out of the favouritism it had demonstrated towards the ICE.*

946. *The Committee more generally recalls its previous conclusion that the organizational monopoly required by the law appears to be at the root of the freedom of association problems in the country and the main hurdle to the recognition of the ICEA, as well as its recommendation that the Government take measures to amend the Labour Law so as to ensure the right of workers and employers to establish more than one organization, be it at enterprise, sectoral or national level, and in a manner that does not prejudice the rights formerly held by the ICEA [see 350th Report, para. 1163]. The Committee takes note of the information supplied by the Government respecting this matter, particularly the proposed amendments to the Labour Law including those contained in the proposed Bill on the Formulation of Temporary Labour Contracts and the Creation of New Employment. The Committee observes from the Bill that the proposed amendment to article 131 of the Labour Law would appear to allow for more than one employers' organization at the sectoral level, inasmuch as it provides that "the employers of a given profession or industry may also establish guild societies". However, it also notes that the proposed amendment to Note 4 of article 131 appears to maintain the notion in law of only one employers' organization at the national level – the Supreme Centre of Employers' Guild Societies. The Committee once again requests the Government to take measures as a matter of urgency to amend the Labour Law so as to ensure not only the freedom of association rights of all workers but also of all employers and, in particular, the right of workers and employers to establish more than one organization, whether at enterprise, sectoral or national level, in a manner consistent with freedom of association and expects that this will be done in a manner that does not prejudice the rights formerly held by the ICEA. It requests the Government to transmit a copy of any additional amendments proposed in this regard and firmly expects that the legislation will be brought into conformity with freedom of association principles in the very near future.*

947. *As concerns the Committee's recommendation relating to the ICEA's appeal of the 2 March 2008 decision of the Administrative Justice Court's Appellate Branch, which ruled that the ICEA had been dissolved by operation of article 42 of its Articles of*

Association, the Committee notes with deep regret the Government's indication that, due to a heavy backlog of cases, the Administrative Justice Court was still considering the ICEA's appeal and that, until a final decision was rendered, the 2 March 2008 decision remains valid. Recalling that justice delayed is justice denied, the Committee once again expresses the expectation that the appeal will, as per the ICEA's request, be heard by the Ultimate Appeals Branch of the Administrative Justice Court in the very near future, and that the latter body will take into full consideration all of the Committee's conclusions relating to this case, including those set out in its previous examination [see 350th Report, paras 1153–1165]. The Committee once again requests the Government to keep it informed of developments in this regard and to provide a copy of the final judgement once it is handed down.

948. *The Committee deeply regrets that, with regard to its previous recommendation to re-register the ICEA, the Government limits itself to stating that the ICEA had filed a complaint against the MLSA before the Tehran Legal Public Court, seeking the nullification of the ICE as a parallel organization possessing the same registration number as its own; the action was subsequently withdrawn and finally nullified by the court in November 2008. Recalling its conclusion that the final decision to dissolve the ICEA was based on legislative provisions and practices contrary to the fundamental principles of freedom of association [see 350th Report, para. 1164], the Committee once again urges the Government, pending the final decision of the Administrative Justice Court, to immediately take the necessary measures to register and recognize the ICEA as constituted following its General Assembly of 5 March 2007 and to ensure that it can exercise its activities without hindrance. The Committee further urges the Government to adopt a position of non-interference and neutrality in the exercise of freedom of association employers must have in relation to membership of the ICEA, and to provide no formal or informal preference or favouritism to other organizations. It once again requests the Government to keep it informed of the steps taken in this regard.*

949. *Finally, in respect of its previous request for a direct contacts mission, the Committee welcomes the Government's statement that such a mission would be viewed positively, in order to review the existing situation and provide guidelines for improvement where appropriate, and that it would soon advise the Committee of the best timetable for the visit. The Committee expects that the mission will be able to visit the country shortly and that it will be in a position to assist the Government in achieving significant results with respect to all the serious outstanding matters and, in particular, as regards the draft labour legislation and principles relating to the freedom of association rights of employers' organizations and non-interference.*

The Committee's recommendations

950. ***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 refrain from interfering in the right of employers' organizations to elect their representatives in full freedom and to take the necessary measures to amend the existing legislation, including the Labour Law and the Council of Ministers' Rules and Procedures on the Organization, Functions, Scope and Liabilities of Trade Unions, so as to ensure that employers' and workers' organizations may fully exercise their right to elect their representatives freely and without interference by the public authorities.

(b) The Committee expects that the Government will continue to desist from any acts of favouritism and refrain from such acts in the future, and once again calls upon the Government to remedy past discriminatory acts arising out of the favouritism it had demonstrated towards the ICE.

(c) The Committee once again requests the Government to take measures, as a matter of urgency, to amend the Labour Law so as to ensure not only the freedom of association rights of all workers but also of all employers and, in particular, the right of workers and employers to establish more than one organization, whether at enterprise, sectoral or national level, in a manner consistent with freedom of association and expects that this will be done in a manner that does not prejudice the rights formerly held by the ICEA. It further requests the Government to transmit a copy of any additional amendments proposed in this regard and firmly expects that the legislation will be brought into conformity with freedom of association principles in the very near future.

(d) Recalling that justice delayed is justice denied, the Committee once again expresses the expectation that the appeal will, as per the ICEA's request, be heard by the Ultimate Appeals Branch of the Administrative Justice Court in the very near future, and that the latter body will take into full consideration all of the Committee's conclusions, including those set out in its previous examination of this case. The Committee once again requests the Government to keep it informed of developments in this regard and to provide a copy of the final judgement once it is handed down.

(e) The Committee once again urges the Government, pending the final decision of the Administrative Justice Court, to immediately take the necessary measures to register and recognize the ICEA as constituted following its General Assembly of 5 March 2007 and to ensure that it can exercise its activities without hindrance. The Committee further urges the Government to adopt a position of non-interference and neutrality in the exercise of freedom of association employers must have in relation to membership of the ICEA, and to provide no formal or informal preference or favouritism to other organizations. It once again requests the Government to keep it informed of the steps taken in this regard.

(f) The Committee welcomes the Government's acceptance of a mission and expects that this mission will be able to visit the country shortly and that it will be in a position to assist the Government in achieving significant results with respect to all the serious outstanding matters and, in particular, as regards the draft labour legislation and principles relating to the freedom of association rights of employers' organizations and non-interference.

(g) The Committee calls the Governing Body's special attention to the grave situation relating to the trade union climate in the Islamic Republic of Iran.

CASES NOS 2177 AND 2183

INTERIM REPORT

Complaints against the Government of Japan presented by – the Japanese Trade Union Confederation (JTUC–RENGO) – the National Confederation of Trade Unions (ZENROREN)

Allegations: The complainants allege that the upcoming reform of the public service legislation, developed without proper consultation of workers' organizations, further aggravates the existing public service legislation and maintains the restrictions on the basic trade union rights of public employees, without adequate compensation

951. The Committee examined these cases at its November 2002, June 2003, March 2006 and June 2008 meetings, where it presented interim reports, approved by the Governing Body at its 285th, 287th, 295th and 302nd Sessions [see 329th Report, paras 567–652; 331st Report, paras 516–558; 340th Report, paras 925–999; and 350th Report, paras 1167–1221].

952. The Japanese Trade Union Confederation (JTUC–RENGO) (Case No. 2177) submitted additional information in communications dated 7 January 2009 and 24 April 2009. The National Confederation of Trade Unions (ZENROREN) (Case No. 2183) submitted additional information in a communication dated 9 March 2009.

953. The Government submitted its observations in communications dated 19 December 2008, 20 April and 20 May 2009.

954. 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). It has not ratified the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. Previous examination of the case

955. At its June 2008 meeting, the Committee made the following recommendations:

(a) While noting the progress achieved since the last examination of this case and welcoming the institutionalized discussions that have taken place between the parties, the Committee expects that the Bill finally adopted by the Diet will be followed by adequate steps for the promotion of a mechanism for full social dialogue aimed at effectively, and without delay, addressing the measures necessary for the implementation of 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) granting the right to organize 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;

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

The Committee requests the Government to keep it informed of developments on all the above issues and to transmit the conclusions of the Prime Minister's Advisory Council on Comprehensive Reform of the Civil Service System and any relevant Bills referred to the Diet.

(b) The Committee reminds the Government that it may avail itself of the technical assistance of the Office, if it so desires.

B. Additional information from the complainants

956. In a communication dated 7 January 2009, JTUC–RENGO and its Public Sector Liaison Council (RENGO–PSLC) state that the Civil Service Reform Law was enacted on 13 June 2008 with the amendment agreed upon by the ruling and opposition parties. The complainant explains that article 12 of the Reform Law provides that "The Government of Japan should show the people the whole picture of the reform, including the benefits and costs of expanding the scope of public employees with the right to conclude collective agreements, and with the understanding of the people, take measures for establishing a transparent and autonomous labour–management relations system". A supplementary article 2 provides that "The Government of Japan examines what the labour rights of local public service employees should be, in a manner consistent with the measure for the labour–management relations system of the national public service as stipulated in article 12".

957. JTUC–RENGO states that the Headquarters for Promoting Civil Service Reform was established under the Cabinet according to the provisions of the Reform Law, in order to promote civil service reform in a comprehensive and intensive manner. The Labour–Employer Relation Systems Review Committee, created under the Headquarters, is endowed with a task of researching and examining the measures to be taken by the Government of Japan in order to realize an autonomous labour–management relations system for civil service employees. The complainant adds that it took over four months to establish the Review Committee after the Reform Law was enacted, which it took as an intentional slow down of the efforts, on the part of the Government, to grant the basic labour rights to civil service employees. The Review Committee was convened on 22 October and 3 December and is scheduled to conclude by the end of 2009 but has not yet conducted a study on how to design a concrete system on the premise that basic labour rights be granted to civil service employees. Therefore, the JTUC–RENGO states that it is uncertain whether or not the Review Committee will be able to draw a conclusion consistent with ILO Recommendations.

958. The complainant added that the Government also established an Advisory Panel under the Headquarters, in order to examine important issues concerning measures to promote civil service reform, with its membership consisting of 11 experts (including the President of JTUC–RENGO, Mr Tsuyoshi Takagi). The Panel studies "the agenda for unifying different channels of personnel management of senior officials and establishing the Cabinet Bureau of Personnel Affairs", but the complainant states that after hasty and one-sided deliberations led by the secretariat, a report was produced on 14 November without sufficient exchange of opinions. JTUC–RENGO states that this report proposes to transfer the authorities of the National Personnel Authority, an independent body functioning as a

mechanism to compensate for the denial of the basic labour rights in the public service, to the Cabinet Bureau of Personnel Affairs, which is a Government organ, ignoring JTUC–RENGO's view that strengthening the employer's authorities must be on the premise of granting the full basic labour rights to public employees.

959. The complainant states that the Government convened a second meeting of the Headquarters on 2 December and confirmed that review work be commenced pursuant to the report of the Advisory Panel. In concrete terms, the Government proposed "(1) to prepare a draft bill to create the Cabinet Bureau of Personnel Affairs by March 2009 and (2) for the Government as the employer to present to the National Personnel Authority the direction for reviewing the existing salary system and to request the NPA to make recommendations consistent with its findings". In JTUC–RENGO's opinion, it is unacceptable for the employer (the Government) to unilaterally reappraise the salary system, without granting civil service employees full basic labour rights; if the Government is to go ahead with review work, it should fully negotiate and consult with JTUC–RENGO and proceed on the basis of an agreement reached by both parties. The complainant considers that the Government's approach is contrary to the repeated recommendations made by the Committee on Freedom of Association and states that the situation is very critical as the Government has stepped up its work for reviewing the salary system and drafting the relevant bill by March 2009. The complainant states that the Government should fully negotiate and consult with JTUC–RENGO if it is to go ahead with review work.

960. In its communication dated 9 March 2009, ZENROREN states that the Basic Law on the Reform in National Public Personnel System was established on 13 June 2008 and aims to create a Cabinet Personnel Bureau which will increase the Cabinet's control of public servants and generalize personnel management based on merit. The complainant considers article 12 to be very vague and to implicitly indicate that giving public servants the right to conclude labour agreements would lead to increases in personnel costs which in turn might restrict the Government. The complainant adds that the law fails to mention anything about granting firefighting personnel the rights to organize and strike.

961. ZENROREN reports on the establishment by the Government of the Headquarters and the Committee and Advisory Panel created pursuant to it. The complainant finds the composition of these new bodies to be "particularly problematic". ZENROREN states that there is no representative of public employees' unions on the Advisory Panel; only one national trade union confederation (JTUC–RENGO) is represented and ZENROREN is excluded. In relation to the Review Committee, ZENROREN's nominees were not accepted, and the complainant notes that while it should have 14 members, it currently has 12 members.

962. The complainant indicates that, as at the date of its communication, there have been three meetings of the Headquarters, seven meetings of the Advisory Panel and three meetings of the Review Committee. The National Personnel Authority "expressed its strong objection" to the progress schedule for reform of the civil service that was adopted by the Headquarters on 3 February 2009. In its communication dated 24 April 2009, JTUC–RENGO states that the Government set this schedule unilaterally without any regard for its demands. This progress schedule is claimed to set out: (1) the direction in which measures and deliberations for the reform are led; (2) a timeframe for the conclusion of the deliberations and for the introduction of related bills to the Diet; and (3) timing of the implementation of the reform itself. The complainant states that it also: (1) creates the Cabinet Bureau for the across-the-board management of public personnel and reduces the functions of the National Personnel Authority; (2) revises the hiring and pay system with the aim of establishing a personnel management system based on merit and ability evaluation; and (3) extends the retirement age for public employees and revises their pay

schemes. Although measures involving changes in working conditions are being discussed, the content of the progress schedule was officially announced to ZENROREN and its affiliates as late as 26 January. The complainant adds that due partly to the biased composition of the Panel and related bodies, ZENROREN and its affiliates continue to have limited opportunities to express their views regarding the reform in the national public personnel system.

963. JTUC–RENGO and ZENROREN note that the progress schedule sets out that the deliberations on the future industrial relations system will be concluded by the end of 2009, related bills will be introduced to the Diet in 2010 and laws enforced in 2012. Nevertheless, the complainant**s** state that it has not been made clear in what direction the deliberations about reform will be led. For example, while aiming to reduce the functions of the National Personnel Authority and transfer to the Cabinet Bureau the administrative work of managing the number of posts assigned to each grade, which is a very important factor for wage determination, the progress schedule is conservative about the reform to be implemented, merely stating "a reform towards an autonomous industrial relation system is an important and indispensable task". The complainant**s** argue that the Government thus maintains its negative stance as to granting the basic labour rights to public servants. ZENROREN believes that the current process of implementing the reform makes it more difficult to discuss the recovery of the right to conclude labour agreements, as recommended by the Committee on Freedom of Association.

964. ZENROREN attaches to its communication an excerpt concerning the "Creation of the Cabinet Personnel and Administrative Control Bureau" from the progress schedule. This document details the functions of the Cabinet Bureau, enumerating the functions to be transferred to it from other administrative bodies under the control of the Ministry of Internal Affairs, the National Personnel Authority, the Cabinet General Affairs Room of the Government, the Ministry of Finance and the Public–Private Human Resource Exchange Centre. These functions include the planning of the national public personnel system, administrative matters, setting and revising the staffing levels of each hierarchical grade, personnel administration, policy for total personnel cost, planning and general coordination, and guidelines for the management of the Public–Private Human Resource Exchange Centre. The Cabinet Bureau is within the Cabinet and is led by its Director.

965. In its communication dated 24 April 2009, JTUC–RENGO also refers to the amendment bill adopted at a cabinet meeting on 31 March 2009. This bill was submitted to the Diet the following day and takes the restriction on basic labour rights as a premise. It transfers the right to set the number of officials and the right to set working conditions from the National Personnel Authority, where it is currently assigned as a compensatory mechanism, to the Cabinet Bureau. According to JTUC–RENGO, the Government has failed to answer the unions' questions and has not incorporated their opinions in this regard. The complainant further states that a working group was established within the Review Committee, to work out a system for granting the right to conclude collective agreements. JTUC–RENGO indicates that it is not clear whether its conclusion will be in line with the ILO recommendations and that it is calling for careful public attention on this point. Despite the fact that, according to the amendment bill, the Cabinet Bureau with strong authority will be inaugurated in April 2010, it is clear that an autonomous labour–management relations system, incorporating the right to conclude collective agreements, will not be specified in sufficient detail by that time.

C. The Government's reply

966. In its communication**s** of 19 December 2008, 20 April and 20 May 2009, the Government provides the Committee with additional information concerning the Civil Service Reform Law and the establishment of the Headquarters for Promoting Civil Service Reform, the

Labour–Employer Relation System Review (or Examining) Committee and Advisory Panel (or Conference). It also provides information on the establishment of the progress schedule for civil service reform, the Amendment Bill of the National Public Service Employee Law, and the examination of basic labour rights.

967. In relation to the Civil Service Reform Law and the establishment of the headquarters, the Government indicates that the Bill was submitted to the Diet on 4 April 2008 and adopted on 13 June 2008 with an amendment agreed upon by both the ruling and opposition parties. The Government reports on articles 12 and 2, as discussed above, and indicates that the headquarters was established in July 2008 pursuant to article 13 in order to promote civil service reform comprehensively and intensively. It states that the headquarters' first meeting was held on 15 July 2008 and its second on 2 December 2008.

