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NINTH ITEM ON THE AGENDA

Reports of the Committee on Freedom of Association

374th 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 12, 13 and 20 March 2015, under the chairmanship of Professor Paul van der Heijden.

2. The following members participated in the meeting: Mr Albuquerque (Dominican Republic), Mr Cano (Spain), Ms Onuko (Kenya), Mr Teramoto (Japan), Mr Titiro (Argentina), Mr Tudorie (Romania), Employers' group spokesperson, Mr Syder, and members Mr Echavarría, Mr Frimpong and Mr Matsui; Workers' group spokesperson, Mr Veyrier and members Mr Asamoah, Ms Mary Liew Kiah Eng, Mr Martínez, Mr Ohrt and Mr Ross. The member of Colombian nationality was not present during the examination of the cases relating to Colombia (Cases Nos 2946, 2960 and 3034).

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3. Currently, there are 151 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 32 cases on the merits, reaching definitive conclusions in 23 cases and interim conclusions in nine cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

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

4. The Committee considers it necessary to draw the special attention of the Governing Body to Cases Nos 2254 (Bolivarian Republic of Venezuela) and 2318 (Cambodia) because of the extreme seriousness and urgency of the matters dealt with therein.

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

5. The Committee deeply regrets that it was obliged to examine the following cases without a response from the Government: 2318 and 2655 (Cambodia) and 2902 (Pakistan). Moreover, in light of the continuing failure of the Government to provide the information requested on serious matters, the Committee decided to invite the Government of Cambodia, by virtue of its authority as set out in paragraph 69 of the procedures for the examination of complaints alleging violations of freedom of association, to come before it at its next session in May 2015.

Urgent appeals

6. As regards Cases Nos 2203 (Guatemala), 2723 (Fiji), 2753 (Djibouti), 2794 (Kiribati), 2869 (Guatemala), 2989 (Guatemala), 3004 (Chad), 3018 (Pakistan), 3040 (Guatemala), 3062 (Guatemala), 3064 (Cambodia), 3067 (Democratic Republic of the Congo), 3070 (Benin) and 3105 (Togo), the Committee observes that, despite the time which has elapsed since the submission of the complaints, it has not received the observations of the governments. The Committee draws the attention of the governments in question to the fact that, in accordance with the procedural rules set out in paragraph 17 of its

127th Report, approved by the Governing Body, it may present a report on the substance of these cases if their observations or information have not been received in due time. The Committee accordingly requests these governments to transmit or complete their observations or information as a matter of urgency.

New cases

7. The Committee adjourned until its next meeting the examination of the following cases: 3107 (Canada), 3108 (Chile), 3109 (Switzerland), 3110 (Paraguay), 3111 (Poland), 3112 (Colombia), 3113 (Somalia), 3114 (Colombia), 3115 (Argentina), 3116 (Chile), 3117 (El Salvador) and 3118 (Australia), 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

8. The Committee is still awaiting observations or information from the governments concerned in the following cases: 2177 and 2183 (Japan), 2949 (Swaziland), 2957 (El Salvador), 3076 (Republic of Maldives), 3081 (Liberia), 3086 (Mauritius), 3090 (Colombia), 3091 (Colombia), 3093 (Spain), 3094 (Guatemala), 3095 (Tunisia), 3097 (Colombia), 3099 (El Salvador), 3100 (India), 3101 (Paraguay), 3102 (Chile), 3103 (Colombia) and 3104 (Algeria).

Partial information received from governments

9. In Cases Nos 2265 (Switzerland), 2445 (Guatemala), 2673 (Guatemala), 2743 (Argentina), 2817 (Argentina), 2824 (Colombia), 2830 (Colombia), 2889 (Pakistan), 2896 (El Salvador), 2897 (El Salvador), 2948 (Guatemala), 2962 (India), 2967 (Guatemala), 2978 (Guatemala), 2987 (Argentina), 2994 (Tunisia), 2997 (Argentina), 3003 (Canada), 3007 (El Salvador), 3010 (Paraguay), 3017 (Chile), 3023 (Switzerland), 3047 (Republic of Korea), 3048 (Panama), 3061 (Colombia), 3078 (Argentina), 3089 (Guatemala), 3092 (Colombia) and 3106 (Panama), the governments have sent partial information on the allegations made. The Committee requests all these governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

Observations received from governments

10. As regards Cases Nos 2508 (Islamic Republic of Iran), 2609 (Guatemala), 2648 (Paraguay), 2761 (Colombia), 2786 (Dominican Republic), 2871 (El Salvador), 2923 (El Salvador), 2927 (Guatemala), 2958 (Colombia), 2960 (Colombia), 2968 (Bolivarian Republic of Venezuela), 2970 (Ecuador), 2982 (Peru), 3016 (Bolivarian Republic of Venezuela), 3019 (Paraguay), 3025 (Egypt), 3026 (Peru), 3027 (Colombia), 3035 (Guatemala), 3042 (Guatemala), 3046 (Argentina), 3049 (Panama), 3051 (Japan), 3053 (Chile), 3054 (El Salvador), 3055 (Panama), 3059 (Bolivarian Republic of Venezuela), 3060 (Mexico), 3063 (Colombia), 3065 (Peru), 3066 (Peru), 3068 (Dominican Republic), 3071 (Dominican Republic), 3072 (Portugal), 3074 (Colombia), 3075 (Argentina), 3079 (Dominican Republic), 3080 (Costa Rica), 3082 (Bolivarian Republic of Venezuela), 3083 (Argentina), 3085 (Algeria), 3087 (Colombia), 3088 (Colombia), 3096 (Peru) and 3098 (Turkey), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

Article 26 complaint

11. The Committee requests the Government of Belarus to provide any additional information it wishes to draw to the Committee's attention in respect of the measures taken to implement the recommendations of the Commission of Inquiry.

Transmission of cases to the Committee of Experts

12. The Committee draws the legislation aspects of the following cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations: 3029 (Plurinational State of Bolivia), and 3044 (Croatia).

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

Case No. 2944 (Algeria)

13. The case was last examined by the Committee at its meeting in March 2013 and concerns allegations of a systematic refusal by the authorities to process the applications to register, submitted by the trade union organizations [see 367th Report, paras 113–142]. On that occasion, the Committee requested the Government to indicate whether the Higher Education Teachers' Union (SESS) had responded to its requests for additional information, and stated that it had expected the Government to have been able to proceed with the trade union organization's registration (recommendation (a)). In addition, the Committee requested the Government to keep it informed of the outcome of the registration process of the National Autonomous Union of Workers of the SONELGAZ Group and the National Autonomous Union of Postal Workers (SNAP), and expected that they would be registered quickly and without further delay (recommendation (b)) [see 367th Report, para. 142].

14. The SESS sent information in a communication dated 8 April 2013 on the additional steps taken at the request of the authorities since the presentation of the complaint. In particular, SESS indicates that it filed its amended statutes in November 2012 taking into account the comments made by the Ministry of Labour. However, there has been no follow-up despite several representations being made by the trade union representatives before the Ministry. At the last meeting, the official in charge of social dialogue reportedly stated that the case was closed from an administrative point of view and that the issue was henceforth a matter of policy. In February 2013, trade unionists and human rights activists were allegedly unlawfully detained for several hours by the police at a gathering organized to request the trade union's registration and an end to anti-union repression.

15. In a communication dated 11 May 2014, SNAP indicated that it still had not received its registration certificate despite the steps taken to have the Ministry of Labour withdraw all its reservations at the various meetings held since 2012 (the reservations were notably in relation to the amendments to the statutes, the change of seat and the disqualification of a trade union member). The SNAP indicates that because it is not registered it is denied all legal existence or official recognition. It is therefore impossible for it to organize its activities, such as having a bank account, providing information by means of publications, and holding general meetings, thereby making it impossible for it to protect the interests of its members.

16. The Government gave an outline of the follow-up to the recommendations of the Committee in a communication dated 12 February 2014 in which it indicates that the

National Autonomous Union of Workers of the SONELGAZ Group was registered on 30 December 2013. The Government also reported the registration of several other trade union organizations in 2013 (the National Autonomous Union of Primary School Teachers (SNAPAP); the National Trade Union of Certified Civil and Building Engineers (SNIAGCB); the National Autonomous Board of Imams and Civil Servants for Religious Affairs and Walis (CNAIFSARW); and the National Organization for Micro-enterprises). The Government indicates, moreover, that the SESS and SNAP cases are being processed and that it will inform the Committee of the outcome.

17. *The Committee takes note of the information provided by the complainants and the Government. While noting with satisfaction the registration of SONELGAZ, the Committee expresses its concern at the particularly long delay in processing the registration of SESS and SNAP – whose applications for registration were submitted in January and June 2012 respectively – despite the fact that these organizations have stated that they have met all the conditions set by the authorities in the registration process. In particular, the Committee notes with concern SNAP's claim that because the union is not registered it is prevented from carrying out its routine business and adequately protecting the interests of its members, and 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 of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 307]. The Committee expects the Government to register SESS and SNAP without delay provided they have met the conditions required by the administration, and to be kept informed in this regard.*

Case No. 2225 (Bosnia and Herzegovina)

18. This case was last examined by the Committee at its November 2003 session, when it requested the Government to take the necessary measures to finalize the registration of the Confederation of Independent Trade Unions of Bosnia and Herzegovina (SSSBiH) [see 332nd Report, paras 363–381].

19. In its communication dated 7 December 2012, the complainant organization informed the Committee that, after more than ten years, SSSBiH had been entered into the Register of Associations and Foundations of Bosnia and Herzegovina with the Ministry of Justice.

20. In communications dated 22 February 2013 and 9 January 2014, the Government stated that it had taken concrete measures to amend existing legislation, including the Law on Associations and Foundations of Bosnia and Herzegovina, so as to ensure an easy and efficient registration procedure, with reasonable time limits and full autonomy for those associations and foundations. The Government indicated that the SSSBiH was registered with the Ministry of Justice on 8 May 2012. *The Committee notes with satisfaction that the SSSBiH was registered on 8 May 2012, thus resolving this long-standing issue.*

Case No. 2808 (Cameroon)

21. The Committee last examined this case, concerning allegations of interference by the management of the National Social Insurance Fund (CNPS) in the business of the National Union of Employees, Supervisors and Managers of Banks and Financial Establishments of Cameroon (SNEGCBEFCAM), at its meeting in October 2013 [see 370th Report, paras 19–21]. In this respect, the Committee regretted the absence of any inquiry by the authorities into the allegations of interference and reiterated its recommendation that Mr Amogo Foe's rights be restored without delay in accordance with the order issued by the Regional Labour and Social Security Office for the Centre Province on 1 February

2010, and that Mr Foe receive full compensation for any harm suffered in this case. The Committee had, moreover, requested the Government to keep it informed of Mr Oumarou Woudang's employment situation and the outcome of the proceedings pertaining to the dispute currently before the Regional Labour and Social Security Office for the Centre Province [see 370th Report, para. 21].

22. In a communication of 31 October 2013, the complainant organization states that, because no penalty that was sufficiently dissuasive was imposed on the CNPS, the CNPS continues to interfere in the affairs of the SNEGCBEFCAM. For example, the complainant organization alleges that the CNPS suspended workers' union dues for six months, resulting in loss of profits for the union amounting to almost 15 million Central African CFA Francs (US$25,800). Moreover, the CNPS has forbidden the trade union from organizing any internal activity and the staff delegates are being prosecuted or brought before the disciplinary board for defamation by the general management of the CNPS. The complainant organization states that no action has been taken with regard to the Committee's recommendations concerning Mr Amogo Foe's situation. Lastly, concerning the Committee's recommendation that the labour inspectorate should examine Mr Oumarou Woudang's case, the labour inspectorate did examine the case but, since the CNPS refused to resolve the matter, the inspectorate simply drew up a memorandum of non-conciliation.

23. *The Committee notes with concern that, in a communication of 30 January 2014, which provides an update of the cases still pending before the Committee, the Government does not provide any information regarding the outstanding issues which were the subject of recommendations or in response to the new allegations made by the complainant organization. The Committee emphasizes the seriousness of the allegations made by the complainant organization in its communication of October 2013, reporting the continued interference of management in the activities of the SNEGCBEFCAM by means of financial penalties, banning the trade union from carrying out any activities within the institution and the disciplinary and legal measures brought against the trade union delegates. The Committee expects the relevant administrative authorities, especially the labour inspectorate, to launch an immediate inquiry into the allegations and the Government to keep it informed of the relevant outcome or follow-up.*

24. *In addition, the Committee is obliged to reiterate, once again, its previous recommendations and urges the Government to be more cooperative by reporting: (i) if Mr Amogo Foe has had his rights restored in accordance with the order issued by the Regional Labour and Social Security Office for the Centre Province on 1 February 2010, specifying whether he has received compensation for the harm suffered in this case; and (ii) Mr Oumarou Woudang's employment situation and, following the failure of the conciliation procedure by the labour inspectorate, the outcome of the proceedings pertaining to the dispute.*

Case No. 2430 (Canada)

25. The Committee last examined this case at its November 2011 meeting [362nd Report, approved by the Governing body at its 312th Session, paras 39–44]. Noting that the issues raised in this case were pending before the Ontario Labour Relations Board (OLRB), the Committee expected that the ongoing dispute would be resolved by that body without delay, in consultations with the parties, in order to effectively guarantee that part-time academic and support staff employed in Ontario's public colleges fully enjoy the right to organize. The Committee also requested the Government to keep it informed of any further developments in relation to this matter.

26. In a communication dated 4 September 2013 transmitted by the Government of Canada, the Government of Ontario indicates that, on 12 August 2013, the OLRB dismissed two certification applications that the Ontario Public Service Employees Union (OPSEU) had filed in respect of part-time college employees. In both cases, the OLRB determined that the union had not met the 35 per cent threshold for either bargaining unit (which is the threshold for obtaining a representation vote under the Colleges Collective Bargaining Act (CCBA), 2008). The Government recalls that, under section 31 of the Act, if the College Employer Council (CEC) gives notice objecting to the union's estimate of the number of employees in a bargaining unit for which the union seeks certification as a bargaining agent, the OLRB must make a determination of the number; if the number of persons who appear to be members of the union is less than 35 per cent of the number in the bargaining unit, the Board must dismiss the union's application.

27. *The Committee recalls that it had examined this case, which initially concerned provisions of the Colleges Collective Bargaining Act, RSO 1990, c. 15, that denied all public colleges' part-time employees the right to join a union and engage in collective bargaining, for the first time in November 2006. At its March 2010 meeting, it noted with satisfaction the Government's indication that the CCBA came into effect on 8 October 2008 and that the new legislation gave part-time and sessional faculty and part-time support staff at Ontario's colleges the right to bargain collectively; established two new province-wide bargaining units for colleges (one for part-time and sessional faculty staff and one for part-time support staff) and a certification process to allow part-time employees to unionize and bargain collectively modelled on the process in place for other workers in Ontario who are covered by the Labour Relations Act (LRA), 1995; and included other reforms to modernize the collective bargaining process for the college sector to give the parties more ownership and control over the process as it exists in other sectors covered by the LRA.*

28. *The Committee further recalls that, in April 2010, the complainant – the National Union of Public and General Employees (NUPGE) – requested the Committee to reopen its examination of this case and alleged that, despite the amendments made to the CCBA, part-time workers employed by Ontario's public colleges were still being denied their fundamental right to join unions and bargain collectively. The complainant argued that the amendments to the CCBA were rendered meaningless by other sections of the Act, which allowed employers to prevent unions from representing part-time employees at the province's 24 community colleges. Specifically, under the amended Act, 35 per cent of affected workers must sign union cards in order for the OLRB to order a vote. Pursuant to section 31, colleges are allowed to challenge the number of cards the union has signed if they suspect that the union has not signed enough cards, a privilege that employers have taken advantage of. To justify these challenges, employers must produce their own lists of the numbers of employees affected by the certification vote. The complainant alleged that employers "flooded" these lists with employees who clearly would not be part of the union bargaining unit, resulting in mediation and litigation at the OLRB that can take months or even years. Furthermore, the complainant noted that union card signing could take months, as Ontario's 24 colleges are spread across the province. Because of this dispersal, the colleges could manipulate the timing of the workers' contracts to limit the number of signed union cards. The complainant acknowledged that, the amended CCBA did allow part-time college workers to unionize, but argued that to date, it was completely failing in practice.*

29. *The Committee recalls that, at its November 2011 meeting, it noted the Government's indication that in May and July 2011, the OLRB had issued several interim decisions regarding determination of the status of certain categories of individuals in respect of the membership in the bargaining units and that consultations at the OLRB were expected to continue. The Committee had further noted the complainants' indication that the process*

was hopelessly mired down in legal arguments with no prospect of an end in sight and observed that the ballots cast by the workers remained uncounted. The Committee notes that, in its decisions dated 12 August 2013 (transmitted by the Government), the OLRB, having determined that the OPSEU had not met the 35 per cent threshold requirement, dismissed the union's applications.