968. The progress schedule of civil service reform was decided at its meeting on 3 February 2009. The Government explains that the progress schedule states that to take measures for a transparent autonomous employee–employer relations system: (1) the Review Committee should achieve a conclusion on the specific institutional design concerning the expansion of the range of public service employees having the right to conclude collective agreements in 2009; (2) the Government should submit the necessary bill to the Diet in 2010; and (3) after the necessary preparation period, the bill should be brought into effect by 2012. The Government states that in the process of establishing the progress schedule and the Amendment Bill it held several meetings with JTUC–RENGO and RENGO–PLSC, at various levels, formally and informally, between November 2008 and the end of March 2009. The Government had also continued discussions with ZENROREN and the National Public Service Employees' Unions (KOKKORORENN). Additionally, the Employee–Employer Relations System Examining Committee, which conducts examinations of basic labour rights, continues to meet approximately every month and held its eighth meeting on 28 April 2009 to reach a conclusion before December 2009. The schedule was decided upon at the seventh meeting, on 30 March 2009, with the agreement of Committee members including those from the labour side. The Government indicates that the working group established under the committee for the organization of concrete issues is promoting vigorous examination, having held meetings four times since its first meeting on 10 April 2009, and takes the labour side's opinion into consideration.

969. The Government explains that this progress schedule accelerates the original schedule as much as possible to implement the whole reform in four years rather than the originally scheduled five years. To do so, it provides that the Government of Japan should make every effort to take legislative efforts within two years, rather than the originally scheduled three years. Legislative measures to establish the Cabinet Bureau of Personnel Affairs should be done within one year, as provided in the original schedule. The Government accordingly submitted an amendment bill for the National Public Service Employee Law on 31 March 2009, that established central control of personnel affairs, a national strategy staff, and the Cabinet Bureau of Personnel Affairs, which will have relevant functions transferred to it from existing government organizations so as to ensure central control and accountability of national public service employees. The Government indicates that the bill is planned on the basis of current limitations of basic labour rights of national public service employees, which will be examined within the working group of the Review Committee discussed below.

970. In relation to the Review Committee and the Advisory Panel, the Government states that it enacted a Cabinet Order for a Headquarters for Promoting Civil Service Reform on 9 July 2008. The Committee and Panel were established under the Headquarters based on that Order (article 1, section 1).

971. The Government explains that the Review Committee consists of 12 individuals and attaches in an appendix a list setting out the names and affiliations of the Committee's members, indicating that the Committee is composed of six academic and other experts (two journalists and four university professors), three employer representatives, and three workers' representatives (Fumio Kaneta, the General Secretary of All-Japan Prefectoral and Municipal Workers Union; Seiichi Fukuda, the President of Japan Public Sector Union; and Koji Amamoto, Assistant General Secretary of the Japanese Trade Union Confederation).

972. The Government indicates that the Review Committee researches and examines the measures the Government should take, based on articles 12 and 2 of the Law. It states that the Review Committee's first meeting was on 22 October, since when it has held a further six meetings, and that its meetings are, in principle, open. On 3 December, the Minister of Civil Service Reform, Mr Amari, requested the Committee "to move forward the original schedule" so as to propose legislative measures within the 2009 fiscal year. In response, the Review Committee affirmed that it would make a final proposal on legislative measures no later than the end of 2009. On 30 March 2009, the Minister requested the Committee to reach its conclusions as soon as possible in 2009 through vigorous examination. A working group to organize the concrete issues on the institutionalization of the expansion of the right to conclude collective agreements from a technical point of view was established, composed of six university professors. The working group held its first meeting on 10 April 2009 and will hold three meetings every month from April to August; to date it has held two meetings.

973. The Government explains that the Advisory Panel is composed of 11 intellectuals, including scholars and persons connected with trade unions, and is charged to examine important issues concerning measures to promote civil service reform based on the Reform Law. The Panel held its first meeting on 5 September 2008 and met a further two times, with eight working group sessions, between then and 14 November 2008, when it issued a report after its fourth meeting. That report includes recommendations regarding the basic roles and functions of a Cabinet Bureau of Personnel Affairs, which would be concerned with the unified personnel management of executives and responsible for the personnel management of all public service employees, and regarding the functions to be transferred from the Ministry of Internal Affairs and Communications and the National Personnel Authority to the Cabinet Bureau of Personnel Affairs, etc.

974. In addition, the Government advises that the Minister of Civil Service Reform laid out his policy directions on the reform plan at the second meeting of the Headquarters, agreed upon in the meeting on 2 December 2008: (a) to begin negotiations among the relevant Government organizations about the functions to be transferred to the Cabinet Bureau along the lines of the report of the Advisory Panel; and (b) to determine the "Progress Schedule" by the end of January 2009, laying out the whole schedule for civil service reform based on the Civil Service Reform Law, including the acceleration of examination about basic labour rights, etc.

975. The Government included further appendices, setting out excerpts from the Reform Law and the Cabinet Order establishing the Review Committee and the Advisory Panel; the composition of the Review Committee; and the composition of the working group on basic labour rights.

976. The Government concludes that it has done its utmost to make the discussion meaningful and achieve fruitful civil service reform, bearing in mind the necessary exchanges of views and coordination.

D. The Committee's conclusions

977. *The Committee recalls that these cases, initially filed in March 2002, concern the current reform of the public service in Japan.*

978. *The Committee takes note, from the complainants' and Government's communications, that a Bill Stipulating Civil Service Reform was submitted to the Diet on 4 April 2008 and that the Civil Service Reform Law was adopted on 13 June 2008 with an amendment agreed upon by both the ruling and opposition parties. The Committee notes that article 12 of this Law purports to set out the basic labour rights of civil servants in Japan, stating that the Government of Japan "should show the people the whole picture of the reform, including the costs and benefits in such a case where the range of public service employees who have the right to conclude collective agreements is expanded and, with the understanding of the people, take measures for a transparent and autonomous labour–employer relations system". The basic labour rights of Local Public Service Employees are protected by article 2, which states that the Government "examines what the labour rights of local public service employees should be, in a manner consistent with the measures for the labour–employer relations".*

979. *The Committee further notes from the communications submitted to it by the complainants and the Government that a Headquarters for Promoting Civil Service Reform was established by the Government pursuant to article 13 of the Reform Law "to promote civil service reform comprehensively and intensively under the Cabinet". Under this, a further two bodies were established at Headquarters pursuant to a Cabinet Order on 9 July 2008. The Advisory Panel (or Conference) examines important issues concerning measures to promote civil service reform based on the Civil Service Reform Law; the Employee–Employer Relation System Review (or Examining) Committee researches and examines the measures for the Government to take. The Committee notes that JTUC–RENGO perceives the four months that it took to establish these two bodies as evidence of an intentional slowdown.*

980. *The Committee notes that, according to the list provided by the Government, the Review Committee includes employer and trade union representatives, including trade unions from the public sector, and academics; according to ZENROREN, its nominations were not accepted and that it currently has 12, rather than 14, members. The Advisory Panel is apparently composed of 11 intellectuals and the President of JTUC–RENGO. The Committee notes ZENROREN's statement that no representative of the public employees' unions is included. Additionally, it notes that ZENROREN considers the composition of these bodies to be "particularly problematic".*

981. *The Committee notes from the complainants' and Government's communications that various meetings of these bodies have been held. The Headquarters has met three times, on 15 July 2008, 2 December 2008 and 3 February 2009. The Review Committee first met on 22 October 2008 and since then has met six further times. The Committee notes that the Advisory Panel appears to have met numerous times: according to ZENROREN, as at the end of February 2009, it had held seven meetings and, according to the Government, as at the date of its first communication, it had held four full meetings and eight working group sessions.*

982. *The Committee notes that the Advisory Panel issued a report following its meeting on 14 November 2008, in which it recommended moving certain functions of other governmental bodies to a Cabinet Bureau of Personnel Affairs. The Committee notes the comments of JTUC–RENGO that this report followed what it considers to have been hasty and one-sided deliberations led by the secretariat and that it was without sufficient exchange of opinions. In particular, JTUC–RENGO considers that the transferral of the*

responsibilities of the National Personnel Authority, an independent body functioning as a mechanism to compensate for the denial of basic labour rights, to the Cabinet Bureau, which is a Government organ, ignores JTUC–RENGO's view that strengthening the employer's authorities must be on the premise of granting the full basic labour rights to public employees.

983. *The Committee notes the information provided by JTUC–RENGO that the Headquarters confirmed, at its 2 December 2008 meeting, that review work would be commenced along the line of the Advisory Panel's report. The Committee notes that the Government indicates that, at the same meeting, the Headquarters agreed upon the policy directions laid out by the Minister of Civil Service Reform: (a) to begin negotiations among the relevant Government organizations about the functions to be transferred to the Cabinet Bureau of Personnel Affairs along the lines of the report of the Advisory Panel (or Conference); and (b) to determine the "Progress Schedule" by the end of January 2009, laying out the whole schedule for civil service reform based on the Civil Service Reform Law, including the acceleration of examination about basic labour rights, etc. The Committee notes that, in relation to the Review Committee, the Government has explained that, at its second meeting on 3 December 2008, the Minister of Civil Service Reform requested it to move forward its original schedule so as to complete a proposal for legislative changes by the end of 2009 and that on 30 March 2009, he requested the Committee to reach its conclusions as soon as possible in 2009.*

984. *The Committee further notes the information from the complainants and the Government that a "progress schedule" was decided by the Headquarters at a meeting on 3 February 2009. The Committee notes that the Government explains that the progress schedule states that to take measures for a transparent autonomous employee–employer relations system: (1) the Review Committee should achieve a conclusion on the specific institutional design concerning the expansion of the range of public service employees having the right to conclude collective agreements in 2009; (2) the Government should submit the necessary bill to the Diet in 2010; and (3) after the necessary preparation period, the bill should be brought into effect by 2012. It notes that ZENROREN considers that this progress schedule illustrates a negative stance as to granting the basic labour rights to public servants on the part of the Government and that the biased composition of the Panel and other bodies contributed to ZENROREN and its affiliates having considerably limited opportunities to express their views regarding the reforms in the public service. It further notes that JTUC–RENGO considers that the progress schedule to have been set unilaterally, and that while it provides details in relation to an accelerated amendment to the National Public Service Employee Law, it provided no clear direction on the granting of the right to conclude collective agreements.*

985. *The Committee further notes, from the information provided by JTUC–RENGO and the Government, that a bill amending the National Public Service Employee Law was adopted at a cabinet meeting on 31 March 2009, and submitted to the Diet on the same day. This bill centralizes control of personnel affairs in the Cabinet, establishing a National Strategy Staff and the Cabinet Bureau of Personnel Affairs by transferring the relevant functions of other government organizations to it. The Committee notes that this includes the transfer of the power to set working conditions away from the National Personnel Authority, which the complainants considered had provided a compensatory mechanism for the denial of basic labour rights in the civil service.*

986. *The Committee notes that both the complainants and the Government indicate that the amendment bill was based upon the current limitations on public service employees' basic labour rights, and that the Government indicates that the question of basic labour rights is also subject to the acceleration of time limits in the progress schedule. A working group under the Review Committee composed of six academic experts was established to*

organize the concrete issues on the institutionalization of the expansion of the right to conclude collective agreements by public service employees, and had its first meeting on 10 April 2009. It will hold three meetings each month between April and August 2009. The Committee notes that the complainant indicates that while the Cabinet Bureau will be inaugurated in April 2009, and that certain of its significant powers would have been transferred from the National Personnel Authority reducing the compensatory guarantees to workers in the civil service, there will not be a conclusion on the issue of an autonomous labour–management relations system incorporating the right to conclude collective agreements by that time.

987. *The Committee notes the information provided by the Government on the composition of the Review Committee and its working group on basic labour rights and the excerpts from the Civil Service Reform Law and Cabinet Order for the Headquarters. While welcoming both the institutionalized tripartite discussions that have taken place in the context of the Review Committee and the establishment of the independent Advisory Panel, the Committee reminds the Government that it is important that consultations take place in good faith, confidence and mutual respect, and that the parties have sufficient time to express their views and discuss them in full with a view to reaching a suitable compromise [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 1071].*

988. *In this regard, the Committee notes with concern JTUC–RENGO's allegation that certain legislative proposals have apparently already been unilaterally set forth for the reappraisal of the salary system of the public service before having resolved the question of public service basic rights and providing for appropriate compensatory guarantees. The complainant considers that any review of the salary system should not only be premised upon the granting of full basic labour rights to the public service, but that it should be based upon full negotiation and consultation. ZENROREN raises similar concerns. The Committee expects that the Government will undertake full and frank consultation with all relevant workers' organizations concerned with a view to determining mutually acceptable conditions with regard to the procedure for the reappraisal of the public service salary system and bearing in mind the need for ensuring compensatory mechanisms.*

989. *In this context, the Committee strongly reiterates its previous recommendations that the Government continues to take steps to ensure the promotion of full social dialogue aimed at effectively, and without delay, addressing the measures necessary for the implementation of 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) granting the right to organize 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; (v) the scope of bargaining matters in the public service.*

990. *Noting ZENROREN's allegations that the composition of the Review Committee and the Advisory Panel are biased as its nominees were not accepted, and recalling its conclusions in a previous case concerning the representation of ZENROREN in national bodies, the Committee recalls the necessity of affording fair treatment to all representative organizations, with a view to restoring the confidence of all workers in the fairness of the composition of councils that exercise extremely important functions from a labour relations perspective. The Committee therefore expects that the Government will take these*

principles into consideration when considering additional members to the Review Committee to ensure that all relevant social partners are represented. It requests to be kept informed in this regard.

991. *The Committee once again reminds the Government that it may avail itself of the technical assistance of the Office, if it so desires.*

The Committee's recommendations

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

(a) Noting with concern the allegation that certain proposals have apparently been unilaterally set forth for the reappraisal of the salary system of the public service before having resolved the question of public service basic rights and providing for appropriate compensatory guarantees, the Committee expects that the Government will undertake full and frank consultation with all relevant workers' organizations concerned with a view to determining mutually acceptable conditions with regard to the procedure for the reappraisal of the public service salary system and bearing in mind the need for ensuring compensatory mechanisms.

(b) While welcoming both the institutionalized tripartite discussions that have taken place in the context of the Review Committee and the establishment of the independent Advisory Panel, the Committee strongly reiterates its previous recommendation to the Government to continue to take steps to ensure the promotion of full social dialogue aimed at effectively and without delay addressing the measures necessary for the implementation of 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) granting the right to organize 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;

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

The Committee requests the Government to keep it informed of developments on all the above issues.

(c) The Committee expects that the Government will take into consideration the necessity of affording fair treatment to all representative organizations, with a view to restoring the confidence of all workers in the fairness of the composition of councils that exercise extremely important functions from a labour relations perspective when considering the additional members to the Review Committee. It requests the Government to keep it informed in this regard.

(d) The Committee once again reminds the Government that it may avail itself of the technical assistance of the Office, if it so desires.

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

CASE NO. 2601

INTERIM REPORT

Complaint against the Government of Nicaragua presented by the Confederation of Trade Union Unity (CUS)

Allegations: The Confederation of Trade Union Unity (CUS) alleges that trade union officials have been dismissed, as part of a campaign to get rid of trade union organizations that do not agree with the Government; in addition it is alleged that collective agreements are being broken

993. The Committee examined this case at its May–June 2008 session and submitted an interim report to the Governing Body [see 350th Report, paras 1423–1451, approved by the Governing Body at its 302nd Session (June 2008)].

994. The Confederation of Trade Union Unity (CUS) submitted new allegations and additional information in a communication dated 24 February 2009.

995. At its March 2009 session, the Committee observed that, despite the time that had elapsed since the previous examination of the case, it had not received the information that had been requested of the Government. The Committee issued 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 might present a report on the substance of the case at its next meeting if the requested observations had not been received in full and in due time. Accordingly, it urged the Government to send its observations as a matter of urgency [see 353rd Report, para. 10].

996. Since then, the Committee has not received the information requested of the Government concerning this case.

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

A. Previous examination of the case

998. At its June 2008 session, the Committee made the following recommendations on the matters that remained pending [see 350th Report, para. 1451]:

(a) With regard to the alleged disregard for and suspension of the bilateral agreement reflected in a memorandum signed on 28 March 2005 between workers and the Ministry of Transport and Infrastructure with regard to the recognition by way of a salary adjustment of the equivalent of 80 additional hours per month for all the drivers, the Committee, while noting that the MTI and the trade union organizations concerned agreed to extend the validity of the collective agreement in the MTI, expects that this matter will be the object of future negotiations if it has not been dealt with yet in the current collective agreement.

(b) With regard to the alleged dismissal of Mr José David Hernández Calderón, secretary of promotion and advertising of the Union of Employees of the MTI "Andrés Castro" (SEMTIAC) on 4 May 2007, the Committee urges the Government to implement the administrative resolutions and to take the necessary measures without delay to ensure that the dismissed union official is reinstated in his post, with payment of outstanding wages and other benefits. The Committee requests the Government to keep it informed in that regard.

(c) With regard to the alleged persecution and harassment in order to later on proceed to the dismissal of Mr González Gutiérrez, finance secretary of the SINATRA-DGTT-MTI, the Committee requests the Government to keep it informed of any legal appeal that the union official, Mr González Gutiérrez, may have presented against the resolution of the General Labour Inspectorate.

(d) The Committee requests the Government to provide information on the specific reasons behind the request to cancel the employment contract of the union official, Mr Javier Ruiz Alvarez, and to inform it of the final outcome of the proceedings before the Departmental Labour Inspectorate.