30. *The Committee expresses its concern at what appears to be a very lengthy process of certification of a collective bargaining agent for the part-time staff employed at community colleges in Ontario. In light of the above and in the absence of any new information on the developments following the 2013 OLRB decisions, the Committee requests the Government to review, in consultations with the social partners, the provisions of the CCBA so as to ensure that the procedures in place are not prone to excessive delays and manipulation that might effectively impede the right of part-time employees to bargain collectively. In the meantime, the Committee requests the Government to indicate the manner in which part-time academic and support staff employed in Ontario's public colleges can currently exercise their collective bargain rights.*

Case No. 2602 (Republic of Korea)

31. The Committee last examined this case at its March 2012 session [see 363rd Report, paras 438–467], when it made the following recommendations:

(a) The Committee requested the Government to keep it informed of the final outcome of the judicial proceedings concerning the case of a worker dismissed from the Hyundai Motor Company (HMC) Ulsan factory and any other concrete developments illustrating the impact of the Supreme Court ruling of 22 July 2010 on the situation of workers in a disguised employment relationship.

(b) The Committee once again requested the Government to develop, in consultation with the social partners concerned, appropriate mechanisms, including an agreed process for dialogue determined in advance, aimed at strengthening the protection of subcontracted/agency workers' rights to freedom of association and collective bargaining, guaranteed to all workers by the Trade Union and Labor Relations Adjustment Act (TULRAA), so as to prevent any abuse of subcontracting as a way to evade in practice the exercise by these workers of their trade union rights; urged the Government to take all necessary measures to promote collective bargaining over the terms and conditions of employment of subcontracted/agency workers in the metal sector, in particular in HMC, KM&I and Hynix/Magnachip, including through building negotiating capacities, so that trade unions of subcontracted/agency workers in these companies may effectively exercise their right to seek to improve the living and working conditions of their members through negotiations in good faith; and to provide a copy of the "Self-compliance Checklist for the Guideline for Subcontracted Workers".

(c) The Committee once again urged the Government to carry out without delay independent investigations into: (i) the dismissals of the subcontracted/agency workers in HMC Ulsan and Jeonju and, if these workers are found to have been dismissed solely on the grounds that they staged industrial action against a "third party", that is, the principal employer (subcontracting company), to ensure that they are reinstated in their posts without loss of pay as a primary remedy. If the judicial authority determines that reinstatement of trade union members is not possible for objective and compelling reasons, adequate compensation should be awarded to remedy all damages suffered and prevent any repetition of such acts in the future, so as to constitute a sufficiently dissuasive sanction against acts of anti-union discrimination; and (ii) the alleged acts of violence perpetrated by private security guards against trade unionists during rallies at HMC Asan and Ulsan and at Kiryung Electronics and, if they are confirmed, to take all necessary measures to punish those responsible and compensate the victims for any damages suffered. Moreover, following the Supreme Court ruling of 25 June 2009 and the High Court ruling of 8 December 2009, the Committee requested the Government to confirm the reinstatement of the unfairly dismissed workers of HMC Asan Plant.

(d) Concerning the allegations of acts of anti-union discrimination and interference at Hynix/Magnachip and at HMC (Ulsan factory and Asan Plant) through the termination of contracts with subcontractors in case of establishment of trade unions of subcontracted workers, the Committee once again urged the Government to take the necessary measures to reinstate the dismissed trade union leaders and members as a primary remedy; if the judicial authority determined that reinstatement was not possible for objective and compelling reasons, adequate compensation should be awarded to remedy all damages suffered and to prevent any repetition of such acts in the future, so as to constitute a sufficiently dissuasive sanction against acts of anti-union discrimination.

(e) The Committee once again requested the Government to take the necessary measures to: (i) ensure that "self-employed" workers, such as heavy goods vehicle drivers, fully enjoy freedom of association rights, in particular the right to join organizations of their own choosing; (ii) to hold consultations to this end with all the parties involved with the aim of finding a mutually acceptable solution so as to ensure that workers who are self-employed could fully enjoy trade union rights under Conventions Nos 87 and 98 for the purpose of furthering and defending their interest, including by the means of collective bargaining; and (iii) in consultation with the social partners concerned, to identify the particularities of self-employed workers that have a bearing on collective bargaining so as to develop specific collective bargaining mechanisms relevant to self-employed workers, if appropriate. The Committee also requested the Government to take the necessary measures to: (i) ensure that organizations established or joined by heavy goods vehicle drivers have the right to join federations and confederations of their own choosing, subject to the rules of the organizations concerned and without any previous authorization; and (ii) withdraw the recommendation made to the Korean Construction Workers' Union (KCWU) and the Korean Transport Workers' Union (KTWU) to exclude owner drivers from their membership, and refrain from any measures against these federations, including under article 9(2) of the Enforcement Decree of the TULRAA, which would deprive trade union members of being represented by their respective unions. The Committee requested to be kept informed of all measures taken or envisaged in this respect.

(f) The Committee requested the Government to take the necessary measures, in consultation with the social partners, to amend the provisions of the TULRAA and its Enforcement Decree, so as to ensure that workers' organizations are not liable to dissolution or suspension by an administrative authority or at least that such an administrative decision is subject to appeal to a judicial authority with suspensive effect. It requested the Government to keep it informed in this respect.

(g) Expressing once again great concern at the excessively broad legal definition of "obstruction of business" encompassing practically all activities related to strikes, the Committee once again urged the Government to take all necessary measures without delay so as to bring article 314 of the Penal Code "obstruction of business" into line with freedom of association principles, and to keep it informed in this regard; and expected that the Government and the judicial authorities would put in place adequate safeguards so as to avert in future the possible risks of abuse of judicial procedure on grounds of "obstruction of business" with the aim of intimidating workers and trade unionists, and that the courts in their rulings would take due account of the need to build a constructive industrial relations climate in the context of individual industrial relations.

(h) The Committee expected that the above recommendations would be implemented without further delay; urged the Government to keep it informed in this respect; and reminded the Government that it may avail itself of the technical assistance of the Office to this end.

32. In a communication dated 30 January 2013, the Government provided further information. In relation to the information previously provided by the Government that some companies were able to refuse inspection, the Government indicated further that labour inspections at HMC factories failed to take place as the HMC trade union and in-company subcontractors' unions blocked the labour inspector's on-site inspection. The Government

states that, in principle, it is in a position that it can conduct inspections on in-company subcontracting when necessary.

33. The Government further indicates that, in a separate case, the Korean Metal Workers' Union (KMWU) and HMC in-company subcontractors' unions etc., have brought a charge against 147 HMC executives and in-company subcontractors over illegal dispatch. To this end, the Ministry of Employment and Labor is conducting an investigation under the direction of the Prosecutor's Office as to whether the HMC in-company subcontracting practices are an illegal form of worker dispatch.

34. In relation to the judicial proceedings concerning the case of a worker dismissed from the HMC Ulsan factory, the Government indicated that, on 23 February 2012, the Supreme Court rejected an appeal by the HMC factory, finding that this was an illegal form of worker dispatch and the HMC was required to directly employ the worker. On 22 November 2012, the HMC management, its in-company subcontractors, their trade unions and the KMWU attended "special negotiations" and the worker was assigned to a permanent position at HMC on 9 January 2013.

35. In relation to the impact of the Supreme Court ruling of 22 July 2010 on the situation of workers in a disguised employment relationship, the Government indicated that it had designed a workplace inspection sheet reflecting the intent of the court decision and that this is used in labour inspections, reinforcing workplace inspections to ensure that in-company subcontracting is not operated in an illegal form of worker dispatch.

36. In relation to the Government's efforts to correct illegal subcontracting and the mechanism to prevent illegal forms of worker dispatch, the Government indicated that the Act on the Protection, etc. of Dispatched Workers (APDW) was partially amended on 1 February 2012, with an enforcement date of 2 August 2012, so that the contracting company was placed under an obligation to directly employ the worker concerned, regardless of the period of employment, in the case of an illegal form of worker dispatch. Previously, the APDW specified that an employer using a dispatched worker for over two years shall directly employ the worker concerned.

37. Further, the Government states that, in 2012, it had conducted inspections on 2,558 workplaces including those that used a large number of in-house subcontractors, cafeteria services, agencies and those suspected of unlicensed worker dispatch. Correction orders were issued to the workplaces found to be illegally subcontracting, resulting in employers directly employing 2,489 of the workers concerned, as at the end of November 2012. The Government states that it plans to enforce strict measures on illegal forms of worker dispatch through continuous workplace inspections.

38. The Government indicates that the "Guidelines for Protection of Subcontracted Workers' Working Conditions" include provisions specifying that the contracting employer shall respect legitimate trade union activities of subcontracted workers and that the activities shall not be grounds for terminating or refusing to renew a contract with the in-company subcontractor. It also included that the worker representative of the subcontractor shall be granted the opportunity to attend the contracting company's labour-management committee consultations or meetings to express opinions concerning desirable cooperative measures. The Government is making efforts to disseminate the guidelines through measures such as concluding guideline compliance agreements with 11 large businesses, including Hyundai Heavy Industries, where subcontractors are widely used. The Government attaches a copy of the "Self-compliance Checklist for the Guideline for Subcontracted Workers", which contains a similar provision concerning the need to respect trade union activities of subcontracted workers and specifying that trade union activities shall not be grounds for terminating or refusing to renew a contract with a subcontractor.

39. In relation to the dismissals of subcontracted/agency workers in HMC Ulsan, the Government took the opportunity to elaborate on the developments in the case as follows. The Government states that the 89 workers dismissed from the HMC Ulsan factory in 2004–2005 filed an application for a remedy for unfair dismissals to the Busan Regional Labor Relations Commission against the HMC and the subcontractors on 23 February 2005. The Commission dismissed the case against the HMC on the grounds that there was no direct employment relationship with the concerned workers; with regard to the subcontractors, the Commission dismissed the applications against the companies that had closed down, and ruled that the dismissals at the other companies were lawful. The Government indicates that those 89 workers filed an application for a retrial to the National Labor Relations Commission (NLRC). On the NLRC's rejection of the application, 15 of the workers filed a further suit; the Administrative Court and High Court both ruled that the decision of the NLRC was legitimate (on 10 July 2007 and 12 February 2008, respectively). The Government explains that two of the workers filed a lawsuit with the Supreme Court which, on 22 July 2010, ruled that the relation of those workers with the HMC was an illegal dispatch and that one of the two workers who had worked there for more than two years was deemed a worker directly employed by the HMC. The Government states that the case was sent back to the High Court to re-address the unfair dismissal of the workers. Consequently, on 10 February 2011, the High Court quashed the earlier decisions of the NLRC and the Administrative Court. The Supreme Court subsequently dismissed an appeal by the HMC, on 23 February 2012, and the worker concerned was assigned to a permanent position at the HMC on 9 January 2013.

40. In relation to the dismissal of workers at the HMC Jeonju Plant, the Government states that, on an application by the four workers, the NLRC upheld the dismissals on 21 July 2006. The Government indicates that a suit filed by the workers on 28 August 2006, was withdrawn by the workers on 22 March 2007, following the closure in July 2006 of the company for which these four workers had worked. The Government indicates that three of the four workers were hired at another HMC subcontractor in April 2007 and the other worker runs his own business.

41. In relation to the alleged acts of violence by private security guards at HMC Asan and Ulsan and at Kiryung Electronics, the Government stresses that violence should not be tolerated in any circumstances. The Government reiterates that the claim that workers were subjected to violence on the grounds of their union activities was found to be groundless, and labour and management blamed each other for the violence. The Government reasserts that those who commit violence should take legal responsibility, no matter whether they are union members or employers. The Government states that it was difficult to investigate the extent of the violence and the exact happenings, because the violence took place in a situation of escalating hostility between labour and management when violence was prevalent, and this is rendered even more difficult now that over eight years has passed.

42. In relation to the reinstatement of dismissed workers at the HMC Asan Plant, the Government reiterates that two of the dismissed workers were unable to be reinstated as the company for which they had worked had closed down on 1 September 2008. The Government further states that the suspension order for the other worker was cancelled and he was reinstated before the company closed down; the worker continued working at the company that took over until leaving it for another job on 1 December 2009.

43. In relation to the unfair labour practices at Hynix/Magnachip, the Government reiterates that there were continuous efforts for conciliation between labour, management and Government, resulting in Hynix/Magnachip tentatively concluding an agreement on 26 April 2007 including provisions such as the payment of compensation to union members of the subcontractors and supporting the reinstatement of union members. On 4 May 2007, the agreement was approved by labour and management and there has been

no particular industrial dispute as of 2012. In the case of unfair labour practices at HMC Ulsan and Asan, the Government referred to its previous comments. The Government states that Korean law prohibits anti-union discrimination and punishes it as unfair labour practice, and the Government follows legal procedures in taking measures on unfair labour practices. The Government considers that it is undesirable to pose problems to the Government for matters that have already been concluded by the Courts or through agreement between labour and management.

44. In relation to the question concerning the "obstruction of business", the Government indicates that, following the Supreme Court's decision of 17 March 2011, the case applying "obstruction of business" charges against the Vice-Chairperson of the KMWU, who had led the Ssangyong Motor strike in July 2008, was returned to the High Court on 27 October 2011. The High Court referred to the Supreme Court's decision, indicating that the strike did not constitute serious confusion or material damage on the operation of the employer's business given that from among the workplaces that took part in the strike, nine out of 182 workers participated in the partial strike. Therefore, it considered that the circumstances involving these workplaces did not overwhelm the free will and judgement of the employer as to the continuance of business.

45. *The Committee notes the detailed information provided by the Government. With respect to its previous recommendation (a), the Committee notes with satisfaction the Government's indications that the worker dismissed from the HMC Ulsan factory was assigned to a permanent position at the HMC on 9 January 2013, and welcomes the information that labour inspectors utilize a workplace inspection sheet reflecting the intent of the 22 July 2010 Supreme Court ruling. The Committee further welcomes the information provided by the Government that 2,558 workplaces were inspected during 2012 and that it plans to enforce strict measures on illegal forms of worker dispatch through workplace inspections. The Committee requests the Government to provide information on any developments in this regard.*

46. *The Committee requests the Government to keep it informed of the outcome of the investigation by the Prosecutor's Office as to whether the HMC subcontracting practices are an illegal form of worker dispatch, and any other developments in this regard.*

47. *With respect to its previous recommendation (b), the Committee welcomes the inclusion of clauses protecting trade union rights of subcontracted workers in the guidelines and self-compliance checklist for protection of working conditions of subcontracted workers, and requests the Government to keep it informed with regard to their impact in practice.*

48. *In light of these positive efforts, the Committee encourages the Government to review with the social partners concerned what further mechanisms could be developed in order to strengthen the protection of subcontracted/agency workers' rights to freedom of association and collective bargaining, guaranteed to all workers by the TULRAA and to prevent any abuse of subcontracting as a way to evade in practice the exercise by these workers of their trade union rights.*

49. *Noting that the Government has not indicated any steps taken to promote collective bargaining for subcontracted and agency workers in the metal sector, which was specifically the subject of the allegations, the Committee once again urges the Government to indicate all necessary measures taken to this end, in particular as regards HMC, KM&I and Hynix/Magnachip, including through building negotiating capacities, so that trade unions of subcontracted/agency workers in these companies may effectively exercise their right to seek to improve the living and working conditions of their members through negotiations in good faith.*

50. *The Committee welcomes the amendment made to the Act on the Protection of Dispatched Workers and requests the Government to provide a copy of the Act as amended in 2012.*