(e) The Committee requests the Government to communicate its observations with regard to the following allegations: (i) dismissal, without respect for trade union immunity or legal process, of Mr José María Centeno, leader of the SINATRA-DGTT-MTI on 26 April 2007; (ii) transfer of Mr Marcos Mejía López, a member of the Executive Committee of the Union of Employees of the MIT "Andrés Castro" (SEMTIAC); and (iii) workplace harassment of union official Mr Alvaro Leiva Sánchez, Secretary for Labour Matters of the Union of Employees of the MTI "Andrés Castro" (SEMTIAC) – he was dismissed on 11 May 2007 and reinstated the same day and is currently again at risk of dismissal.

B. The complainant's new allegations

999. In its communication of 24 February 2009, the CUS alleges that the Ministry of Transport and Infrastructure has not yet complied with the requests to hold a meeting with the trade unions representing all the workers at that Ministry, even though this request has been made since January 2007. The CUS adds that the Government has still not complied with the recommendations made by the Committee on Freedom of Association at its session in May–June 2008 and has not yet complied with many of the clauses of the collective agreement, including with regard to recruitment, dismissal procedures and union facilities (offices, etc.), or the drivers' bilateral agreement, in particular with regard to the salary adjustment.

1000. The CUS adds that the decision to dismiss union official Alvaro Leiva Sánchez was overturned by the Director of Human Resources in May 2007, on the grounds that it had been an error, but his job is currently again in imminent danger as a result of the preparation of a memorandum which falsely states that it had been necessary to issue warnings to the individual in question, questions the image that he presents of the institution and accuses him, on the basis of pure unsubstantiated speculation, of removing documents from the Assistance Desk Unit; this is clearly a case of harassment. Finally, on 18 September 2008, he was suspended from work.

1001. The CUS also alleges that the union official Ms Perla Corea Zamora started to be subjected to sexual harassment and work pressure from her immediate supervisor, and two months later, on 5 March 2008, not having given in to the demands of her supervisor, she was suspended from work, pending her dismissal; although the Civil Service Appeals Committee stated that the dismissal was not appropriate and ordered that her rights be restored, the Ministry has appealed to a court against this decision; the unionist in question has filed *amparo* proceedings (protection of constitutional rights).

1002. According to the allegations, the Ministry of Transport has illegally suspended the duties of trade union official Mr Javier Ruiz Alvarez (this allegation was discussed in the previous examination of the case); although it is clear – according to the complainant organization in its latest communication – that he was absent from work due to illness, a claim that is substantiated by an official certificate, the Ministry of Transport refuses to take into account the decision of the Labour Inspectorate in favour of this unionist. Likewise, it is alleged that after dismissing union official Mr Guillermo Rafael González, the Ministry wants to liquidate his benefits without taking into account the fact that the injured party has filed *amparo* proceedings before the Supreme Court of Justice.

1003. According to the allegations, the Ministry has transferred unionist Ms Tania Castillo Centeno, in violation of the legal procedural rules.

1004. Furthermore, it is alleged that in the context of a special hearing, without legal grounds, the trade union official Ms Yerigel Zúñiga Izaguirre was suspended from work and subsequently dismissed. This dismissal decision was suspended pending an appeal, which the Ministry refuses to accept.

1005. The complainant organization indicates that, in early January 2008, the unions exercised their right to strike on the grounds of the violation of the current collective agreement, and that the Ministry of Labour ruled that the union complaint was admissible (a decision which was ignored by the Ministry of Transport). Later, the Ministry of Labour – under the guidance of the Executive Branch – declared the strike illegal and arbitrary on 7 January 2008. The unions filed *amparo* proceedings.

1006. According to the allegations, on 24 July 2007, union member Nelson Antonio Martínez was illegally suspended from work for allegedly committing gross misconduct for having participated in a protest by workers in January 2008 against the Ministry of Transport's failure to comply with the collective agreement. The Civil Service Appeals Committee declared the disciplinary proceedings invalid, but nevertheless the Ministry did not comply with this decision, and the injured party had to file an appeal, which was found to be admissible; nevertheless, the Ministry has not complied with this legal decision.

1007. According to the allegations, the Ministry of Transport has suspended union officials Mr Freddy Antonio Velázquez Luna, Mr José Boanerges Cruz Berrios, Mr Byron Antonio Tercero Ramos and Mr Francisco Zamora Viva from work (with a request to cancel their employment contracts) for opposing the construction of a concrete wall blocking the emergency exits in the western part of the Ministry; furthermore, it reported them to the

police for allegedly causing criminal damage; in fact, blocking the exits put the lives and safety of workers at risk. The injured parties have lodged an appeal which resulted in the charges being set aside and the Civil Service Appeals Committee declared the acts of the Ministry of Transport to be invalid. However, the Ministry has not complied with the aforementioned decisions.

1008. Finally, the complainant organization points out that, on the basis of a report by the Labour Inspectorate dated 17 September 2008 indicating that the Ministry of Transport complies with only 13 per cent of the collective agreement, union official Mr Alvaro Leiva Sánchez has filed a criminal complaint with the Office of the Public Prosecutor against the Minister of Transport and other senior officials at the Ministry for the crimes of "abuse of authority" and "disobedience by a public servant to official authority".

C. The Committee's conclusions

1009. *The Committee regrets that, despite the time that has elapsed, the Government has not sent the requested observations, although it has been invited on several occasions, including by means of an urgent appeal, to present its observations on the case.*

1010. *Under these circumstances, and in accordance with the applicable rules of procedure [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee is bound to present a report on the substance of the case without the benefit of the information which it had hoped to receive from the Government.*

1011. *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 practice. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments, on their side, must recognize the importance of formulating, so as to allow objective examination, detailed replies to the allegations brought against them.*

1012. *The Committee urges the Government to be more cooperative in the future with regard to the Committee's procedural rules especially in the present case as the complainant organization has submitted a long list of allegations concerning violations of trade union rights, the importance of which is unquestionable.*

1013. *The Committee observes that, in the present case, the complainant had alleged that with a view to destroying and getting rid of the trade unions that are not in agreement with the ideas of the present Government, trade union officials have been dismissed and collective agreements or accords are being broken. Specifically, the complainant alleged: (i) disregard for and suspension of the bilateral agreement reflected in a memorandum signed on 28 March 2005 between the authorities and workers at the Ministry of Transport and Infrastructure (MTI) regarding the recognition by way of a salary adjustment, the equivalent of 80 extra hours per month for all the drivers; (ii) violation of numerous clauses of the current collective agreement by the MTI (regarding among other things the use of vehicles assigned to the trade unions on weekends, the use of the premises by the General Secretary of the Independent Trade Union of the MTI and of the auditorium used by this trade union for holding its meetings, etc.); (iii) dismissals, without respect for trade union immunity or legal process, of José María Centeno, leader of the SINATRA-DGTT-MTI on 26 April 2007, and of José David Hernández Calderón, secretary of promotion and advertising of the Union of Employees of the MTI "Andrés Castro" (SEMTIAC) on 4 May 2007; (iv) workplace harassment of union official Mr Alvaro Leiva Sánchez, Secretary for Labour Matters of the Union of Employees of the MTI "Andrés Castro" (SEMTIAC) – he was dismissed on 11 May 2007 and reinstated the same day and is*

currently again at risk of dismissal; (v) the transfer of Mr Marcos Mejía López, a member of the Executive Committee of the Union of Employees of the MTI "Andrés Castro" (SEMTIAC); (vi) suspension from work of Mr Javier Ruiz Alvarez, publications and press secretary of the Independent Union of Workers of the MTI; and (vii) persecution and harassment in order later on to proceed to the dismissal of Mr González Gutiérrez, finance secretary of the SINATRA-DGTT-MTI.

1014. *The Committee notes the new allegations of the complainant organization, indicating that the Government has ignored the Committee's recommendations and that the authorities of the Ministry of Transport continue to violate the terms of the collective agreement (87 per cent of the clauses, according to the labour inspectorate) and ignore the judicial and administrative decisions in favour of the union officials and members. In its new allegations, the complainant organization refers to cases concerning the suspension and dismissal of union officials and unionists and to the Ministry of Labour's refusal to comply with administrative or judicial decisions in favour of those unionists. According to the allegations, the Minister of Transport continues to refuse to accept the leaders of the unions that operate in the Ministry. The Committee urges the Government to send without delay detailed observations on these new allegations by the complainant organization, also including copies of the administrative and judicial decisions concerning the different allegations.*

1015. *In the absence of observations by the Government on the recommendations made by the Committee during its previous examination of the case, and bearing in mind the new allegations, the Committee notes a serious deterioration in industrial relations at the Ministry of Transport, a negative attitude towards dialogue among the authorities in the Ministry of Transport, a significant number of acts of anti-union discrimination and an unwillingness among the authorities of the Ministry to comply with the terms of the collective agreement.*

1016. *The Committee urges the Government to promote dialogue and negotiation between the Ministry of Transport and the trade unions to overcome the various problems raised in this case – including compliance with the current collective agreement and the bipartite agreement on wage adjustment. The Committee requests the Government to keep it informed in this regard. In these circumstances, the Committee considers it necessary to conduct an independent investigation into the allegations that should cover – with particular attention – the alleged failure by the Ministry of Transport to comply with judicial and administrative decisions and judgements in favour of the unionists. The Committee requests the Government to keep it informed in this regard. The Committee emphasizes that excessive litigation in labour matters is in the interests neither of the employer nor of the union.*

1017. *Finally, in the absence of any reply from the Government concerning the recommendations it made in May–June 2008, the Committee reiterates the recommendations it made at that time.*

The Committee's recommendations

1018. ***In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee stresses the importance of the allegations and regrets that the Government has not sent its observations on this case despite having been invited to do so on several occasions and despite an urgent appeal in

that respect; the Committee urges the Government to be more cooperative in the future with regard to its procedural rules.

(***b) The Committee urges the Government to promote dialogue and negotiation between the Ministry of Transport and the trade unions in order to overcome the various problems that have been raised in this case – including with regard to compliance with the current collective agreement and the bipartite agreement on wage adjustment. The Committee requests the Government to keep it informed in this regard. In these circumstances, the Committee considers it necessary to conduct an independent investigation into the allegations that should cover – with particular attention – the alleged failure by the Ministry of Transport to comply with the judicial and administrative decisions and judgements in favour of the unionists.***

(c) The Committee urges the Government to send without delay detailed observations on the new allegations by the complainant organization, also including copies of the administrative and judicial decisions concerning the different allegations.

(d) Finally, in the absence of any reply from the Government concerning the recommendations it made in May–June 2008, the Committee reiterates the recommendations it made at that time:

– ***With regard to the alleged disregard for and suspension of the bilateral agreement reflected in a memorandum signed on 28 March 2005 between workers and the Ministry of Transport and Infrastructure with regard to the recognition by way of a salary adjustment of the equivalent of 80 additional hours per month for all the drivers, the Committee, while noting that the MTI and the trade union organizations concerned agreed to extend the validity of the collective agreement in the MTI, expects that this matter will be the object of future negotiations if it has not been dealt with yet in the current collective agreement.***

– ***With regard to the alleged dismissal of Mr José David Hernández Calderón, secretary of promotion and advertising of the Union of Employees of the MTI "Andrés Castro" (SEMTIAC) on 4 May 2007, the Committee urges the Government to implement the administrative resolutions and to take the necessary measures without delay to ensure that the dismissed union official is reinstated in his post, with payment of outstanding wages and other benefits. The Committee requests the Government to keep it informed in that regard.***

– ***With regard to the alleged persecution and harassment in order to later on proceed to the dismissal of Mr González Gutiérrez, finance secretary of the SINATRA-DGTT-MTI, the Committee requests the Government to keep it informed of any legal appeal that the union official, Mr González Gutiérrez, may have presented against the resolution of the General Labour Inspectorate.***

– ***The Committee requests the Government to provide information on the specific reasons behind the request to cancel the employment contract of the union official, Mr Javier Ruiz Alvarez, and to inform it of the final outcome of the proceedings before the Departmental Labour Inspectorate.***

– ***The Committee requests the Government to communicate its observations with regard to the following allegations: (i) dismissal, without respect for trade union immunity or legal process, of Mr José María Centeno, leader of the SINATRA-DGTT-MTI on 26 April 2007; (ii) transfer of Mr Marcos Mejía López, a member of the Executive Committee of the Union of Employees of the MTI "Andrés Castro" (SEMTIAC); and (iii) workplace harassment of union official Mr Alvaro Leiva Sánchez, Secretary for***

Labour Matters of the Union of Employees of the MTI "Andrés Castro" (SEMTIAC) – he was dismissed on 11 May and reinstated the same day and is currently again at risk of dismissal.

CASE NO. 2677

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

Complaint against the Government of Panama presented by the National Union of Workers of the University of Panama (SINTUP)

Allegations: Refusal to recognize that the complainant trade union has legal personality

1019. The complaint is contained in a communication from the National Union of Workers of the University of Panama (SINTUP) dated 24 November 2008. The Government sent its observations in a communication dated 29 February 2009.

1020. Panama has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

1021. In its communication dated 24 November 2008, the SINTUP presented a complaint against the Government of Panama for refusing to grant it legal personality, in blatant violation of the National Constitution, the Labour Code and the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

1022. SINTUP states that it is an organization mainly composed of administrative workers of the University of Panama. On 11 September 2007 it held its constituent assembly, which was attended by 41 persons and it approved its union statutes the same day. The union's executive committee comprises 22 members (11 titular and 11 substitute) and its fundamental purpose is to improve economic, labour, social, educational and cultural standards for university administrative workers.

1023. On 13 September 2007, in strict compliance with the Labour Code (section 352), the trade union presented the necessary documents for requesting legal personality to the Department of Social Organizations of the Directorate-General of Labour of the Ministry of Labour and Labour Development (Ministry of Labour). The documents comprised of: the founding instrument of the constituent assembly held on 11 September 2007 with the signatures of the 41 participants; the record of the meeting of 11 September 2007 at which the statutes of the organization were approved; the approved statutes; and the list of members of the first executive committee of SINTUP. The complainant organization adds that on 18 September 2007 the Director-General of Labour issued a decision not to accept the request to grant legal personality to SINTUP on the grounds that it was against the Constitution and the law. The union's lawyers filed an appeal against this decision on 13 November 2007 with the Ministry of Labour, and this was also rejected by Decision No. D.M. 174/2007 of 26 December 2007.

1024. The complainant organization states that since the University of Panama, an autonomous institution of the Panamanian State according to the National Constitution, decided further to the unanimous approval of its highest decision-making body (the university general council) to incorporate in its statutes the right to organize and collective bargaining of its workers and, furthermore, since the union recently made a number of amendments to the composition of its executive committee and its statutes, SINTUP decided to apply for legal personality a second time (23 July 2008). Once again the request was rejected, this time not by means of a reasoned decision but through note No. 225.DOS.2008 of 28 July 2008 from the head of the Department of Social Organizations. This violation of legal standards led the union to file an appeal for *amparo* (protection of constitutional rights) with the Supreme Court of Justice for errors of form, and this has not yet been settled. The complainant attaches the texts of the various decisions issued by the authorities in relation to the case.

B. The Government's reply

1025. In its communication dated 29 February 2009, the Government declares that it respects the international instruments which it has ratified, including the ILO Conventions and in particular the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and that it has been applying them in full in national law and practice.

1026. In the specific case presented by the complainant union, its representatives initially submitted an application to the Directorate-General of Labour of the Ministry of Labour for legal personality in respect of the organization seeking to call itself the National Union of Workers of the University of Panama (SINTUP). The Directorate-General of Labour, by means of Decision No. 1208.DOS.2007 of 18 September 2007, decided not to grant legal personality to SINTUP on the grounds that the organization was against the Political Constitution of the Republic and against the law. The decision states that the documentation submitted in support of the application contains flaws which need to be rectified and indicates the reasons for refusal of the request, including the following:

> The founding instrument enclosed as one of the documents supporting the application states in its heading that "… meet at the Ciudad Universitaria Octavio Méndez Pereira for the purpose of founding an enterprise workers' union at the University of Panama …"
>
> From the above it can be deduced that the union comprising public servants employed at the University of Panama which is applying for registration is an enterprise union. However, the law does not permit this type of organization for the fundamental reasons set out below:
>
> 1. It is not composed of "workers" as defined according to the provisions of section 82 of the Labour Code.
> 2. The persons applying to register an enterprise trade union are employed at the University of Panama, an entity which, in accordance with article 103 of the Political Constitution, is an Official University of the Republic with autonomous status. Hence all persons employed there are public servants, as defined by article 299 of the Constitution: "Public servants are persons who are temporarily or permanently appointed to posts in the executive, legislature or judiciary, municipalities, or autonomous or semi-autonomous entities; and in general persons who are remunerated by the State."
> 3. This trade union calls itself an enterprise trade union and it is therefore necessary to clarify this term in accordance with section 97 of the Labour Code, which states: "For the purpose of labour standards, enterprise means the structure encompassing activities and means which constitute an economic unit for the extraction, production or distribution of goods or services, for profit or otherwise …" Clearly, in view of the provisions of the Constitution, the University of Panama does not meet this definition.

1027. Hence registration of a trade union composed of public servants of the University of Panama is not feasible, since this violates clear, specific standards of the Labour Code.

Section 1 of the Labour Code governs the relationship between capital and labour, i.e. it refers to the employment relationship between a private investor and an employee. Such a private investor, as opposed to a public or official investor, has the legal title of "employer" and is defined as "the natural or legal person for whom/which the worker provides services or performs work" (section 87). An employee, as opposed to a public servant, is given the title of "worker" and is defined by law as the natural person who has the obligation "by means of a verbal or written employment contract, explicit or presumed, individually or as part of a group, to provide a service or perform a task while subordinate to or dependent on a person" (section 82).