51. *Noting that the Government has not indicated any steps taken with respect to its previous recommendation (e), the Committee once again requests the Government to keep it informed of all measures taken to give effect to this recommendation.*

52. *Noting that the Government has not indicated any measures taken with respect to its previous recommendation (f), the Committee once again requests the Government, in consultation with the social partners, to amend the provisions of the TULRAA and its Enforcement Decree, so as to ensure that workers' organizations are not liable to dissolution or suspension by an administrative authority or at least that such an administrative decision is subject to appeal to a judicial authority with suspensive effect. It requests the Government to keep it informed in this respect.*

53. *With respect to its previous recommendation (g) regarding article 314 of the Penal Code, the Committee notes the Government's information concerning the High Court's decision in that case, that strike did not constitute serious confusion or material damage on the operation of the employer's business, and indicates that the broader question of Article 314 is being treated under Case No. 1865.*

Case No. 2836 (El Salvador)

54. In its previous examination of the case, the Committee made the following recommendations on matters still pending [see 367th Report of the Committee, paragraph 60]:

> The Committee urges the Government to take all the necessary steps, including through dialogue in the Commission consisting of the Human Rights Ombudsman and several religious authorities, to ensure that the governing body of the Legislative Assembly proceeds to reinstate the Secretary-General of SITRAL, Mr Luis Alberto Ortega Ortega, and that this trade union is recognized without delay.

55. In its communication dated 25 June 2013, the Trade Union of Workers of the Legislative Assembly (SITRAL) stated that the Legislative Assembly continued to refuse to reinstate union leader Mr Luis Alberto Ortega Ortega, despite the provisional order issued by the Constitutional Chamber of the Supreme Court ordering his reinstatement.

56. In its communication dated 16 January 2015, the Government states that, in accordance with the Committee's recommendations, it forwarded its conclusions and recommendations to the Legislative Assembly specifically so that the governing body of the Legislative Assembly could proceed to reinstate the Secretary-General of SITRAL, Mr Luis Alberto Ortega Ortega, and to recognize the trade union without delay. The Government adds that, in light of the above, the Legislative Assembly complied with the Constitutional Chamber of the Supreme Court's decisions and the Committee's recommendations, namely by reinstating Mr Luis Alberto Ortega Ortega in his post, who has been working as usual in the institution in question since July 2014 and, moreover, continues to serve as Secretary-General of SITRAL.

57. Regarding the recognition of SITRAL, the Committee takes note that the Government states that the National Department of Social Organizations of the Ministry of Labour and Social Welfare approved the statutes of SITRAL through Resolution No. 56/2010 of 21 September 2010, and at the same time granted legal status to the trade union. It also granted credentials to the governing body of SITRAL for the period of 31 July 2014 to 30 July 2015.

58. *The Committee notes with satisfaction the reinstatement of the trade union leader, Mr Luis Alberto Ortega Ortega, and the granting of credentials to the governing body of the complainant union.*

Case No. 2679 (Mexico)

59. The Committee last examined this case at its June 2013 meeting. It concerns alleged anti-union dismissals of insurance sales agents who are members of the Union of General Insurance Sales Agents in the State of Jalisco (SAVSGEJ) and the cancellation of the union's registration [see 368th Report, paras 61–63]. On that occasion, the Committee requested the Government to inform it of the outcome of the ongoing judicial proceedings concerning the anti-union dismissals.

60. In its communication dated 6 May 2014, the SAVSGEJ informs the Committee that the legal proceedings in three of the six cases of dismissal are still ongoing: the proceedings concerning Ms María Cristina Vergara Parra (Case No. 1097/2008); Ms María del Socorro Guadalupe Acevez González (Case No. 1254/2008), who, since her dismissal, has been affected by the non-renewal of the policies she was managing; and Mr Martin Ramírez Olmedo (Case No. 83/2009). To its communications dated 6 May 2014 and 19 June 2014, the SAVSGEJ appends certified copies of letters that it sent to the President of the Republic, the Secretary of Labour and Social Welfare of Mexico, and the Secretary of Finance and Public Credit of Mexico, in which it requested a meeting to discuss the grave situation of insurance agents in the absence of the most basic social welfare entitlements.

61. In a communication dated 23 May 2014, the Government provides detailed information on the judicial proceedings concerning anti-union dismissals on the basis of the information provided by the Local Conciliation and Arbitration Board of Jalisco State (JLCA de Jalisco). The Government informs the Committee that Case No. 1099/2008 concerning Mr Lázaro Gabriel Téllez Santana has been closed. The Government states that the defendant enterprise refused to reinstate the worker and was consequently ordered to pay 1 million Mexican pesos (MXN) in compensation. Mr Téllez Santana received the compensation and dropped his appeal and the case was closed as it was fully resolved. The Government informs the Committee that the proceedings in Case No. 993/2008 concerning Mr Alejandro Casarrubias Iturbide, who had already received compensation, were also closed.

62. However, the Government informs the Committee that the following dismissal cases are still pending:

– With regard to Case No. 1222/2008 concerning Ms Rossana Aguirre Díaz, in October 2013 the Allianz Mexico insurance company filed a direct appeal for protection of a constitutional right *(juicio de amparo directo)* against rulings of the JLCA de Jalisco.

– With regard to Case No. 83/2009 concerning Mr Martín Ramírez Olmedo, the Government informs the Committee that the reinstatement process could not be completed because the defendant enterprise, Mapfre Tepeyac SA was not notified of the agreement dated 13 January 2014; as a result, on 18 February 2014, the Fifth Special Board of the JLCA de Jalisco admitted an application for review of the implementation with a view to regularizing the proceedings.

– With regard to Case No. 1097/2008 concerning Ms María Cristina Vergara Parra, the Government informs the Committee that on 27 June 2013, the Fifth Special Board of the JLCA de Jalisco notified the parties of the official response from the National Insurance and Surety Commission in order that they may make comments, as is their right.

– Case No. 1254/2008 concerning Ms María del Socorro Guadalupe Acevez González is at the admission of evidence stage. On 27 January 2014, the Fifth Special Board of the JLCA de Jalisco formally requested the Special Local Conciliation and Arbitration Board of Tecomán, Colima state, to assist it by formally admitting the testimonial evidence from the complainant. Once the requested authority has the date for the admission of evidence, it must communicate it to the Fifth Special Board.

63. *The Committee takes note of the information provided by the Government. While noting that two cases have been resolved, the Committee observes with concern that four of the cases (those concerning Ms Rossana Aguirre Díaz; Mr Martín Ramírez Olmedo; Ms María Cristina Vergara Parra; and Ms María del Socorro Guadalupe Acevez González) remain pending, despite the fact that almost six years have passed since the termination of the employment relationship of the employees concerned. The Committee recalls the principle that "justice delayed is justice denied" [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 105] and firmly expects that these cases will be concluded without delay. The Committee urges the Government to inform it of the outcome of these proceedings as soon as they have been concluded.*

Case No. 2291 (Poland)

64. The Committee last examined this case, which concerns numerous acts of anti-union intimidation and discrimination, including dismissals, lengthy proceedings and non-execution of judicial decisions, at its meeting in June 2013 [see 368th Report, paras 120–123]. On that occasion, with regard to the case against 19 senior managers of SIPMA SA, the Committee requested the Government to: (i) keep it informed of progress made concerning the retrial before the District Court in Lublin of two of the defendants; and (ii) to indicate the status of the proceedings before the Court of Appeal concerning the other 16 defendants. The Committee once again firmly expected that the proceedings pending before the Court of Appeal and the District Court in Lublin would be concluded without any further undue delay, and requested the Government to keep it informed of progress made and to transmit a copy of the judgment once handed down.

65. In its communication dated 9 December 2013, the Government sends copies of three judgments delivered in the case against 19 members of the management staff of SIPMA SA: the decision issues on 29 December 2010 by the District Court in Lublin; a ruling handed down on 27 January 2012 by the Region Court in Lublin; and a decision delivered on 15 March 2013 by the District Court in Lublin.

66. *The Committee notes the information provided by the Government and recalls from its previous examination of the case that, out of the 19 senior managers of SIPMA SA charged with offences – under the Act of 23 May 1991 on the settlement of collective disputes, the Penal Code and the Act of 23 May 1991 on trade unions – on 14 October 2003, 18 were found guilty by the District Court in Lublin on 29 December 2010 and lodged an appeal. The Committee understands from the judgement handed down on 27 January 2012 by the Regional Court in Lublin that: (i) the contested District Court judgement of 29 December 2010 was repealed in whole as regards eight defendants; (ii) the contested District Court judgment was party repealed and partly confirmed as regards two defendants; and (iii) in the case of two defendants, the contested District Court judgment was partly repealed and party quashed for retrial by the District Court in Lublin. In this respect, the Committee understands from the judgment handed down on 15 March 2013, after retrial, that the two defendants have been acquitted and the proceedings against them discontinued. The Committee requests the Government to confirm its understanding as set out above, and to clarify the status of appeal proceedings filed by six defendants (out of the 18) who were not explicitly named in the Regional Court judgment of 27 January 2012.*

* * *

67. 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
1787 (Colombia)	March 2010	June 2014
1962 (Colombia)	November 2002	June 2008
2096 (Pakistan)	March 2004	March 2011
2173 (Canada)	March 2003	June 2010
2341 (Guatemala)	March 2011	June 2014
2384 (Colombia)	June 2008	June 2014
2450 (Djibouti)	March 2011	June 2014
2460 (United States)	March 2007	November 2014
2478 (Mexico)	March 2010	November 2014
2547 (United States)	June 2008	November 2014
2616 (Mauritius)	November 2008	November 2014
2652 (Philippines)	March 2010	October 2013
2700 (Guatemala)	March 2010	March 2011
2715 (Democratic Republic of the Congo)	June 2014	–
2741 (United States)	November 2011	November 2014
2755 (Ecuador)	June 2010	March 2011
2797 (Democratic Republic of the Congo)	March 2014	–
2820 (Greece)	November 2012	–
2870 (Argentina)	November 2012	–
2872 (Guatemala)	November 2011	–
2919 (Mexico)	June 2013	November 2014
2934 (Peru)	November 2012	–
2954 (Colombia)	June 2014	–
2964 (Pakistan)	June 2013	–
2973 (Mexico)	October 2013	–
2980 (El Salvador)	June 2013	–
2995 (Colombia)	November 2014	–
3002 (Plurinational State of Bolivia)	November 2014	–
3020 (Colombia)	November 2014	–
3021 (Turkey)	November 2014	–
3022 (Thailand)	June 2014	–
3036 (Bolivarian Republic of Venezuela)	November 2014	–
3039 (Denmark)	November 2014	–
3041 (Cameroon)	November 2014	–

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

69. In addition, the Committee has received information concerning the follow-up of Cases Nos 1865 (Republic of Korea), 2086 (Paraguay), 2153 (Algeria), 2304 (Japan), 2400 (Peru), 2434 (Colombia), 2453 (Iraq), 2488 (Philippines), 2512 (India), 2528 (Philippines), 2533 (Peru), 2540 (Guatemala), 2583 (Colombia), 2611 (Romania), 2637 (Malaysia), 2656 (Brazil), 2667 (Peru), 2678 (Georgia), 2699 (Uruguay), 2706 (Panama), 2708 (Guatemala), 2710 (Colombia), 2716 (Philippines), 2719 (Colombia), 2725 (Argentina), 2745 (Philippines), 2746 (Costa Rica), 2750 (France), 2751 (Panama), 2752 (Montenegro), 2758 (Russian Federation), 2763 (Bolivarian Republic of Venezuela), 2765 (Bangladesh), 2768 (Guatemala), 2775 (Hungary), 2777 (Hungary), 2780 (Ireland), 2788 (Argentina), 2789 (Turkey), 2793 (Colombia), 2807 (Islamic Republic of Iran), 2815 (Philippines), 2816 (Peru), 2827 (Bolivarian Republic of Venezuela), 2833 (Peru), 2837 (Argentina), 2840 (Guatemala), 2844 (Japan), 2850 (Malaysia), 2852 (Colombia), 2854 (Peru), 2856 (Peru), 2860 (Sri Lanka), 2883 (Peru), 2892 (Turkey), 2895 (Colombia), 2900 (Peru), 2907 (Lithuania), 2915 (Peru), 2916 (Nicaragua), 2929 (Costa Rica), 2947 (Spain), 2952 (Lebanon), 2953 (Italy), 2966 (Peru), 2976 (Turkey), 2977 (Jordan), 2979 (Argentina), 2981 (Mexico), 2985 (El Salvador), 2988 (Qatar), 2991 (India), 2992 (Costa Rica), 2999 (Peru), 3006 (Bolivarian Republic of Venezuela), 3011 (Turkey), 3013 (El Salvador), 3033 (Peru) and 3037 (Philippines), which it will examine at its next meeting.

CASE NO. 2882

INTERIM REPORT

Complaint against the Government of Bahrain presented by
– the International Trade Union Confederation (ITUC) and
– the General Federation of Bahrain Trade Unions (GFBTU)

***Allegations:** The complainants allege serious violations of freedom of association, including massive dismissals of members and leaders of the GFBTU following their participation in a general strike, threats to the personal safety of trade union leaders, arrests, harassment, prosecution and intimidation, as well as interference in the GFBTU's internal affairs*

70. The Committee last examined this case at its March 2014 meeting, when it presented an interim report to the Governing Body [see 371st Report, paras 171–194, approved by the Governing Body at its 330th Session].

71. The Government sent its observations in a communication dated 27 October 2014.

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

A. Previous examination of the case

73. At its March 2014 meeting, the Committee made the following recommendations [see 371st Report, para. 194]:

(a) The Committee requests the Government to continue to keep it informed of the progress made to resolve the remaining cases of dismissal following the 2011 demonstrations, in accordance with the March 2012 Tripartite Agreement and March 2014 Supplementary Tripartite Agreement.

(b) The Committee requests the Government to review with the GFBTU its allegations relating to a defamation campaign against it, so as to enable the Government to conduct an independent inquiry to ensure that Government authorities are not linked to these statements, and to issue a high-level public statement to clarify that trade union leaders and members should not be harassed or intimidated for carrying out legitimate trade union activity domestically or globally. It requests the Government to keep it informed of developments in this regard.

(c) Deeply regretting, once again, that there is still no detailed information on the results of the investigations into the allegations of torture and mistreatment of Abu Dheeb and Jalila al-Salman while in detention, the Committee requests the Government to expedite these investigations without delay and to provide copies of the court judgments convicting them. Observing that their appeals are still pending before the Court of Cassation, the Committee urges the Government also to provide copies of these judgments once they have been rendered, and to ensure that Abu Dheeb is immediately released should it be found that he has been detained for the exercise of legitimate trade union activity.

(d) The Committee expects that the amendments to the Trade Union Act and the Prime Minister's Decision No. 62 of 2006 will be made in the very near future and that they will bring Bahraini law and practice into conformity with Conventions Nos 87 and 98, thus facilitating the Government's ratification of these fundamental Conventions. The Committee reminds the Government that ILO technical assistance is available in this regard and requests the Government to keep it informed of the progress made. The Committee also expects that the Government will take steps without delay for specific legislative provisions to ensure effective implementation of the freedom of association rights of domestic workers.

(e) Finally, the Committee requests the Government to conduct inquiries without delay into the series of allegations raised by the GFBTU, in its communication dated 14 February 2012, of anti-union discrimination and interference by the employer in trade union affairs in the following companies: ALBA, BAS, ASRY, Aluminium Rolling Mill, BATELCO, BAPCO, BAFCO, Gulf Air, Yokogawa Middle East, KANOO cars and Sphynx cleaning. It further requests the Government to provide information on the outcome of these inquiries. The Committee invites the Government to solicit information from the employers' organization concerned on these allegations so that its views, as well as those of the enterprises concerned, may be made available to the Committee.