1028. The Government emphasizes that the Labour Code does not govern employment relationships between public servants and state/public institutions, as provided for in section 2: "Public employees shall be governed by the administrative career regulations, except where specific provision is made for the application of any rules of the present Code".

1029. In the light of the above, the court resolves in the aforementioned decision "not to accept the application requesting legal personality for the National Union of Workers of the University of Panama on the grounds of being against the Constitution and against the law".

1030. Since the ruling was unfavourable, the complainants filed an appeal with the court of second instance, which, by means of Decision No. D.M. 174/2007 of 26 December 2007, upheld in its entirety Decision No. 1208.DOS.2007 of 18 September 2007, including the following points:

> Section 1 of Act No. 11 of 8 June 1981 concerning the restructuring of the University of Panama states: "The Official University of the Republic of Panama is called the University of Panama and is composed of authorities, lecturers, researchers, students and other public servants who comprise the teaching, research, administrative, regional and extension units which exist at the same or will be established in the future." The same provision is laid down by article 103 of the Constitution of Panama.
>
> Accordingly, and as previously indicated, article 103 of the Constitution states that public servants are persons appointed within, inter alia, autonomous or semi-autonomous entities, and in general those who receive remuneration from the State.
>
> Hence it is clear that it is not the provisions of the Labour Code but the administrative career regulations which are applicable, as laid down by section 2 of the Labour Code.
>
> Furthermore, section 1 of the Labour Code governs the link between capital and labour, i.e. the employment relationship between the employer, who is the recipient of the services provided or the task performed (section 87), and the worker, who is the person who provides the service (section 82).
>
> As the present case shows, the applicants wish to register an "enterprise trade union", even though they are public servants employed by the University of Panama, an autonomous entity, and not by an enterprise as they indicate in the founding instrument.
>
> In the light of the above and weighing the evidence, this higher court considers that the conclusion reached by the Directorate-General of Labour, by means of Decision No. 1208.DOS.2007 of 18 September 2007, remains valid, inasmuch as there are no grounds for amending it.

1031. Hence, the above court having upheld Decision No. 1208.DOS.2007 of 18 September 2007 in its entirety, the application for registration of SINTUP was not accepted. Since both decisions were unfavourable, the complainants filed an appeal for *amparo* (protection of constitutional rights) with the Supreme Court of Justice in October 2008 on grounds of errors of form in the decision refusing legal personality and no ruling has yet been issued

with regard to the appeal. The final decision from the court is currently pending and once the ruling has been issued it will be forwarded to the ILO for information.

C. The Committee's conclusions

1032. *The Committee observes that in the present complaint, the complainant organization alleges that the Ministry of Labour refused to recognize its legal personality despite the fact that the union complied with all the legal formalities, and also that the first-instance decision of 18 September 2007 refusing registration was upheld on appeal by the Ministry of Labour and Labour Development (Ministry of Labour). The complainant further states that it submitted a second application for recognition of its legal personality on 23 July 2008 and this was also refused, this time by the head of the Department of Social Organizations. This led the union to file an appeal with the Supreme Court of Justice (for errors of form in the last refusal to recognize its legal personality) and no ruling has yet been issued in this regard.*

1033. *The Committee notes the Government's statement that the grounds for non-recognition of legal personality are as follows: although the complainant trade union (SINTUP) wished to be operational at the University of Panama, it applied for registration as an "enterprise trade union", whereas the University of Panama is an autonomous institution with public servants (and not an enterprise with workers within the meaning of the Labour Code);and the Labour Code is not applicable at the University of Panama since public employees are governed specifically by the administrative career regulations (as recognized by another part of the Labour Code) and receive remuneration from the State. The Committee notes the Government's emphasis that the judicial authority upheld the administrative decision refusing to recognize the legal personality of the trade union. Finally, the Committee notes the Government's confirmation that the Supreme Court of Justice has not yet issued a ruling on the* amparo *appeal filed by the complainant because of a second refusal to recognize the union's legal personality.*

1034. *The Committee concludes that the Ministry of Labour's refusal to recognize the legal personality of the complainant trade union is because the complainant sought to be subject, as an enterprise union, to the provisions of the Labour Code instead of being covered by the provisions of the Administrative Career Act, which govern the trade union rights of public servants in autonomous institutions, as in the case of the University of Panama. Although the Committee considers that there are no grounds for challenging the validity of special legal regulations which govern public servants' right to organize in so far as such regulations comply with the provisions of Convention No. 87 (a point not mentioned by the complainant), it observes that the complainant has filed an appeal with the Supreme Court of Justice citing errors of form in the decision refusing to recognize its legal personality. The Committee expects that the Government will send it the ruling issued by the Supreme Court of Justice and expects that the Court will issue its ruling in this regard in the near future.*

1035. *The Committee requests the complainant organization to indicate the reasons why it chose not to establish itself in accordance with the regulations governing the right to organize in the public sector.*

The Committee's recommendations

1036. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee expects that the Government will send it the ruling issued by the Supreme Court of Justice with respect to the authorities' refusal to recognize that the complainant trade union has legal personality and expects that the Court will issue its ruling in this regard in the near future.

(b) The Committee requests the complainant organization to indicate the reasons why it chose not to establish itself in accordance with the regulations governing the right to organize in the public sector.

CASE NO. 2587

DEFINITIVE REPORT

Complaints against the Government of Peru presented by – the Single Union of Peruvian Education Workers (SUTEP) – the General Confederation of Workers of Peru (CGTP) and – the National Federation of Education Administrative Workers (FENTASE)

Allegations: The trade union organizations object to legislative provisions which they consider violate the principles of freedom of association with regard to strikes in the education sector

1037. The complaints are contained in a communication from the Single Union of Peruvian Education Workers (SUTEP) and the General Confederation of Workers of Peru (CGTP) dated 10 July 2007 and in a communication from the National Federation of Education Administrative Workers (FENTASE) dated 31 July 2007. FENTASE sent additional information in a communication dated 21 September 2007.

1038. The Government sent its observations in communications dated 26, 28 and 30 May, 30 December 2008, and 18 and 20 February 2009.

1039. Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

1040. In their communications dated 10 and 31 July 2007, the SUTEP, the CGTP and the FENTASE object to Act No. 28988 published in the Official Journal of 21 March 2007. This Act: (1) declares regular basic education an essential public service and makes the state administration responsible for adopting measures to ensure the relevant services, and (2) provides that such declaration "shall not affect the constitutional rights of workers or the workers' rights recognized by international treaties" (section 2). Finally, it provides that implementing regulation shall be issued within 30 days of the Act entering into force (section 4).

1041. On 3 July, the Government issued Supreme Decree No. 017-2007-ED regulating the Act. The provisions of this Decree include the following:

– Its purpose is to regulate measures designed to ensure the continued provision of the education service in public educational institutions in the case of a work stoppage by the managerial, teaching, auxiliary, administrative and service staff.

– A "work stoppage" is defined as any form of suspension of the education service in educational institutions by a unilateral decision of the staff concerned, regardless of the reason given, how it is termed and the manner in which it is carried out. Furthermore, it states that a strike or any other type of interruption in the service concerned carried out following a unilateral decision by the staff concerned, regardless of how it is termed, which does not constitute the exercise of the right to strike declared in accordance with the requirements laid down in its text shall constitute "irregular and illegal forms of suspension of the education service".

– It provides that the National Register of Substitute Teachers, created by Ministerial Resolution No. 080-2007-ED, is a register of professionals who are qualified to provide the education service in the event of a work stoppage. Within 24 hours of an announcement of a work stoppage or of an unannounced stoppage, the principals of the public educational institutions shall, under penalty of administrative responsibility, request that professionals listed on the National Register of Substitute Teachers be hired in sufficient number to ensure the continued provision of the education service.

– It provides that the staff may exercise the right to strike during the school year only through their respective trade union organizations. The trade union organizations are required to have legal personality and be registered in the Register of Trade Union Organizations of Public Servants (ROSSP) of the Ministry of Labour and Employment Promotion in order to initiate the process of declaring a strike to the authorities in the education sector.

– It states that the Ministry of Education shall examine and issue a decision on the declaration of strike.

– It provides that a decision to call a strike shall be communicated by the respective trade union organization to the relevant decentralized education management authority, at least ten working days in advance, together with: (1) details concerning the scope of the strike, the reason, its duration and the day and time set for its start; (2) a copy of the voting record which clearly shows that the decision was adopted in the manner expressly laid down in the constitution of the trade union concerned, and that this decision represents the will of the majority of its members included in its scope. With regard to trade union organizations whose assembly is made up of representatives, the decision shall have been adopted in an assembly expressly convened and ratified by their rank and file members; (3) a copy of the assembly record, which shall be approved by public notary or, failing that, by the Justice of the Peace of the town; (4) the names of the managerial, teaching, auxiliary, administrative and service staff of the public educational institutions who will continue working to ensure the continuity of the services and activities in the educational institutions concerned; and (5) a sworn statement of the executive committee of the union concerned that the decision was adopted in accordance with the requirements laid down in paragraphs (b) and (c) of section 18.

– The strike shall be declared illegal by the Regional Directorate of Education or by the Ministry of Education if, for example, it is staged without the union concerned having notified the decentralized education management authority of the decision to call a strike; if it is held despite the fact that it has been declared inadmissible; or if it involves any irregular form of suspension of the education service such as a strike or

any other type of interruption in the service concerned, by a unilateral decision of the staff.

– If the strike is declared illegal, the staff shall return to work, failing which they shall be guilty of serious misconduct and shall be liable to the relevant sanction.

1042. According to the complainants, these legislative provisions issued by the current Government violate Article 3 of Convention No. 87 given that education services may not be regarded as an essential service. The determination of minimum services should involve not only the public authorities, but also the relevant employers' and workers' organizations. Moreover, irregular forms of suspension of the educational service shall not be regarded as illegal if they do not involve violence towards property and persons and a strike may not be evaluated and controlled by a government authority, let alone one that is involved in the dispute, as is the case in public education.

1043. Finally, the complainant organizations point out that the use of a register for the replacement of workers who suspend work constitutes a serious violation of freedom of association, given that this measure renders the exercise of the right to strike ineffective, especially where, as in this case, the legality of the strike is in the hands of the very authority involved in the dispute.

1044. In its communication dated 21 September 2007, FENTASE objects to Ministerial Resolution No. 0332-2007-ED which declared the national strike staged on 10 July 2007 inadmissible. The declaration that the strike was inadmissible is based on Act No. 28988. Furthermore, it alleges the application of Decree No. 010-2003-TR, the amended consolidated text of the Collective Labour Relations Act, which contains requirements for calling a strike which are impossible to fulfil in practice.

B. The Government's reply

1045. In its communications dated 26, 28 and 30 May 2008, the Government states with regard to the issue of Ministerial Resolution No. 0332-2007-ED that it should be taken into account firstly that, in accordance with the provisions of article 28 of the Political Constitution of Peru, the right to strike shall be exercised in line with the social interest. In this context, on 21 March 2007 Act No. 28988 was published, which defines regular basic education as an essential public service, in order to ensure the full exercise of the fundamental right of the person to education, a right recognized in the Political Constitution of Peru, in the General Education Act and in the international agreements concluded by the Peruvian State.

1046. Moreover, in accordance with the provisions of section 86 of the amended consolidated text of the Collective Labour Relations Act, approved by Supreme Decree No. 010-2003-TR, strikes carried out by workers covered by the labour conditions of the public sector are subject to the regulations contained in that text. In that regard, under section 73(c) of the same amended consolidated text, the employer and the labour authority shall be notified of a decision to call a strike at least ten working days in advance when the strike concerns essential public services and under section 82, when the strike affects essential public services, workers involved in a dispute shall ensure that the staff required to prevent the total interruption of the service and ensure the continuity of the necessary services and activities remain in their posts. Consequently, the FENTASE was under the obligation to notify the employer and the labour authority of the decision to call a strike at least ten working days in advance and ensure that the staff required to prevent the total interruption of the service and ensure the continuity of the education service in the educational institutions providing regular basic education remained in their posts. Given that FENTASE did not comply with this obligation, the strike was declared inadmissible.

1047. With regard to Act No. 28988, which declares regular basic education an essential public service, the Government adds that the text of this instrument in no way affects the constitutional rights of workers or the workers' rights recognized by the international conventions and treaties ratified by the Peruvian Government. The aim of this Act is to grant the Ministry of Education the power to prevent pupils at the initial, primary and secondary levels from missing classes due to a strike or work stoppage by teachers. Moreover, the declaration of regular basic education as an essential public service is intended to ensure continuity of the education service, with the exception of school holidays, in the public educational institutions providing regular basic education, as a result of which the principal and vice-principal of these educational institutions must remain in their posts.

1048. In that regard, the Ministry has the power to ensure that public schools never close, that the class schedule is followed and that classes actually take place. Consequently, since FENTASE has not proved its assertion on this point, the Government considers that none of the standards of the ILO Conventions ratified by the Peruvian Government have been violated. In this regard, the Government indicates that if fails to see how declaring regular basic education an essential public service would violate freedom of association rights.

1049. With regard to the creation of the National Register of Substitute Teachers, the Government points out that, in accordance with the provisions of section 7 of the Regulations issued under Act No. 28988, approved by Supreme Decree No. 017-2007-ED, this register was created under Ministerial Resolution No. 080-2007-ED as a register of professionals who are qualified to provide the education service in the event of a work stoppage by the managerial, teaching, auxiliary, administrative and service staff. According to the Government, the creation of the National Register of Substitute Teachers does not violate freedom of association rights.

1050. With regard to Supreme Decree No. 010-2003-TR, the amended consolidated text of the Collective Labour Relations Act, which according to FENTASE contains requirements for calling a strike which are impossible to fulfil in practice, the Government reiterates its comments made in previous paragraphs on sections 86 and 73 of the amended consolidated text of the Collective Labour Relations Act. In that regard, the Government points out that in accordance with its comments in previous paragraphs concerning the Ministry of Education's power to declare a strike legal or illegal, this power was already regulated in accordance with the provisions of the amended consolidated text of the Collective Labour Relations Act, approved by Supreme Decree No. 010-2003-TR. The Government considers that the requirements laid down for calling a strike in accordance with the provisions of section 73(c) of the amended consolidated text of the Collective Labour Relations Act, approved by Supreme Decree No. 010-2003-TR, are not impossible to fulfil and moreover the complaint dates from 2007 while the legislation dates back to 2003.

1051. With regard to the legality of Supreme Decree No. 017-2007-ED which is the implementing regulation of Act No. 28988, the Government indicates that this Supreme Decree regulates measures designed to ensure the continued provision of the education service in public educational institutions which provide regular basic education at the initial, primary and secondary levels in the case of a work stoppage by the managerial, teaching, auxiliary, administrative and service staff. For the purposes of these Regulations, a work stoppage by these staff in public educational institutions which provide regular basic education at the initial, primary and secondary levels is understood to mean any form of suspension of the education service in those educational institutions by unilateral decision of the staff concerned, regardless of the reason given, how it is termed and the manner in which it is carried out.

1052. In this regard, it should be pointed out that this instrument is consistent with the provisions of section 83(j) of the amended consolidated text of the Collective Labour Relations Act, approved by Supreme Decree No. 010-2003-TR, which provides that essential public services shall include other services as determined by law. Thus, the Collective Labour Relations Act allows other services to be added by law to the list of essential public services which does not include education (section 83). In that regard, when a strike affects essential public services, the striking workers shall ensure that the staff required to prevent the total interruption of the service and ensure the continuity of the necessary services and activities remain in their posts. Thus, the strike may not be total, since there must be a minimum contingent of workers present to prevent the interruption of the albeit restricted service.

1053. Furthermore, it should be taken into account that the Collective Labour Relations Act also provides for restrictions on strikes held in non-essential public services, namely where it is necessary to ensure the continuity of "essential activities", although there is no legal definition of such services. However, the ILO accepts that workers in certain non-essential public services may be subject to restrictions when a strike is called, such as requiring the continued provision of a "minimum service". Finally, with regard to the statement made by the Director-General of the Legal Advice Office of the Ministry of Labour and Employment Promotion concerning the need to bear in mind that the ILO Committee of Experts on the Application of Conventions and Recommendations has defined essential public services as services the interruption of which would endanger the life, personal safety or health of the population and that in these cases the restriction of the right to strike is justified because of the priority given to the general interest over the private interests of striking workers, and that, consequently, the ILO Committee on Freedom of Association has expressly stated that the education service is not an essential public service.

1054. The Government indicates that since the aim of education is to promote the full development of the person, the Political Constitution of Peru recognizes it as a fundamental right which ensures the development of the person, since it is a worthy activity which encourages personal growth. Consequently, the fact that education is a fundamental right means that the activity of implementing it and providing it, being linked to the dignity of persons, makes it an essential service for the coexistence and development of people in society. Furthermore, article 17 of the Constitution provides that education shall be free of charge and stipulates that the State has a duty to provide education at the initial, primary and secondary levels as a necessity and undertaking of the State. Finally, the Government mentions the international treaties under which education is recognized as a fundamental human right. In its communications of 30 December 2008 and 18 and 20 February 2009, the Government provided the decision of the constitutional tribunal holding that the constitutional complaint lodged against Law No. 29062, which modifies the legislation concerning the careers of public teachers, is unfounded. The tribunal's decisions also noted that Law No. 28988 provides that education, generally, is an essential service and that minimum services must be provided for in case of strikes without affecting the essential content of this right. The Government indicated, in relation to the complainants' allegations regarding the creation of the Register of Substitute Teachers, that the Register was created – in conformity with Law No. 28922 – by ministerial resolution in 2007 as a register of professionals who should be ready to provide educational services in case of a paralysis of labour in the education sector. The Government indicated that it does not understand in what way the creation of this Register violates freedom of association rights.