B. The Government's reply

74. In its communication dated 27 October 2014, the Government indicates that in the light of the Kingdom of Bahrain's success in settling 99 per cent of the cases of workers dismissed in the wake of the events of February and March 2011 and in order to consolidate cooperation between the parties and to resolve the pending matter, the Ministry of Labour, the Bahrain Chamber of Commerce and Industry (BCCI) and the GFBTU concluded, on 10 March 2014, a tripartite agreement finalizing the matter of the dismissed workers. The agreement includes the general principles for finalizing outstanding cases and strengthening tripartite cooperation between the three parties in order to close this file. In this context, the parties to the agreement sent a letter to the ILO requesting the Governing Body to decide that the complaint brought by a group of Workers' delegates at the 100th Session of the ILC alleging non-observance of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), called for no further action on its part. The Government points out that the Governing Body welcomed the Supplementary Tripartite Agreement, 2014, reached by the parties concerned, decided that the complaint required no

further action on its part and declared the matters closed. The Government cites the decision of the Governing Body, which:

(a) welcomed the Supplementary Tripartite Agreement, 2014, reached by the Government, the General Federation of Bahrain Trade Unions (GFBTU) and the Bahrain Chamber of Commerce and Industry (BCCI) which, together with the Tripartite Agreement, 2012, addressed all the issues contained in the complaint and provided for measures to settle all the remaining matters;

(b) invited the Committee of Experts on the Application of Conventions and Recommendations, in its examination of the application by the Government of Bahrain of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), to follow up on the implementation of the Tripartite Agreement, 2012, as well as the Supplementary Tripartite Agreement, 2014;

(c) invited the Office to provide technical assistance, if so required, by the Government of Bahrain, the GFBTU and the BCCI for the full and effective implementation of the Agreements referred to above;

(d) decided that the complaint called for no further action on its part; and

(e) declared closed the procedure under article 26 of the ILO Constitution concerning the abovementioned complaint.

75. The Government indicates that the Ministry of Labour continues to collaborate with the parties with a view to settling any outstanding individual cases and to restore normal labour relations. In light of the above, the Government requests the Committee to close the issue of the dismissed workers.

76. As regards the allegation of a media campaign against the GFBTU, the Government points out that in accordance with the Constitution and the legislation in force, protection of all persons on its territory is one of its primary duties. It notes that no directives were issued to restrict the freedom of union activists or prevent them from travelling. Many of them carry out their activities in complete freedom. The Government further indicates that no complaint about a media campaign against the GFBTU has been submitted to the Ministry of Labour or the judiciary by that organization and that no sanctions against it have been taken by the Government. The Government did not stop it from carrying out its duties either inside or outside of the country. To the contrary, according to the Government, the GFBTU has recently seen a marked upsurge in the activities and events it organizes, alongside the ongoing cooperation between it and a number of bodies inside and outside the country. The GFBTU's participation in tripartite delegations to several international Arab events, of which the most recent was the 41st session of the Arab Labour Conference, as the member on behalf of the Workers' group is an indication of the Government's continuing collaboration with the GFBTU. The Government further refers to the report of the independent Bahraini fact-finding committee, which had reviewed a sample of the national television, radio and press coverage during the events of February and March 2011 and found no evidence of media coverage containing hate speech.

77. As regards the Committee's request for information about the case of the president and vice-president of the Bahrain Teachers Association, the Government indicates that a special investigation unit of the Public Prosecutor's Office had begun an investigation into the allegation that Abu Dheeb was tortured in custody. The case is still under investigation by that unit, which has questioned him and requested the records of the police interrogation. Furthermore, an investigation has been opened by the Public Prosecutor into the allegations that Jalila al-Salman was subjected to torture and abuse while in detention, following a claim to that effect by her attorney. The plaintiff's testimony has been heard

and the Public Prosecutor has requested the records of the police interrogation. This case is still under investigation.

78. As regards the Committee's request for steps to be taken to amend the Trade Union Act and the Prime Minister's Decision No. 62 of 2006, the Government indicates that the said Act is a progressive text, which contains numerous privileges and rights for workers. It considers that the regulations governing trade union activity in the Kingdom of Bahrain are consistent with the international labour standards. The Government further points out that any amendment to national legislation requires a series of constitutional measures, with the amendment needing to be proposed and adopted by the National Assembly before being promulgated. In this respect, the Government explains that the third legislative season of the National Assembly has ended and the country was preparing for the election for the fourth legislative season (November 2014). The Government will inform the Committee of any progress in this matter.

79. As regards the ban on strikes in a number of vital sectors, the Government affirms that the essential services in which it is forbidden to strike are set out in the Prime Minister's Decision No. 62 (2006), which pays due regard to the international labour standards and the principles developed by the Committee on Freedom of Association, which give member States the right to determine those essential services where the stoppage of work would disrupt daily life. This principle is enshrined in section 21 of the Trade Union Act, promulgated under Statute No. 33 (2002), as amended by Act No. 49 (2006), which added further services, including educational institutions and oil and gas enterprises on the list of essential services on grounds of public interest. According to the Government, while the list of essential services in which strikes are forbidden is determined by the Prime Minister, if it becomes clear that one of such services is no longer vital, the list can be amended. The Government indicates that the national legislation provides for the recourse to compulsory conciliation and arbitration to resolve collective labour disputes in these services in order to help forestall resort to strike action by the employees. In the Government's opinion, this is consistent with international labour standards.

80. On the question of ratification of Conventions Nos 87 and 98, the Government indicates that it is continuing its consultation with the social partners and will inform the Committee of any progress in this regard.

81. The Government further states that the situation of trade union rights in a number of private-sector companies referred to in the complaint (ALBA, BAS, ASRY, GARMCO, BATELCO, BAPCO, BAFCO, Gulf Air, Yokogawa Middle East, KANOO cars and Sphynx cleaning) has not been affected. All trade union organizations are still in place and carry out their activities. Their leaders and members enjoy full rights under the Trade Union Act. The Government points out that no trade union has submitted a complaint to the Ministry of Labour regarding impairment of rights or harassment. The Ministry's relevant agencies are fully prepared to investigate and resolve such claims in accordance with the law.

C. The Committee's conclusions

82. *The Committee recalls that this case concerns grave allegations of widespread arrest, torture, dismissals, intimidation and harassment of trade union members and leaders following a general strike action in March 2011 in defence of workers' socio-economic interests. The complainant further alleged acts of interference in the GFBTU's internal affairs through, inter alia, the amendment of the trade union legislation.*

83. *As regards recommendation (a), the Committee notes the Government's indication that it has succeeded in resolving 99 per cent of cases of dismissals occurred following March 2011 events and that the March 2014 Supplementary Tripartite Agreement is being followed up by the Committee of Experts on the Application of Conventions and Recommendations in respect of remaining issues under Convention No. 111.*

84. *As regards recommendation (b) concerning allegations of a media campaign against the GFBTU, the Committee notes the Government's indication that an independent fact-finding commission has reviewed this allegation but found no evidence indicative of such a campaign.*

85. *As regards recommendation (c), the Committee notes the Government's indication that the allegations of torture and ill-treatment of Jalila Al-Salman and Abu Dheeb while in detention are still under investigation. The Committee deplores that nearly four years after the allegations have been made, the investigations have not yet been concluded. It urges the Government to expedite these investigations and emphasizes that in cases of alleged torture or ill-treatment while in detention, governments should carry out inquiries into complaints of this kind so that appropriate measures, including compensation for damages suffered and the sanctioning of those responsible, are taken to ensure that no detainee is subjected to such treatment [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 56]. The Committee requests the Government to inform it of the results of the investigations without delay. The Committee regrets that no information has been provided by the Government on the outcome of the appeals brought by these trade unionists before the Court of Cassation. It therefore once again requests the Government to provide copies of the court judgments, including on appeal, in their cases. It further requests the Government to ensure that Abu Dheeb is immediately released should it be found that he has been detained for the exercise of legitimate trade union activity and to keep it informed in this respect.*

86. *As regards recommendation (d) concerning the Trade Union Act and the Prime Minister's Decision No. 62 of 2006, the Committee notes that the Government considers that the legislation as currently in force is in line with the international labour standards. The Government adds, however, that any amendment requires a series of constitutional procedures, while the third session of the National Assembly has ended and the country was preparing the November 2014 election of the fourth session of the National Assembly. With reference to Case No. 2552 examined in its 349th and 356th Reports (March 2008 and March 2010, respectively), the Committee recalls that it has been commenting upon the need to amend the above pieces of legislation for several years now. Bearing in mind the Government's commitment in the tripartite agreement to work on the possibility of ratifying Conventions Nos 87 and 98 and its indication that it hoped that the Labour Code would be a catalyst for the development of the relationship between the production parties, thereby contributing to the elaboration of the decision to ratify Conventions Nos 87 and 98 [see 364th and 367th Reports (paras 307 and 211, respectively), thus facilitating the Government's ratification of these fundamental Conventions, the Committee reiterates its request made in the framework of Case No. 2552 and expects that the resulting amendments will bring Bahraini law and practice into conformity with freedom of association principles. It reminds it that ILO technical assistance is available in this regard. The Committee also expects that the Government will take steps, without delay, for specific legislative provisions to ensure effective implementation of the freedom of association rights of domestic workers. The Committee requests the Government to keep it informed of the progress made in the above legislative matters.*