C. The Committee's conclusions

1055. *The Committee observes that in the present case the complainant organizations object to the following, considering that they violate the principles of freedom of association with*

regard to the right to strike: (1) Act No. 28988 published on 21 March 2007 in the Official Journal, which declares regular basic education an essential public service; (2) Supreme Decree No. 017-2007-ED regulating Act No. 28988 (providing, inter alia, that the Ministry of Education or the Regional Directorate of Education may issue an opinion on the admissibility of a strike or declare a strike illegal and creating the National Register of Supply Teachers to replace teachers on strike); and (3) Resolution No. 0332-2007-ED which, in accordance with the challenged Act No. 28988, declared the National Strike staged on 10 July 2007 by FENTASE inadmissible and Decree No. 010-2003-TR, the amended consolidated text of the Collective Labour Relations Act, which, according to the complainants, contains requirements for calling a strike which are impossible to fulfil in practice.

1056. *The Committee notes that the Government indicates that: (1) with regard to Act No. 28988 which declares regular basic education an essential public service, this in no way affects the constitutional rights of workers or the workers' rights recognized by the international conventions and treaties ratified by the Government, given that this Act is intended to grant the Ministry of Education the power to prevent pupils at the initial, primary and secondary levels from missing classes due to a strike or work stoppage by teachers. The purpose of declaring regular basic education an essential public service is to ensure the continuity of the education service, with the exception of school holidays, in public educational institutions providing regular basic education, as a result of which the principal and vice-principal of these institutions must remain in their posts; (2) Supreme Decree No. 017-2007-ED regulating Act No. 28988 regulates measures designed to ensure the continued provision of the education service in public educational institutions providing regular basic education at the initial, primary and secondary levels in the event of a work stoppage by the managerial, teaching, auxiliary, administrative and service staff; (3) for the purposes of the regulations concerned, a work stoppage by the managerial, teaching, auxiliary, administrative and service staff of public educational institutions providing education at the initial, primary and secondary levels shall be understood to mean any form of suspension of the education service in such institutions by unilateral decision of the staff concerned, regardless of the reason given, how it is termed and the manner in which it is carried out; (4) these regulations are consistent with the provisions of section 83(j) of the amended consolidated text of the Collective Labour Relations Act, approved by Supreme Decree No. 010-2003-TR, establishing that essential public services shall include services other than those listed as determined by law (when a strike affects essential public services, the striking workers shall ensure that the staff required to prevent the total interruption of the service concerned and ensure the continuity of the necessary services and activities remain in their posts); (5) with regard to the creation of the National Register of Substitute Teachers, in accordance with the provisions of section 7 of the Regulations issued under Act No. 28988, approved by Supreme Decree No. 017-2007-ED, this register was created under Ministerial Resolution No. 080-2007-ED as a register of professionals who are qualified to provide the education service in the event of a work stoppage by the managerial, teaching, auxiliary, administrative and service staff; and (6) with regard to Ministerial Resolution No. 0332-2007-ED, this was issued taking into account the provisions of section 86 of the amended consolidated text of the Collective Labour Relations Act, approved by Supreme Decree No. 010-2003-TR, which provides that strikes carried out by workers covered by the labour conditions of the public sector shall be subject to the provisions of that Act, as well as the provisions of section 73(c) of the same amended consolidated text which provides that a decision to call a strike shall be notified to the employer and to the labour authority at least ten working days in advance when it concerns essential public services; moreover, section 82 of the same text provides that where a strike affects essential public services, workers involved in a dispute shall ensure that the staff required to prevent the total interruption of the service concerned and ensure the continuity of the necessary services and activities remain in their posts. FENTASE was under the obligation to communicate*

the decision to call a strike to the employer and to the labour authority at least ten working days in advance and ensure that the staff required to prevent the total interruption of the service and ensure the continuity of the education service in the educational institutions providing regular basic education remained in their posts. Since it failed to fulfil this obligation, the strike was declared inadmissible.

1057. *The Committee recalls that basic education is not an essential service in the strict sense of the term namely, one which would endanger the life, personal safety or health of the whole or part of the population (the only services in which the right to strike can be prohibited or seriously restricted) but points out that it is acceptable in this sector to establish a minimum service which respects the following principles: "A minimum service may be set up in the event of a strike, the extent and duration of which might be such as to result in an acute national crisis endangering the normal living conditions of the population. Such a minimum service should be confined to operations that are strictly necessary to avoid endangering life or normal living conditions of the whole or part of the population; in addition, workers' organizations should be able to participate in defining such a service in the same way as employers and the public authorities." The Committee has stated, for example, that minimum services may be established in the education sector, in full consultation with the social partners, in cases of strikes of long duration [see* ***Digest of decisions and principles of the Freedom of Association Committee,*** *fifth edition, 2006, paras 610 and 625].*

1058. *The committee observes that, following developments in legislation and the constitutional tribunal decision, the right to strike may be exercised in the education sector but minimum services must be maintained. Bearing in mind the principles set out in the preceding paragraph, the Committee considers that establishing a minimum service in the education sector is not contrary to the principles of freedom of association. However, the Committee observes that section 82 of the Collective Labour Relations Act grants the administrative labour authority the power to establish minimum services in the event of a disagreement between the parties concerned, in the case of a strike in essential public services. In this regard, the Committee observes that, following an analysis of the conformity of Peru's legislation with Convention No. 87, in its 2008 observation, the Committee of Experts on the Application of Conventions and Recommendations noted that the Government indicated in its report that: (1) in September 2006, the Labour Committee of the Congress of the Republic entrusted the National Council for Labour and Employment Promotion (CNTPE) with the task of revising the General Labour Act, and (2) the CNTPE appointed to that end an ad hoc committee whose work was ratified by the CNTPE plenary meeting on 27 October 2006 and referred to the Congressional Labour Committee and that the draft is currently on the agenda of the Congress plenary for discussion.*

1059. *The Committee recalls that "the determination of minimum services and the minimum number of workers providing them should involve not only the public authorities, but also the relevant employers' and workers' organizations. This not only allows a careful exchange of viewpoints on what in a given situation can be considered to be the minimum services that are strictly necessary, but also contributes to guaranteeing that the scope of the minimum service does not result in the strike becoming ineffective in practice because of its limited impact, and to dissipating possible impressions in the trade union organizations that a strike has come to nothing because of over-generous and unilaterally fixed minimum services [see* ***Digest****, op. cit., para. 612]. The Committee expects that the revision of the General Labour Act will be adopted and will be in full conformity with the Convention so that in the event of a strike in essential services the determination of minimum services and the minimum number of workers providing them involves not only the public authorities, but also the relevant employers' and workers' organizations.*

1060. *With regard to Supreme Decree No. 017-2007-ED which regulates Act No. 28988 and provides inter alia that the Ministry of Education or the Regional Directorate of Education may issue an opinion on the admissibility of a strike or declare a strike illegal (sections 19 and 20), the Committee notes that the strike staged by FENTASE in the education sector was declared inadmissible by the administrative authority for failure to comply with the legal requirements laid down in the amended consolidated text of the Collective Labour Relations Act concerning the notification of the strike ten working days in advance when the strike concerns essential public services and the need to ensure that the staff required to prevent the total interruption of the service and ensure the continuity of the services remain in their posts. However, the Committee recalls that responsibility for declaring a strike illegal should not lie with the government, but with an independent body which has the confidence of the parties involved [see* ***Digest****, op. cit., para. 628]. In these circumstances, the Committee requests the Government to take the necessary steps to amend Supreme Decree No. 017-2007-ED regulating Act No. 28988, so that responsibility for declaring a strike inadmissible or illegal in the education sector lies with an independent body which has the confidence of the parties involved.*

1061. *With regard to the creation of the National Register of Substitute Teachers to replace teachers on strike, mentioned in sections 7–10 of Supreme Decree No. 017-2007-ED regulating Act No. 28988. The Committee notes the Government's statements that the Register of Substitute Teachers was created by ministerial resolution in 2007 as a register of professionals who should be ready to provide educational services in case of a paralysis of labour in the education sector. The Government indicated that it does not understand in what way the creation of this Register violates freedom of association rights. The Committee recalls that strikers should be replaced only: (a) in the case of a strike in an essential service in the strict sense of the term in which the legislation prohibits strikes; and (b) where the strike would cause an acute national crisis. In these circumstances, recalling that the basic education sector is not an essential service in the strict sense of the term (although as noted previously, minimum services may be established in the event of a strike and should be determined with the participation of the relevant workers' organizations), the Committee requests the Government to take the necessary steps to repeal sections 7–10 (National Register of Supply Teachers) of Supreme Decree No. 017-2007-ED regulating Act No. 28988 and to focus its policy on effective observance of minimum services rather than on preparing lists of replacements for strikers.*

1062. *With regard to the requirement to which the complainant organizations object, namely the obligation to notify the employer and the administrative labour authority of the decision to call a strike ten working days in advance in the case of a strike in essential services, in accordance with Supreme Decree No. 010-2003-TR, the amended consolidated text of the Collective Labour Relations Act, which declared the national strike staged on 10 July 2007 by FENTASE inadmissible, the Committee considers that the period established does not undermine the principles of freedom of association.*

The Committee's recommendations

1063. ***In the light of its foregoing conclusions, the Committee requests the Governing Body to approve the following recommendations:***

(a) The Committee expects that the revision of the General Labour Act will be adopted and will be in full conformity with Convention No. 87 and in particular that, in the event of a strike in the basic education sector, the determination of minimum services and the minimum number of workers providing them involves not only the public authorities, but also the relevant employers' and workers' organizations.

(b) The Committee requests the Government to take the necessary steps to amend Supreme Decree No. 017-2007-ED regulating Act No. 28988, so that responsibility for declaring a strike in the education sector inadmissible or illegal lies with an independent body which has the confidence of the parties.

(c) The Committee requests the Government to take the necessary steps to repeal sections 7–10 (National Register of Substitute Teachers) of Supreme Decree No. 017-2007-ED regulating Act No. 28988 and to focus its policy on effective observance of minimum services rather than on preparing lists of replacements for strikers.

CASE NO. 2594

INTERIM REPORT

Complaint against the Government of Peru presented by the Latin American Central of Workers (CLAT)

Allegations: The complainant organization alleges dismissals, threats of dismissal and other acts of intimidation following the establishment of a trade union at Panamericana Televisión SA (now called Panam Contenidos SA)

1064. The Committee examined this case at its November 2008 meeting and submitted an interim report to the Governing Body [see 351st Report, paras 1162–1179, approved by the Governing Body at its 303rd Session (November 2008)].

1065. The Government sent further observations in communications dated 3 November 2008 and 27 February 2009.

1066. Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

1067. At its November 2008 meeting, the Committee made the following recommendations on the pending allegations [see 351st Report, para. 1179]:

> The Committee urges the Government to take measures without delay so that an investigation takes place at Panam Contenidos SA with regard to the alleged dismissals, transfers and other anti-union acts that have reportedly been carried out since the establishment of the trade union, and to inform it of the outcome of that investigation. Furthermore, the Committee requests the Government, if the allegations in question are shown to be valid, to take the necessary measures to ensure that the workers who were dismissed and redeployed for anti-union reasons are reinstated in their posts and paid the wages and other benefits owed to them.

B. The Government's further reply

1068. In its communications dated 3 November 2008 and 27 February 2009, the Government states that since 2007 Panamerica Televisión (now called Panam Contenidos SA) has been preventing the Labour Inspectorate from carrying out inspections ordered by the Ministry of Labour and Employment Promotion (MTPE), for which it has been fined a total of 42,000 new soles. Furthermore, in accordance with Act No. 28806 and Supreme Decree No. 002-2007-TR, the Ministry of Labour has notified the Office of the Public Prosecutor of evidence of an alleged offence against the public administration committed by the said employer and a criminal complaint has been officially lodged with the 43rd Provincial Prosecutor's Office of Lima with a view to bringing criminal charges or opening a preliminary judicial inquiry, if necessary.

1069. The Government adds that in December 2007, a total of 14 fines had been imposed on Panamericana Televisión SA for obstructing labour inspections, eight of which have already been paid and the remaining six are being collected through a seizure of bank accounts, which has been reported to the Distinctive Signs Office of INDECOPI.

1070. In recent years, Panamericana Televisión SA (now called Panam Contenidos SA) has had a history of refusing to agree to inspections carried out by the Ministry of Labour and Employment Promotion, particularly in the last few years with its continual obstructions and blatant refusal to obey the labour authority that carries out such inspections. Moreover, this had made it impossible to verify the general situation of hundreds of workers who are working at the company, allegedly without any employment benefits, despite the fact that the company has been reporting substantial profits which would enable them to fulfil their employment obligations as established by law.

1071. Furthermore, the Government states that, as a result of the repeated obstructions of labour inspections by the company, by means of Note No. 1302-2008-MTPE/2, dated 18 July 2008, the Deputy Labour Minister requested the Public Prosecutor to initiate legal action to request authorization from the courts to enter the workplace, in accordance with Article 4 of the Regulations issued under the Labour Inspection Act, and that the Public Prosecutor has taken the relevant internal steps to that end.

1072. Furthermore, by means of Note No. 1357-2008-MTPE/2, dated 21 July 2008, a communication has been sent to the judge of the Second Civil Court of Lima Norte, which is currently handling the judicial administration of the company, requesting that an assessment be carried out of the information concerning the irregularities in the company's compliance with social and labour-related norms and its refusal to obey authority, so that the judicial administration granted may be subject to certain rules of conduct which include proper management based on respect for the labour rights of workers.

1073. In its report dated 29 February 2008, the Legal Department of the MTPE includes the information provided by the MTPE's Regional Labour Directorate that, to date, a total of 69 inspection visits have been planned for the company in question, but as those inspections have been hindered by the employer, the Ministry of Labour, through its National Inspections Directorate, has been forced to request the support of the police in accordance with the legislation.

1074. The Government indicates that according to section 46 of Supreme Decree No. 019-2006-TR (the Regulations of the Labour Inspection Act), any unfounded refusal to allow inspections, and any attempts to prevent officially appointed inspection supervisors or labour inspectors from entering or remaining in a place of work are serious offences; the company in question has been repeatedly fined and the enforcement department of the Ministry of Labour has brought eight separate actions against the company.

1075. It should be pointed out that on 28 October 2008, the Legal Department of the Ministry of Labour and Employment Promotion submitted an urgent request to the judge of the Second Civil Court of Lima Norte for up to date information on the case before the court under file No. 184-2003, concerning the legal action brought by the Ministry of Labour with a view to obtaining the relevant authorization from the courts to enter the company's premises in order to check the employment situation of workers whose labour rights have been infringed by the company in question.

1076. In order to give effect to the recommendations of the ILO Committee on Freedom of Association, the Regional Labour and Employment Promotion Directorate of Lima and Callao reports that on 12 December 2008, it issued Inspection Order No. 19300-2008-MTPE/2/12.3, for the attention of Labour Inspector Mr Rey Demetrio Cabezas Lagos, and that at the time of writing this Order has been "delivered". The Committee will be informed of the outcome of the inspections to be carried out.

C. The Committee's conclusions

1077. *The Committee recalls that, in the present case, the complainant alleges that since the appointment of the receiver of Panam Contenidos SA (formerly Panamericana Televisión SA) in February 2003, an anti-labour and anti-union policy has been applied; confronted with so many labour problems, the workers decided to establish a trade union in 2005 and asked Ms María Vilca Peralta, Ms Ana María Sihuay and Ms Carmen Mora to assume the leadership of the trade union. The complainant alleges that: (1) in December 2005 and April 2006, the workers held peaceful protests in Arequipa Avenue and outside the channel's headquarters; the company's management tried to identify the organizers of the protests and, to that end, monitored electronic mail and telephone conversations; finally, 16 workers were identified as the instigators and it was decided to intimidate them using various methods; (2) because they had organized a trade union, the company dismissed María Vilca Peralta, Fanny Quino, Liliana Sierra, Laura Chahud and Guillermo Noriega, and transferred the following employees to posts unrelated to their professions: Carmen Mora, Ana María Sihuay, Enrique Canturin, Carlos Mego and Rafael Saavedra; and (3) as a result of a request from the workers to the Ministry of Labour and Employment Promotion, an inspection of the company was carried out, but the inspectors showed a passive and complacent attitude towards the company and, prior to an inspection in July 2006, the company threatened with dismissal any workers who reported irregularities [see 351st Report, para. 1175].*

1078. *The Committee further recalls the Government's statements to the effect that: (1) the Regional Labour Directorate of the Ministry of Labour and Employment Promotion provided information that, to date, a total of 69 inspection visits have been planned for the company in question; as those inspections have been hindered by the employer, the National Inspections Directorate has been forced to request the support of the police in accordance with the legislation; (2) according to section 46 of Supreme Decree No. 019-2006-TR (the regulations of the Labour Inspection Act), any unfounded refusal to allow inspections, and any attempts to prevent inspection supervisors, labour inspectors, assistant inspectors, or officially appointed experts or technicians responsible for carrying out an inspection, from entering or remaining in a place of work or specific areas thereof, are serious offences, and Panam Contenidos SA has accordingly been fined; and (3) the enforcement department of the Regional Labour Directorate has brought eight separate actions against the company for failing to pay the fines [see 351st Report, para. 1176].*

1079. *The Committee notes that in its latest reply the Government states that: (1) the company continues to prevent the carrying out of inspections by the Labour Inspectorate, that the 14 fines imposed for these offences total 42,000 new soles and that the company has paid eight of them (the other fines are being collected by means of a seizure of bank accounts);*

the enforcement department has brought eight separate actions against the company; (2) the Public Prosecutor has taken action to obtain authorization from the courts to enter the workplace to carry out inspections; (3) the support of the police has been sought to carry out the 69 planned inspections; (4) the judicial authority (Second Civil Court of Lima) has been asked to obtain information on any irregularities in the company's compliance with labour standards and its refusal to obey authority and to grant the relevant legal authorization to enter the company's premise; and (5) with a view to giving effect to the recommendations of the Committee on Freedom of Association, the Regional Labour and Employment Promotion Directorate of Lima issued an inspection order on 12 December 2008 which has been delivered.

1080. *In this regard, the Committee welcomes the action and initiatives taken by the authorities but regrets that they have not produced results thus far. The Committee also notes that the Government has not sent its specific observations concerning the alleged anti-union dismissals and transfers and other intimidating practices following the establishment of a trade union at Panam Contenidos SA and that it has merely provided information on the difficulties encountered in carrying out inspections of the company, which makes it extremely difficult to draw conclusions on the concrete and serious allegations of violations of trade union rights. The Committee recalls that "anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions", and 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* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, paras 769 and 771].*

1081. *The Committee notes the various steps taken by the Ministry of Labour to ensure that labour inspections can be carried out at the company. The Committee regrets the time that has passed since the alleged anti-union dismissals and transfers took place, without any possibility of investigating whether the allegations were true or adopting measures to redress the situation, if necessary. The Committee further regrets the uncooperative attitude of the company, which, according to the Government, has prevented labour inspections from being carried out.*

1082. *In these circumstances, the Committee notes the slowness and ineffectiveness of the system for investigating labour offences in the case of allegations of serious violations of trade union legislation by the employer, as in the present case in which the employer refuses to receive labour inspectors, and emphasizes that justice delayed is justice denied. The Committee once again urges the Government to take measures without delay so that a thorough investigation takes place at the company with regard to the alleged dismissals, transfers and other anti-union acts that have reportedly been carried out since the establishment of the trade union, and to inform it of the outcome of that investigation. Furthermore, the Committee requests the Government, if the allegations in question are shown to be valid, to take the necessary measures to ensure that the workers who were dismissed and redeployed for anti-union reasons are reinstated in their posts and paid the wages and other benefits owed to them, and that the fines for such violations should be significantly increased so as to constitute sufficiently dissuasive sanctions.*

1083. *The Committee also requests the Government to keep it informed of the various procedures and actions under way to ensure that the company fulfils its legal obligations as regards labour and trade union matters.*

1084. *The Committee requests the Government to take steps to amend the legislation so that the system for the prompt protection of trade union rights by the Labour Inspectorate is truly*

effective, including sufficiently dissuasive sanctions, particularly in cases in which a company refuses to allow the Labour Inspectorate to carry out inspections of workplaces.

The Committee's recommendations

1085. ***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 take measures without delay so that a thorough investigation takes place at Panam Contenidos SA with regard to the alleged dismissals, transfers and other anti-union acts that have reportedly been carried out since the establishment of the trade union, and to inform it of the outcome of that investigation. Furthermore, the Committee requests the Government, if the allegations in question are shown to be valid, to take the necessary measures to ensure that the workers who were dismissed and redeployed for anti-union reasons are reinstated in their posts and paid the wages and other benefits owed to them, and that the fines for such violations should be significantly increased so as to constitute sufficiently dissuasive sanctions.

(b) The Committee requests the Government to keep it informed of the various procedures and actions under way to ensure that the company fulfils its legal obligations as regards labour and trade union matters in relation to the present case.

(c) The Committee requests the Government to take steps to amend the legislation so that the system for the prompt protection of trade union rights by the Labour Inspectorate is truly effective, including sufficiently dissuasive sanctions, particularly in cases in which a company refuses to allow the Labour Inspectorate to carry out inspections of workplaces.

CASE NO. 2581

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

Complaint against the Government of Chad
presented by
– the Organization of African Trade Union Unity (OATUU) and
– the International Trade Union Confederation (ITUC)
supported by
Public Services International (PSI)

Allegations: Adoption of a decree refusing official recognition of an inter-union association and petition to the administrative courts for the dissolution of that association, storming of the Labour Exchange by the security forces and occupation of union

premises for several days preventing workers from gaining access, confiscation of the passport of Mr Djibrine Assali, General Secretary of the Union of Trade Unions of Chad (UST), preventing him from attending the International Labour Conference, and adoption of an act broadening the concept of essential services to include public service activities that would not be considered essential in the strict sense of the term by the Committee on Freedom of Association

1086. The Committee last examined this case at its November 2008 meeting and submitted an interim report to the Governing Body [see 351st Report, paras 1313–1338, approved by the Governing Body at its 303rd Session].

1087. The Government sent its observations in a communication dated 17 February 2009.

1088. Chad 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. Previous examination of the case

1089. In its previous examination of the case in November 2008, the Committee drew the Governing Body's attention to this case due to the seriousness and urgency of the issues raised in it and made the following recommendations [see 351st Report, para. 1338]:

(a) The Committee expresses its deep concern at the particularly serious nature of the allegations in this case and the absence of any reply from the Government. The Committee urges the Government to provide its observations without delay so as to enable the objective consideration of each of the issues raised.

(b) The Committee urges the Government to provide an explanation with regard to the confiscation of the passport of Mr Assali, General Secretary of the UST, to take all the necessary measures to return the document to him and to ensure that he is able to exercise full freedom of movement in carrying out his mandate as a trade union official.

(c) The Committee urges the Government to carry out an investigation and to explain without delay the intervention of the security forces at the Labour Exchange on 5 June 2007 and the occupation for about ten days of the head office of the SET, making it impossible for workers to gain access to the building.

(d) The Committee expects that the Government will in the future ensure full respect for the principles recalled above relating to the freedom of action of representative organizations and collective bargaining and requests it to ensure that trade unions will not in any way be restricted with regard to the measures that they may decide to undertake jointly to defend the interests of workers.

(e) The Committee requests the Government to take the necessary measures to review, in consultation with the social partners concerned, its legislation relating to the determination of essential services. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case.

B. The Government's reply

1090. In a communication dated 17 February 2009, the Government expresses its surprise at the comment that it has not provided a reply to the complaint, since it considers that it has in fact replied by means of a communication dated 18 March 2008, a copy of which is provided.

1091. With regard to the confiscation of the passport of Mr Djibrine Assali, General Secretary of the Union of Trade Unions of Chad (UST), the Government indicates that it has already explained, on several occasions, that, like the other members of the delegation of Chad called upon to attend the International Labour Conference, Mr Djibrine Assali received a mission order which he used to obtain his travel documents. However, even though he merely had to present this mission order at the time of boarding, Mr Assali instead chose to present a different unofficial mission order, which led to his passport being confiscated by airport security. The Government states that Mr Assali has been motivated by a desire for confrontation since 2007, when he distanced himself from the other members of the Chad delegation during a mission to Addis Ababa in April of that year and organized the long strike of public servants which began on 2 May of the same year. The Government further indicates that Mr Assali participated in the work of the Labour and Social Affairs Commission in Addis Ababa in April 2008 even though he had not been appointed by his organization and attacked the Deputy General Secretary, who had in fact been put forward by his organization. The Government explains that, despite his prolonged absence from the country, Mr Assali has always been included on the list of members of the Chad delegation and had his expenses paid insofar as he has been appointed by his organization. According to the Government, the explanation provided by the Minister of Labour to the representatives of the International Trade Union Confederation (ITUC) concerning the untruthful allegations made by Mr Assali certainly took them by surprise.

1092. According to the Government, Mr Assali has always concealed his desire to devote himself to a political struggle but finally revealed this desire by resigning as General Secretary of the UST contrary to all expectations.

1093. With regard to the collective bargaining initiated between the trade union organizations and the authorities following the public sector strike launched on 2 May 2007, the Government indicates that these negotiations were held in several contexts. The initial negotiations were held within the Tripartite Committee responsible for negotiating improvements to conditions of employment set up by the Prime Minister and involved the UST, the Union of Teachers of Chad (SET), the National Union of Primary School Teachers of Chad (SNIT), and the Independent Union of Public Officials of Chad (SAAAT). Negotiations were then held in the context of a Tripartite Committee responsible for negotiating with trade union organizations, created by Prime Minister's Decree No. 1481/PR/PM/MFPT/2007 of 6 June 2007, which were subsequently extended to include three other trade union organizations which were not members of the inter-union association, which had until then been negotiating with the authorities, namely the Free Confederation of Workers of Chad (CLTT), the Trade Union Confederation of Chad (CST), and the Trade Union Confederation of Workers of Chad (CSTT), which shared the same demands.

1094. The Government indicates that during the negotiations it presented the economic and budgetary arguments necessary to justify its proposals, but that these proposals were rejected by the trade union organizations on the basis that they were insufficient. It further indicates that its request made to the trade unions to lift the call for strike action was justified by its desire to negotiate peacefully and in the interests of all. The Government also explains that it informed the partners of its willingness to negotiate with all trade unions, but that the inter-union association withdrew from the negotiations at the meeting

of the Tripartite Negotiations Committee held on 24 May 2007 and requested the exclusion from the negotiations of those organizations which were not members of the inter-union association, as well as the repeal both of Act No. 008/PR/2007 regulating the exercise of the right to strike in public services and of a circular concerning the withholding of the wages of striking workers. The Government indicates that, despite a final invitation from the Government to continue negotiations based on a final proposal, it was notified by the organizations comprising the inter-union association, by letter dated 19 June 2007, of their refusal to participate in the negotiations. However, the CLTT, CST and CSTT replied to the invitation and on 20 June 2007, they signed a Memorandum of Understanding (MOU) with the authorities. According to the Government, this MOU remains open to signature by the other trade union organizations and also provides for the possibility of negotiating on the specific points contained in the lists of grievances presented by the UST, SET and CLTT.

1095. The Government therefore expresses its regret at the radical position and negative attitude adopted by the trade union organizations which have not signed the MOU, in particular their lack of respect for decisions taken by the Head of State, their refusal to negotiate within a broader framework and their provision of false information to the media and to international trade union organizations about so-called violations of freedom of association. This attitude, which the Government describes as a drift led by the UST which disregards national laws, has led to the SET dissociating itself from the other organizations.

1096. With regard to the petition for the suspension of the activities of the inter-union association and its dissolution, the Government explains that following an investigation, the labour inspectorate noted that the inter-union association had not been established in accordance with the procedures laid down in the Labour Code, which requires that the statutes and the list of officials be filed at the prefecture and a receipt of such obtained. Consequently, the Ministry of the Public Service and Labour adopted a decree refusing official recognition of the inter-union association in the absence of legal status. In accordance with the procedure laid down in the Labour Code, the labour inspector then made an urgent application to the social chamber of the Court of Appeal of N'Djamena for an interim ruling on the legal status of the inter-union association. The Government indicates that it is still prepared to continue negotiations with the workers' organizations which have not signed the MOU of 20 June 2007, which was adopted on an individual basis, based on the achievements of that MOU.

1097. The Government refers to the principles laid down by the Committee on Freedom of Association on the recognition of a trade union organization through official registration and to the Labour Code, which states that, "Lawfully established trade unions may form central trade union organizations freely. These organizations may call themselves unions or confederations, based on the groupings and titles which they decide to adopt. The establishment and reorganization of these groups shall be subject to the same procedures and conditions applicable to the establishment and reorganization of trade unions themselves". The Government recalls that trade union rights should therefore be exercised with respect for law and order and the authority of the State. Finally, the Government indicates that the petition filed with the Supreme Court by Mr Assali, on behalf of the inter-union association, was rejected by the Court on the grounds that Mr Assali did not have the authority to lodge such action.

1098. With regard to Act No. 008/PR/2007 regulating the exercise of the right to strike in public services, the Government indicates that this Act has filled a legal void in the control of strikes in the public sector. It recalls that the right of public servants to organize is recognized but that this right must be exercised within the framework of the law. It further states that essential services are determined based on the realities of the country, taking

into account the Government's duty to ensure public safety in the face of the state of war and insecurity imposed by the outside world. The Government states that it has taken into account the principle laid down by the Committee that, "What is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country".

C. The Committee's conclusions

1099. *The Committee recalls that the present case concerns the adoption of a decree refusing official recognition of an inter-union association and petition to the administrative courts for the dissolution of that association, the storming of the Labour Exchange by the security forces and occupation of union premises for several days preventing workers from gaining access, confiscation of the passport of Mr Djibrine Assali, General Secretary of the UST, preventing him from attending the International Labour Conference, and the adoption of an act broadening the concept of essential services to include activities that would not be considered essential in the strict sense of the term by the Committee on Freedom of Association. In its previous examination of the case, the Committee expressed its concern at the serious nature of the allegations.*

1100. *The Committee notes the explanation provided by the Government with regard to certain aspects of the case. It further notes that the communication dated 18 March 2008 to which the Government refers, concerns its reply to the observations presented by the ITUC in the context of the procedure for examining the application of ratified Conventions before the Committee of Experts on the Application of Conventions and Recommendations and that, in the absence of a specific request by the Government, this communication was therefore disregarded in the examination of this complaint.*

1101. *With regard to the matter referred to in paragraph (b) of its recommendations concerning the confiscation of the passport of Mr Djibrine Assali, General Secretary of the UST, the Committee notes the explanation provided by the Government which reiterates the Government's submission during the examination of the matter by the Credentials Committee at the 96th Session (June 2007) of the International Labour Conference (see Provisional Record No. 4C, paras 123–127) and which has already previously been noted by the Committee. The Committee notes that, according to the Government, Mr Assali, like the other members of the Chad delegation called upon to attend the International Labour Conference, received a mission order which he used to obtain the necessary travel documents. However, even though he merely had to present this mission order at the time of boarding, Mr Assali instead chose, for unknown reasons, to present a different unofficial mission order, which led to his passport being confiscated by airport security. The Committee notes the Government's statement that Mr Assali's attitude is symptomatic of his desire for confrontation demonstrated since 2007, as well as the examples given by the Government to illustrate this point. Finally, the Committee notes the indication that, against all expectations, Mr Assali resigned as General Secretary of the UST in July 2008.*

1102. *In its previous examination of this case, the Committee had recalled the special importance it attaches to the right of workers' and employers' representatives to attend and to participate in meetings of international workers' and employers' organizations and of the ILO. It is therefore important that no delegate to any organ or Conference of the ILO, and no member of the Governing Body, should in any way be hindered, prevented or deterred from carrying out their functions or from fulfilling their mandate [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, paras 761 and 766]. The Committee previously noted the Government's statement to the Credentials Committee in 2007 that Mr Assali could recover his passport from the police. While noting that Mr Assali, according to the Government, no longer carries out trade union activities within the UST, the Committee requests the Government to indicate*

whether his passport has actually been returned. Furthermore, the Committee urges the Government to guarantee in future that all trade union leaders in the country enjoy full freedom of movement when carrying out their mandate, in particular the freedom to participate in trade union activities organized abroad and in ILO meetings without being hindered in any way.

1103. *The Committee recalls that it previously noted with concern the allegations made by the complainant organizations regarding the various incidents and measures that followed the launching of the strike of 2 May 2007, in particular the fact that the workers involved in the strike had been pressured by the authorities, who furthermore made the resumption of negotiations conditional upon the lifting of the strike. In this regard, the Committee notes the Government's statement that its request made to the trade unions to lift the call for strike action was motivated by its desire to negotiate peacefully and in the interests of all. The Committee wishes to recall once again that the right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests [see* ***Digest****, op. cit., para. 522], and that in these circumstances the Government should ensure that no influence or pressure can affect the exercise of this right in practice.*

1104. *The Committee previously noted with concern the allegations made by the complainant organizations that, on 5 June 2007, the security forces stormed the Labour Exchange and barricaded its entrance, and occupied the head office of the SET for approximately ten days, blocking workers' access to the building. It urged the Government to carry out an investigation and to explain without delay the intervention of the security forces. The Committee notes with deep regret that the Government has not provided any information on this matter referred to in paragraph (c) of its recommendations. The Committee once again recalls that the inviolability of trade union premises is a civil liberty which is essential to the exercise of trade union rights and that the occupation of trade union premises by the security forces, without a court warrant authorizing such occupation, is a serious interference by the authorities in trade union activities. Actions such as attacks carried out against trade union premises and threats against trade unionists create among trade unionists a climate of fear which is prejudicial to the exercise of trade union activities, and the authorities, when informed of such matters, should carry out an immediate investigation to determine who is responsible and punish the guilty parties [see* ***Digest****, op. cit., paras 179 and 184]. Consequently, the Committee once again urges the Government to carry out an investigation without delay into the allegations concerning the intervention of the security forces at the Labour Exchange on 5 June 2007 and the occupation for approximately ten days of the head office of the SET, and to provide an explanation in this regard.*

1105. *The Committee notes the explanation provided by the Government concerning the negotiations held following the strike of 2 May 2007 in the public sector. The Committee notes in particular the indication that negotiations were held in several contexts with the organizations comprising the inter-union association which had until then been negotiating with the authorities, namely the UST, SET, SNIT and SAAT, and that these negotiations were subsequently extended to include three other trade union organizations which were not members of the inter-union association, namely the CLTT, CST, and CSTT, which shared the same demands. The Committee notes that the Government considers that during the negotiations, it presented the economic and budgetary arguments necessary to justify its proposals but that the trade union organizations nonetheless rejected the proposals on the basis that they were insufficient. The Committee notes the indication that the trade unions comprising the inter-union association abandoned the negotiations and requested the exclusion from the negotiations of those organizations which were not members of the inter-union association, as well as the repeal both of Act No. 008/PR/2007 regulating the exercise of the right to strike in public services and of a circular concerning*

the withholding of the wages of striking workers. However, according to the Government, the CLTT, CST and CSTT (none of which are members of the inter-union association) replied to a final invitation from the Government, which led to the signature, on 20 June 2007, of a MOU which remains open to signature by the other trade union organizations and also provides for the possibility of negotiating on the specific points contained in the lists of grievances presented by the UST, SET and CLTT.

1106. *The Committee observes that the Government regrets the radical position and negative attitude adopted by the trade union organizations which have not signed the MOU, in particular their lack of respect for decisions taken by the Head of State, their refusal to negotiate within a broader framework and their provision of false information to the media and to international trade union organizations about so-called violations of freedom of association. This attitude has led to the SET dissociating itself from other organizations.*

1107. *The Committee holds the view that collective bargaining in the public service certainly has special characteristics, given that the State's margin for manoeuvre is closely linked to its tax revenue, but it is at the same time ultimately responsible for the allocation of these resources in its role as employer. The Committee considers that, in this case, it is not competent to express a view on the strength of the economic arguments presented by the Government to justify its position in the collective bargaining. On the other hand, the Committee is competent to remind the Government, in accordance with the principles of promoting collective bargaining contained in Conventions Nos 98 and 151 ratified by Chad, of the need for the authorities to give preference as far as possible to collective bargaining in determining the conditions of employment of public servants. In this sense, and noting that almost two years have passed since the MOU was signed on 20 June 2007, the Committee requests the Government to indicate any concrete steps taken to hold fresh negotiations with the workers' organizations which have not signed the MOU in order to find a solution to the pending issues that is acceptable to all parties. In this regard, the Committee recalls the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations [see* ***Digest****, op. cit., para. 934], which depend primarily on the attitudes of the parties towards each other and on their mutual confidence.*

1108. *With regard to the Government's adoption of Decree No. 019/PR/PM/MFPT/SG/DTSS/2007 of 4 July 2007, "refusing official recognition of the inter-union association in the absence of legal status", the Committee noted, in its previous examination of the case, the allegations of the complainant organizations, that a petition to suspend the activities of and dissolve the inter-union association, was brought on 26 June 2007 by the interregional labour inspector for the northern zone, before the administrative chamber of the Supreme Court but that the ministerial decree had been adopted even before any decision had been made. The Committee also noted that, according to the complainants, the inspector did not have the authority to file such a petition and that the administrative chamber of the Supreme Court had no jurisdiction over cases of this nature, an authority which is reserved under sections 299, 300 and 314 of the Labour Code for the social chamber of the Court of Appeal. In this regard, the Committee notes the Government's indication that the labour inspector did indeed make an urgent application to the social chamber of the Court of Appeal of N'Djamena for an interim ruling on the legal status of the inter-union association.*

1109. *The Committee also previously noted the position of the complainant organizations that the inter-union association is not an organization in itself but rather a "claims platform" consisting of a national trade union confederation (the UST) and several trade unions representing professional sectors, all of which have been duly registered in accordance with the law. The Committee therefore noted the information provided by the inter-union association that it was an ad hoc group composed of legally recognized trade unions, all of*

which had legal status. The inter-union association did not claim to be a supraorganization or an organization in itself and it indicated that the agreement to establish it, which had been signed by the trade unions, could in no way be compared to the statutes of a union, which must be filed under section 299 of the Labour Code. In conclusion, the inter-union association considered that the sole aim of the Government's action was to prevent the trade unions that had signed up to the claims platform of the inter-union association from carrying out their legitimate activities.

1110. *On this matter, the Committee notes the Government's explanation that the labour inspectorate merely noted, following an investigation, that the inter-union association which was negotiating with the authorities had not been established in accordance with the procedures laid down in the Labour Code, which requires that the statutes and list of officials be filed at the prefecture and a receipt for such obtained. Consequently, the Ministry of the Public Service and Labour adopted a decree refusing official recognition of the inter-union association in the absence of legal status. In accordance with the procedure laid down in the Labour Code, the labour inspector then made an urgent application to the social chamber of the Court of Appeal of N'Djamena for an interim ruling on the legal status of the inter-union association. The Committee further notes that the Government refers to the principles which it has laid down on the recognition of a trade union organization through official registration and to the Labour Code, which states that, "Lawfully established trade unions may form central trade union organizations freely. These organizations may be called unions or confederations, according to the groupings and titles which they wish to adopt. The establishment and reorganization of these groups shall be subject to the same procedures and conditions applicable to the establishment and reorganization of trade unions themselves".*

1111. *While noting the Government's statement on the need to exercise trade union rights in accordance with the law, the Committee can, however, only reiterate its previous conclusions in which it observed that the action of the Government in the present case, putting aside any legal interpretation, is prejudicial to the development of normal and healthy labour relations because such conduct is likely to violate the freedom, established in Convention No. 87, of each representative organization to organize freely its own activities and its own programme of action, in accordance with its own statutes. The Committee once again draws the Government's attention to the principle that trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent. The public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof. Any such interference would appear to infringe the principle that workers' and employers' organizations should have the right to organize their activities and to formulate their programmes [see* ***Digest****, op. cit., para. 881]. Observing that the sole objective of the inter-union association was to gather together on an informal basis, without claiming legal status of its own, several duly registered trade unions which share a common position on specific points, the Committee requests the Government to ensure in future that trade union organizations will not be restricted with regard to any action that they may decide to take jointly to defend the interests of workers.*

1112. *Finally, with regard to the matter referred to in paragraph (e) of its recommendations concerning Act No. 008/PR/2007 of 9 May 2007, regulating the exercise of the right to strike in public services, the Committee recalls that it previously observed that section 18 of this Act provides that, "a compulsory minimum service is guaranteed in the context of essential public service activities, the interruption of which would endanger the life, personal safety or health of the whole or part of the population". Section 19 of the Act lists the public services that are deemed essential, namely: air traffic control services; hospital services; water and electricity services; firefighting services; post and telecommunications services; television services; broadcasting services; the key services of the Ministry of*

Foreign Affairs and African Integration; the services of inter-prefectural labour inspectorates; financial management services; slaughterhouse services; and the services provided by the Farcha Laboratory.

1113. *The Committee notes the Government's brief indication that Act No. 008/PR/2007 has filled a legal void in the control of strikes in the public sector and that essential services are determined in this Act based on the realities of the country, taking into account the Government's duty to ensure public safety in the face of the state of war and insecurity imposed by the outside world. The Government states that it has therefore taken into account the principle laid down by the Committee that, "What is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country".*

1114. *In this regard, the Committee wishes to recall firstly that the right to strike is an intrinsic corollary to the right to organize protected by Convention No. 87 [see* ***Digest****, op. cit., para. 523]. It further recalls the principle that, as an exception to the general principle of the right to strike, the essential services in which this principle may be entirely or partly waived should be defined restrictively, and therefore should include only those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. For the sectors listed which are not essential in the strict sense of the term, the Committee recalls that a minimum service could be appropriate as a possible alternative in situations in which a substantial restriction or total prohibition of strike action would not appear to be justified and where, without calling into question the right to strike of the large majority of workers, one might consider ensuring that users' basic needs are met or that facilities operate safely or without interruption. Furthermore, the determination of minimum services and the minimum number of workers providing them should involve not only the public authorities, but also the relevant employers' and workers' organizations. This not only allows a careful exchange of viewpoints on what in a given situation can be considered to be the minimum services that are strictly necessary, but also contributes to guaranteeing that the scope of the minimum service does not result in the strike becoming ineffective in practice because of its limited impact, and to dissipating possible impressions in the trade union organizations that a strike has come to nothing because of over-generous and unilaterally fixed minimum services. Finally, the Committee recalls that what is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country. Moreover, this concept is not absolute, in the sense that a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population [see* ***Digest****, op. cit., paras 582, 607 and 612].*

1115. *Consequently, the Committee requests the Government to take the necessary steps to review, in consultation with the social partners concerned, its legislation relating to the exercise of the right to strike in public services to ensure the determination of a minimum service in accordance with the principles of freedom of association recalled above. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case.*

The Committee's recommendations

1116. ***In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) While noting that Mr Assali no longer carries out trade union activities within the UST, the Committee requests the Government to indicate whether

his passport has actually been returned to him. Furthermore, the Committee urges the Government to guarantee in future that all trade union leaders in the country enjoy full freedom of movement when carrying out their mandate, in particular the freedom to participate in trade union activities organized abroad and in ILO meetings without being hindered in any way.

(b) The Committee once again urges the Government to carry out an investigation without delay into the allegations concerning the intervention of the security forces at the Labour Exchange on 5 June 2007, and the occupation for about ten days of the head office of the SET, and to provide an explanation in this regard.

(c) Noting that two years have passed since the MOU of 20 June 2007 was signed, the Committee requests the Government to indicate any concrete steps taken to hold fresh negotiations with the workers' organizations which have not signed the MOU in order to find a solution to the pending issues that is acceptable to all parties.

(d) The Committee requests the Government to ensure in future that trade union organizations will not be restricted with regard to any action that they may decide to take jointly to defend the interests of workers.

(e) The Committee requests the Government to take the necessary steps to review, in consultation with the social partners concerned, its legislation concerning the exercise of the right to strike in public services to ensure the determination of a minimum service in accordance with the principles of freedom of association. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of the present case.

CASE NO. 2672

INTERIM REPORT

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

Allegations: The complainant organization alleges the following acts by the authorities: refusal to register a new trade union confederation; refusal to authorize the holding of press conferences by the founders of the confederation; refusal to negotiate with first-level trade unions in the Gafsa mining region; and the questioning and intimidation of a trade union leader by the police

1117. The complaint is contained in communications of the Liaison Committee of the Tunisian General Confederation of Labour (CGTT), dated 4 June and 4 December 2008.

1118. The Government sent its observations in communications dated 26 November 2008 and 28 January 2009.

1119. Tunisia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

1120. In a communication dated 4 June 2008, the Liaison Committee and founder of the CGTT first of all provides an overview of the trade union movement in Tunisia. According to the complainant organization, the practice of trade unionism, particularly within the Tunisian General Labour Union (UGTT), is based on a model of governance and operation characterized by centralism, concentrated authority, a personalization of power, an office with extensive and far-reaching powers and a fear of divergent opinions, positions and practices. The complainant organization indicates that these concepts also reflect a nationalist culture which has not broken away from the notions prevailing during the colonial period and demonstrate an inability to adapt as soon as it was necessary to evolve as an independent State in a new political, economic and social situation. In addition, since the trade union movement was unable to develop democracy within the movement itself, it therefore proved incapable of influencing the country's political development towards a democratization of civil and political society.

1121. The complainant organization indicates that the creation of a new democratic, progressive and autonomous trade union organization offers a dynamic alternative to the block currently faced and has therefore aroused the interest of the country's trade unionists and media. The CGTT does not identify with any political party in power or in opposition. The trade unionism sought would be based on the following pillars: the defence of the fundamental social and economic rights of workers; the involvement of trade unionism as an efficient actor in social transformation; the safeguarding of the autonomy of the trade union movement in relation to the various entities of power, both political, ideological and economic. The CGTT specifies that its ambition is to reshape the Tunisian trade union movement by overhauling its concepts, methods of work and operation. In this regard, the CGTT aspires to modernize the machinery for industrial action and to train trade union leaders to constitute a force for submitting claims and proposals in the fight against labour exploitation and precarious employment. The complainant organization intends to take advantage of the trade union experience in the country while at the same time taking into account the Belgian, Spanish and Scandinavian experiences of trade union pluralism, which it regards as success stories.

1122. The complainant organization indicates that a liaison committee was set up and that its function is to ensure follow-up of the establishment of trade unions at the enterprise level, federations and local and regional unions, in preparation for a national constituent congress of the CGTT. Trade unionists, the public and the media, both in Tunisia and around the world, were to be informed of the CGTT's establishment. The CGTT's executive committee was to be established on 2–4 December 2007, but the complainant organization indicates that this proved impossible.

1123. The complainant organization recalls the constitutional and legislative provisions which guarantee freedom of association and the right to establish trade unions without prior administrative authorization. For example, although certain formal obligations have to be fulfilled when establishing a trade union organization, they are limited to informing the authorities. Despite this, the complainant organization claims that it has been facing an increasing number of obstacles since its announced establishment, which are intended to prevent its existence and its normal operation. A press conference, scheduled for Thursday,

1 February 2007, to officially announce its establishment, was prohibited by the authorities. On 13 February 2007, certain members of the Liaison Committee, Mr Habib Guiza and Mr Mohamed Chakroun, attempted to file the by-laws of the newly established organization, which had been established in accordance with section 250 of the Labour Code, but their request was turned down point-blank at the seat of the Tunis Governorate. A second press conference intended to inform the public and the media of the organization's establishment, due to be held on 7 December 2007, was also arbitrarily prohibited by the authorities.

1124. The complainant organization then describes the process of establishing trade unions at the enterprise level, which were to form the first-level trade unions of the CGTT. In this regard, it indicates that the initial notifications of their establishment were addressed to the Governor of Gafsa, a mining region. These notifications included, as required under sections 242, 250 and 252 of the Labour Code, the by-laws of the trade union and the complete list of its officials, including the first name and surname, nationality, filiation, place and date of birth, occupation and address of each person. The trade union leaders then informed the management of the Compagnie des phosphates de Gafsa (CPG) of the establishment of their trade unions in a communication dated 4 September 2007, but received no reply. The lack of reply prompted the trade union leaders, on 5 May 2008, to report the CPG to the Regional Directorate for Social Affairs and National Solidarity for violation of the aforementioned sections of the Labour Code and ILO Convention No. 87. In the absence of a response from the authorities, the trade unions in question organized a gathering on 15 May 2008 at the head office of the mining enterprise and at the Regional Directorate for Social Affairs in Gafsa. They demanded the recognition of the trade unions established and the start of collective bargaining with a view to finding solutions to the difficulties encountered by workers of the enterprise and by inhabitants of the mining area in general.

1125. The complainant organization adds that, during the mobilization in the Gafsa region, Mr Habib Guiza, coordinator of the CGTT Liaison Committee, was summoned to the Tunis central police station and questioned for two hours on the legality of the trade union organization and on the action taken by the trade unions in the Gafsa region. He was asked to cease his trade union activities, which were deemed illegal, but he refused on the basis of the national legislation and international Conventions. As a reprisal measure, the police prevented access to the premises of the Tunis training centre of the Association Mohamed Ali, chaired by Mr Guiza.

1126. In its communication dated 4 December 2008, the complainant organization indicates that, in the context of the commemoration of the 84th anniversary of the establishment of the first Tunisian trade union organization, the General Confederation of Tunisian Workers, created on 3 December 1924, a meeting of officials of the Tunisian General Confederation of Labour was planned for 30 November 2008 in Tunis. However, the trade unionists were surprised to find that the meeting venue was surrounded by police in considerable number, who informed them that the meeting had been cancelled and blocked access to the intended meeting venue. The complainant organization alleges that this situation is an additional arbitrary measure intended to prevent it from carrying out its activities. It once again recalls that the exercise of the right to organize is a fundamental public freedom contained in the international Conventions ratified by Tunisia, in the national legislation and in the Constitution.

B. The Government's reply

1127. In its communications dated 26 November 2008 and 28 January 2009, the Government recalls that the right to organize is guaranteed under article 8 of the Tunisian Constitution. Consequently, the legislation provides for the freedom to establish trade union

organizations without the prior authorization of the public authorities (section 242 of the Labour Code). The only requirement is the completion of a number of formalities intended to inform the public of the establishment of a trade union. For instance, the founders of a trade union simply have to file its by-laws and the list of persons making up its executive committee with the Governorate or Delegation in which the trade union is located (section 250 of the Labour Code). The public authorities may not therefore hinder the establishment of the CGTT. The Government states that checks carried out with the authorities showed that the CGTT did not complete the legal formalities required for the establishment of a trade union.

1128. Furthermore, with regard to the establishment of trade unions in the Gafsa region, the Government indicates that neither public nor private employers are obliged under any text to reply to a trade union which sends them information on its establishment. At best, the employer may make a note of it.

1129. With regard to the request for meaningful negotiations to be held in the mining area to respond to the difficulties of workers, the Government provides the following information: the CPG is a public enterprise created in 1896 which employs 6,000 workers and provides indirect work for 10,000 people. As a public enterprise, the CPG is governed by the general conditions of service of State employees. At the same time, the CPG has its own special regulations governing its relations with its employees. Since 1990, the CPG, like all public enterprises, has held negotiations every three years aimed at improving the conditions of work of its employees. Since 2008, and in the context of the seventh round of labour negotiations, the CPG has been negotiating with the UGTT which, according to the Government, is the only legally established trade union organization to date. The Government adds that trade union representativeness, which is governed by the provisions of section 39 of the Labour Code, is used to determine the most representative trade union for collective bargaining purposes.

1130. The Government draws attention to the fact that requesting negotiations to resolve the problems of inhabitants of the mining area, as called for by the CGTT, does not come under trade union rights, given that under section 243 of the Labour Code, occupational trade unions have the sole purpose of examining and defending the economic and social interests of their members. The Government adds that the Gafsa region has undergone constant development during the last twenty years with investment totalling more than 1.8 billion US dollars, which has had an impact on all aspects of the life of the region's inhabitants, especially their social well-being. In 2008, the Gafsa region benefited from a series of supplementary investment measures in all sectors of economic life (agricultural projects and the creation of industrial and technological complexes, redevelopment funds for the area, a project for the creation of a cement works and a factory for the production of higher phosphate triacid and the development of tourist sites). The Government indicates that the public authorities have always resolved the problems of the inhabitants of the Gafsa mining area with the diligence and solicitude required to improve their conditions of work.

1131. With regard to the complainant's allegations concerning the alleged questioning of the coordinator of the CGTT Liaison Committee and the prevention of access to the Tunis training centre of the Association Mohamed Ali, the Government states that it has carried out the necessary checks and declares those allegations unfounded. The Government observes that no proof has been supplied by the party concerned.

1132. Finally, with regard to the allegations concerning the surrounding by police of the venue for a meeting planned to commemorate the 84th anniversary of the General Confederation of Tunisian Workers established on 3 December 1924, the Government indicates that it carried out the necessary checks and declares those allegations unfounded. Since no plans

for a gathering were ever announced, no authority had any knowledge of it and could therefore neither authorize nor prohibit it. The Government indicates that the national legislation guarantees trade union organizations the freedom to carry out their activities, including holding meetings, provided that they complete certain administrative formalities required for all public, trade union, political or other meetings. With regard to the commemoration of certain events, a prior declaration to the competent authorities is required in accordance with Act No. 69-4 of 24 January 1969, concerning public meetings, processions, parades, demonstrations and gatherings. The Government adds that the presence of the police in the event of a gathering is always motivated by the desire to avoid threats to law and order.

1133. The Government concludes by indicating that the recent ratification of the Workers' Representatives Convention, 1971 (No. 135), shows its determination to strengthen trade union rights and the facilities granted to trade union representatives. It confirms that the allegations made by the complainant organization are unfounded.

C. The Committee's conclusions

1134. *The Committee observes that, in the present case, the complainant's allegations relate to the refusal of the authorities to recognize the establishment of the CGTT and authorize it to hold press conferences to inform the public of its establishment; the questioning of the coordinator of the CGTT Liaison Committee at the Tunis central police station; the prevention by the authorities of access to the Tunis training centre of the Association Mohamed Ali, which is chaired by the coordinator of the CGTT Liaison Committee; the lack of reply from the authorities and from a public mining enterprise in the Gafsa region to the claims of newly established trade unions; and the surrounding by police of the venue for a meeting planned to commemorate the 84th anniversary of the creation of the first Tunisian trade union organization, the General Confederation of Tunisian Workers.*

1135. *With regard to the establishment of the CGTT, the Committee notes that the complainant organization alleges obstacles to its establishment and its activities since its announced creation. The complainant organization states that the initiative for its creation was the signature by 500 trade unionists of a "platform for a radical reform of the Tunisian trade union movement" in December 2006. The Committee notes the indication that the platform gave an overview of national trade unionism and proposed an alternative for the future, in particular the establishment of trade union pluralism through the creation of the CGTT as an alternative to the existing trade union. However, the complainant organization reports in particular that the authorities prevented a press conference from being held which was planned for Thursday, 1 February 2007, to officially announce its establishment, that the request made by the members of the Liaison Committee, Mr Habib Guiza and Mr Mohamed Chakroun, on 13 February 2007, to register the filing of the by-laws was turned down at the Tunis Governorate, and that the authorities once again prevented a second press conference from being held, which was planned for 7 December 2007. The Committee notes that, according to the complainant organization, these acts by the public authorities violate not only the international Conventions ratified by Tunisia, in particular Convention No. 87, but also the provisions of the Constitution (article 8), as well as the relevant provisions of the Labour Code, which establish freedom of association and the freedom to establish trade union organizations without prior administrative authorization (sections 242 and 250). The Committee notes that under section 242 of the Labour Code, "Trade unions or occupational associations of persons engaged in the same occupation, similar trades or related occupations connected with the production of specific products or in the same liberal profession may be established freely". The Committee further notes that, according to section 250 of the Labour Code, "The founders of any occupational trade union shall, as soon as the union has been established, file the following documents at the seat of the Governorate or Delegation in which its headquarters are located, or send*

such documents by recorded delivery in quintuplicate to the same: (1) its by-laws; (2) the complete list of the persons responsible in any way for its administration or management. The list shall indicate the first name, surname, nationality, filiation, date and place of birth, occupation and address of the persons concerned. A copy of all these documents shall be retained at the seat of the Governorate or Delegation in which they are filed. The Governor shall send a copy to the Secretary of State for the Interior, a second to the Secretary of State for Youth, Sport and Social Affairs, and a third to the public prosecutor at the court of first instance in the judicial district in which the union's headquarters are located. The last copy stating the date of filing by the receiving authority shall be handed over or sent to the filing parties immediately. Finally, any amendment to the by-laws or to the abovementioned list shall immediately give rise to a new filing of these documents, under the same conditions".

1136. *The Committee notes that the legislative provisions, as drafted, appear to be in line with the principles that it always recalls concerning the establishment of a trade union organization, namely that the right to official recognition through legal registration is an essential facet of the right to organize since that is the first step that workers' or employers' organizations must take in order to be able to function efficiently and represent their members adequately [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth edition, 2006, para. 295]. Furthermore, national legislation providing that an organization must file its by-laws is compatible with Article 2 of Convention No. 87 if it is merely a formality to ensure that those rules are made public.*

1137. *The Committee notes the allegation that the steps required by the national legislation were taken in February 2007 but that no reply was received from the authorities. The Committee further notes that, in its replies, the Government merely indicates that checks carried out with the competent authorities showed that the CGTT did not complete the legal formalities required for the establishment of a trade union. The Committee notes that more than two years have passed since the founders of the CGTT attempted unsuccessfully to file the by-laws of the organization and wishes to recall that the formalities prescribed by law for the establishment of a trade union should not be applied in such a manner as to delay or prevent the establishment of trade union organizations. Any delay caused by authorities in registering a trade union constitutes an infringement of Article 2 of Convention No. 87. 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* ***Digest****, op. cit., paras 279 and 307]. Consequently, the Committee hopes that, provided that the CGTT completes the formalities prescribed in the Labour Code concerning the establishment of an occupational trade union, the authorities will not fail to recognize its legal personality quickly. The Committee requests the Government to keep it informed of any developments in this regard and, if applicable, to indicate any element taken into account by the Tunis Governorate as grounds for refusing to register the CGTT. The Committee also requests the Government to indicate the legislative provisions which provide for recourse against any obstacle to the filing of trade union by-laws, including any refusal to register a trade union.*

1138. *The Committee notes the complainant's indication that press conferences planned for 1 February and 7 December 2007, to inform the public and the media of the establishment of the CGTT were prohibited by the authorities. The Committee notes that the Government does not provide any comments on this matter. The Committee requests the Government to indicate the reasons for the authorities prohibiting the holding of two CGTT press conferences on its establishment.*

1139. *The Committee also notes that, according to the complainant organization, in the context of the commemoration of the 84th anniversary of the establishment of the first Tunisian*

trade union organization – the General Confederation of Tunisian Workers created on 3 December 1924 – a meeting of CGTT officials was planned for 30 November 2008 in Tunis. However, the meeting venue was allegedly surrounded by police in considerable number, who informed them that the meeting had been cancelled and blocked access to the intended meeting venue. In this regard, the Committee notes the Government's reply that checks carried out with the competent authorities showed that the meeting was never announced and that no authority was therefore aware of the meeting and could therefore neither authorize nor prohibit it. According to the Government, the national legislation guarantees trade union organizations the freedom to carry out their activities, including holding meetings, provided that they complete certain administrative formalities required for all public, trade union, political or other meetings. With regard to the commemoration of certain events, a prior declaration to the competent authorities is required in accordance with Act No. 69-4 of 24 January 1969, concerning public meetings, processions, parades, demonstrations and gatherings. The Government adds that the presence of the police in the event of a gathering is always motivated by the desire to avoid threats to law and order.

1140. *The Committee expresses its concern at the allegations of repeated violations of the exercise of the right of assembly and freedom of expression. The Committee notes the Government's indication that these allegations are unfounded. In this regard, the Committee recalls firstly that trade union rights include the right to organize public demonstrations and that the right to hold trade union meetings is an essential aspect of trade union rights. Although the requirement of administrative permission to hold public meetings and demonstrations is not objectionable per se from the standpoint of the principles of freedom of association, it must be ensured that this permission is not arbitrarily refused. Furthermore, in general, the use of the forces of order during trade union demonstrations should be limited to cases of genuine necessity. Furthermore, the Committee recalls that the right to express opinions through the press or otherwise is an essential aspect of trade union rights [see* ***Digest****, op. cit., paras 150 and 155]. The Committee therefore requests the Government to guarantee fully all workers' organizations, including the CGTT Liaison Committee, the right to organize public meetings falling within the exercise of trade union rights, insofar as they comply with the general provisions on public meetings applicable to all, and to resort to the use of force only in situations where law and order would be seriously threatened.*

1141. *The Committee also expresses its concern with regard to the allegations concerning the questioning of Mr Habib Guiza, coordinator of the CGTT Liaison Committee, at the Tunis police station for two hours on the legality of the trade union organization and the action taken by trade unions in the Gafsa region. The Committee notes the indication that Mr Guiza was asked to cease his trade union activities, which were deemed illegal, but that he refused to do so on the basis of the national legislation and international Conventions. As a reprisal measure, the police prevented access to the Tunis training centre of the Association Mohamed Ali chaired by Mr Guiza. The Committee notes the Government's reply that checks were carried out with the competent authorities, that the complainant's allegations are completely unfounded, and that no proof has been supplied of the alleged questioning of Mr Guiza or of the prevention of access to the Tunis training centre of the Association Mohamed Ali.*

1142. *Noting the contradictory information provided by the complainant organization and the Government, the Committee recalls the importance it attaches to the principle that measures depriving trade unionists of their freedom on grounds related to their trade union activity, even where they are merely summoned or questioned for a short period, constitute an obstacle to the exercise of trade union rights [see* ***Digest****, op. cit., para. 63], and requests the Government to ensure respect for this principle.*

1143. *The Committee notes the description provided by the complainant organization of the process for establishing trade unions in enterprises in the Gafsa mining region. It notes that these trade unions were to form the first-level unions of the CGTT and that the initial notifications of their establishment, including, as required by the Labour Code, the union's by-laws and the complete list of its officials, including the first name and surname, nationality, filiation, date and place of birth, occupation and address of each person, were sent to the Governor of Gafsa. The trade union leaders then informed the management of the CPG, a public enterprise, of the establishment of their trade unions in a communication dated 4 September 2007, but received no reply. The lack of reply prompted the trade union leaders, on 5 May 2008, to report the CPG to the Regional Directorate for Social Affairs and National Solidarity for violation of the aforementioned sections of the Labour code and ILO Convention No. 87. Finally, the Committee notes that, according to the complainant organization, the lack of reply from the authorities prompted the trade unions in question to organize a gathering on 15 May 2008 at the head office of the mining enterprise and at the Regional Directorate for Social Affairs in Gafsa to demand that the trade unions established be recognized and that collective bargaining start with a view to finding solutions to the difficulties encountered by workers at the enterprise and by inhabitants of the mining area in general.*

1144. *The Committee observes that, in its reply, the Government indicates firstly that neither public nor private employers are obliged under any text to reply to a trade union which sends them information on its establishment. At best, the employer might take note of such information. Furthermore, with regard to the request made by the newly established trade union organizations to engage in meaningful negotiations in the mining area to respond to the difficulties of workers, the Committee notes the detailed information provided by the Government concerning the CPG, which is a public enterprise employing 6,000 workers governed by the general conditions of service of State employees. At the same time, the CPG has its own special regulations governing its relations with its employees. The Committee notes the information provided by the Government on the negotiations held every three years by the CPG, like all public enterprises, for the purpose of improving the working conditions of its employees. The Committee notes that the CPG negotiates with the UGTT, which, according to the Government, is the only legally established trade union to date.*

1145. *The Committee notes that, according to the Government, requesting negotiations to resolve the problems of the inhabitants of the mining area, as called for by the CGTT, does not come under trade union rights, given that, under section 243 of the Labour Code, occupational trade unions have the sole purpose of examining and defending the economic and social interests of their members. The Government further states that over the last twenty years, it has invested more than 1.8 billion US dollars in the development of the Gafsa region and describes the impact that this has had on all aspects of the life of the region's inhabitants, in particular on their social well-being. The Committee, recalling that Article 4 of Convention No. 98 encourages and promotes the development and utilization of machinery for collective bargaining on terms and conditions of employment, notes that the objective of the establishment of trade unions in the mining area is, according to the CGTT's statements, to solve the problems encountered by workers in the enterprise situated in that area, which, in the Committee's view, falls within the scope of the collective bargaining referred to in the Convention.*

1146. *The Committee recalls that nothing in Article 4 of Convention No. 98 places a duty on the Government to enforce collective bargaining by compulsory means with a given organization; such an intervention would clearly alter the nature of bargaining. However, the Committee has previously had cause to indicate that it would also not be contrary to this provision to oblige social partners, within the framework of the encouragement and promotion of the full development and utilization of collective bargaining machinery, to*

*enter into negotiations on terms and conditions of employment. The public authorities should however refrain from any undue interference in the negotiation process [see **Digest**, op. cit., paras 927 and 928]. With regard to the determination of the trade union(s) eligible to engage in bargaining, the Committee notes that the Government refers to the provisions of section 39 of the Labour Code which lay down the procedure for determining the most representative trade union for collective bargaining purposes. The Committee notes that, according to this section, in the event of a dispute on the most representative nature of one or more trade union organizations, an order of the Secretary of State for Youth, Sport and Social Affairs, issued following consultation with the National Social Dialogue Committee, shall determine which of the organizations in question shall be called upon to conclude the collective agreement in the context of the branch of activity and territory concerned. The Committee also notes the indication that negotiations are held with the CPG and the UGTT, which the Government regards as the only legally established trade union organization.*

1147. *Taking into account that declaration, the Committee urges the Government to indicate the recognized status of the trade union organizations established in the enterprises in the Gafsa region which, according to the complainant organization, sent their by-laws and the list of members of their executive committees by recorded delivery to the Governor of Gafsa on 26 July 2007. If applicable, the Committee requests the Government to indicate why these organizations are not regarded as legally established.*

1148. *The Committee notes that it has already had cause to remind the Government in a previous case of the principles to which it attaches importance concerning the determination of trade union representativeness in a given sector (see Case No. 2592, 350th Report, paras 1540–1588). In the present case, the Committee considers that it is not its role to express a view on the representativeness of any trade union body in the mining sector or in any enterprise within the sector. However, the Committee recalls that it is important that the determination of the representativeness of trade unions for the purposes of collective bargaining is based on objective and pre-established criteria so as to avoid any opportunity for partiality or abuse. In this regard, taking into account the Government's reference to section 39 of the Labour Code, the Committee requests the Government to indicate the objective and pre-established criteria which have been set for determining the representativeness of the social partners in accordance with this section in the CPG enterprise or in the mining sector of the Gafsa region. If such criteria have not yet been established, the Committee hopes that the Government will take all the necessary steps to establish them in consultation with the social partners and that it will keep it informed of any developments in this regard.*

The Committee's recommendations

1149. ***In the light of its foregoing interim conclusions, the Committee requests the Governing Body to approve the following recommendations:***

(a) The Committee trusts that, insofar as the CGTT has completed the formalities laid down in the Labour Code concerning the establishment of an occupational trade union, the authorities will not fail to recognize its legal personality rapidly. The Committee requests the Government to keep it informed of any developments in this regard and, if applicable, to indicate any element taken into account by the Tunis Governorate as grounds for refusing to register the CGTT.

(b) The Committee requests the Government to indicate the legislative provisions which provide for recourse against any obstacle to the filing of trade union by-laws, including any refusal to register a trade union.

(c) The Committee requests the Government to guarantee fully all workers' organizations, including the CGTT Liaison Committee, the right to organize public meetings falling within the exercise of trade union rights provided that they comply with the general provisions concerning public meetings applicable to all, and to resort to the use of force only in situations where law and order would be seriously threatened.

(d) The Committee requests the Government to indicate why the authorities prohibited the holding of two press conferences by the CGTT on its establishment.

(e) Taking into account the Government's statement that it regards the CGTT as the only legally established trade union organization, the Committee urges it to indicate the recognized status of the trade union organizations established in the enterprises of the Gafsa region which, according to the complainant organization, sent their by-laws and the list of members of their executive committees by recorded delivery to the Governor of Gafsa on 26 July 2007. If applicable, the Committee requests the Government to indicate why these organizations are not regarded as legally established.

(f) The Committee requests the Government to indicate the objective and pre-established criteria that have been set for determining the representativeness of the social partners in accordance with section 39 of the Labour Code in the CPG enterprise or in the mining sector of the Gafsa region. If such criteria have not yet been established, the Committee hopes that the Government will take all the necessary steps to establish them in consultation with the social partners and that it will keep it informed of any developments in this regard.

Geneva, 5 June 2009. *(Signed)* Professor van der Heijden
Chairperson

Points for decision:

Paragraph 242;
Paragraph 257;
Paragraph 271;
Paragraph 289;
Paragraph 304;
Paragraph 363;
Paragraph 398;
Paragraph 423;
Paragraph 440;
Paragraph 484;
Paragraph 589;
Paragraph 628;
Paragraph 680;
Paragraph 725;
Paragraph 840;
Paragraph 884;
Paragraph 927;
Paragraph 950;
Paragraph 992;
Paragraph 1018;
Paragraph 1036;
Paragraph 1063;
Paragraph 1085;
Paragraph 1116;
Paragraph 1149.