87. *Finally, as regards recommendation (e) concerning allegations of anti-union discrimination and interference by the employer in trade union affairs in a number of companies; the Committee notes the Government's indication that: (1) there has been no*

violation of trade union rights at these enterprises; (2) no trade union has submitted a complaint to the Ministry of Labour regarding impairment of rights or harassment; and (3) the Ministry's relevant agencies are fully prepared to investigate and resolve such claims in accordance with the law. The Committee recalls that it had previously requested the Government to conduct inquiries without delay into the specific allegations raised by the GFBTU in its communication dated 14 February 2013 and to provide information on their outcome. The Committee recalls that these allegations concerned anti-union acts by a number of enterprises [see 371st Report, para. 176]:

- *Aluminium Bahrain (ALBA): punitive measures taken by the management with respect to workers who were establishing an alternative union to the BLUFF, resulting in the dismissal of Hussain Ali Al-Radi, Vice-President of the founding committee, Abdel Menhem Ahmad Ali, Secretary, and Nader Mansour Yaakoub, founding committee member. The Ministry of Labour has refused to respond to the grievances they have made. Following the first founding Congress, the union's Secretary-General, Yousif al Jamri, was demoted and punitive measures were taken against executive board members Abdallah Chaaban and Mohamad Achour. Membership dues continue to be transferred to the management-backed union, despite the withdrawal of 500 workers, and the management refuses to recognize and meet the trade union leaders of the newly formed union.*
- *Bahrain Airport Services (BAS): the company refuses to restore the check-off system for union dues, forcibly shutting the union office, unilaterally taking over the management of the savings fund, refusing to respond to GFBTU calls for dialogue and negotiation, while meeting regularly with the BLUFF-affiliated union. Yousuf Alkhaja, President of the BAS trade union, has still not been reinstated. Moreover, Governing Body member Abdullah Hussein's airport access permit has not been renewed due to his trade union work.*
- *Arab Shipbuilding and Repair Yard (ASRY): the trade union's representation on joint committees has been cancelled, while management supports the establishment of a rival union affiliated to the BLUFF. Migrant workers have been pressured to withdraw from the GFBTU-affiliated union and affiliate with the BLUFF union.*
- *Aluminium Rolling Mill: the unilateral cancellation of facilities provided to the Aluminium Rolling Mill Workers' trade union for a full-time president; management has provided support for the creation of a rival union; intimidation and pressure placed on migrant workers to withdraw from the GFBTU-affiliated union and affiliate to the rival management-supported union; favouritism towards the rival union by according free time to its president; the unilateral ending of the collective bargaining process; and the unilateral reduction of privileges obtained through collective agreements.*
- *Bahrain Telecommunications Company (BATELCO): the absence of dialogue on the part of the management with respect to mass dismissals; the freezing of the joint union–management committee under the pretext of confusion due to the recent trade union plurality; the unilateral withdrawal of trade union privileges; and the placing of all three unions at the workplace on an equal footing, despite the representativeness of the GFBTU.*
- *Bahrain Petroleum Company (BAPCO): the management has unilaterally put in place an alternative negotiation mechanism replacing a decade-old agreed mechanism; three trade union board members remain suspended; the trade union office at Jabal Camp has been demolished; all trade union offices have been locked up by management; documents have been confiscated from the Awali office; management issued a circular calling on workers to withdraw their membership from the GFBTU-affiliated union; and all facilities previously granted to the union have been cancelled by management.*
- *Gulf Air: the management dismissed Hussein Mehdi, the GFBTU-affiliated union board member, under the pretext that he was divulging work secrets. Management sent an email asking workers if they wanted to remain members of the GFBTU-affiliated union.*
- *Yokogawa Middle East: management refuses to hold negotiation meetings with the trade union and refuses to delegate its representatives to attend a meeting with the Ministry of Labour to resolve these issues. The President of the union has been transferred and*

harassed in reprisal for his trade union work and he has not been granted full-time trade union status to enable him to carry out his representative functions.

– *Bahrain Aviation Fuelling Company (BAFCO): the re-dismissal of the trade union president, Abdul Khaleq Abdul Hussain, in January 2013, after having transferred him to a job without any specific tasks. All his attempts to rectify the situation were ignored.*

– *The continued refusal to reinstate: former board member of the Banks trade union, Ayman Al Ghadban; the President of the trade union at KANOO cars, Hassan Abdul Karim; and board members of Sphynx trade union for cleaning.*

88. *The Committee 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****, fifth (revised) edition, 2006, para. 817]. The Committee therefore reiterates its previous request and further invites the Government to solicit information from the employers' organization concerned on these allegations so that its views, as well as those of the enterprises concerned, may be made available to the Committee.*

The Committee's recommendations

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

(a) Deploring that nearly four years after the allegations of torture and ill-treatment of Jalila Al-Salman and Abu Dheeb while in detention have been made, the investigations have not yet been concluded, the Committee urges the Government to expedite these investigations and to inform it of the results without delay. The Committee regrets that no information has been provided by the Government on the outcome of the appeals brought by these trade unionists before the Court of Cassation. It therefore, once again, requests the Government to provide copies of the court judgments, including on appeal. It further requests the Government to ensure that Abu Dheeb is immediately released should it be found that he has been detained for the exercise of legitimate trade union activity and to keep it informed of developments in this regard.

(b) Bearing in mind the Government's commitment in the tripartite agreement to work on the possibility of ratifying Conventions Nos 87 and 98, thus facilitating the Government's ratification of these fundamental Conventions, the Committee reiterates its request made in the framework of Case No. 2552 and expects that the amendments to the Trade Union Act and the Prime Minister's Decision No. 62 of 2006 will be made in the very near future and that they will bring Bahraini law and practice into conformity with freedom of association principles. The Committee reminds the Government that ILO technical assistance is available in this regard. The Committee also expects that the Government will take steps without delay for specific legislative provisions to ensure effective implementation of the freedom of association rights of domestic workers. It requests the Government to keep it informed of the progress made in the above legislative matters.

(c) The Committee requests the Government to conduct inquiries without delay into the allegations of anti-union discrimination and interference by the

employer in trade union affairs in the following companies: ALBA, BAS, ASRY, GARMCO, BATELCO, BAPCO, BAFCO, Gulf Air, Yokogawa Middle East, KANOO cars and Sphynx cleaning. It further requests the Government to provide information on the outcome of these inquiries. The Committee invites the Government to solicit information from the employers' organization concerned on these allegations so that its views, as well as those of the enterprises concerned, may be made available to the Committee.

CASE NO. 3029

DEFINITIVE REPORT

Complaint against the Government of Plurinational State of Bolivia presented by the Bolivian Workers' Federation (COB)

Allegations: The complainant organization alleges serious acts of violence against demonstrators, the search of the home of a trade union official, restrictions on the exercise of the right to strike and the declaration by the Ministry of Labour, Employment and Social Welfare that the strike was illegal

90. The complaint is contained in a communication dated 7 June 2013, submitted by the Bolivian Workers' Confederation (COB).

91. The Government sent its observations in a communication of 29 November 2013.

92. The Plurinational State of Bolivia 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

93. In its communication of 7 June 2013, the COB alleges that, in connection with the general strike held in May 2013, serious acts of violence were carried out against demonstrators, and union officials suffered illegal detentions, criminal proceedings and persecution, in violation of the right to strike and the rights enshrined in Convention No. 87. The complainant also reports that the strike was declared illegal by the Ministry of Labour, Employment and Social Welfare and that workers' wages were deducted on the basis of a declaration of illegality by a non-independent body.

94. The complainant indicates that on 5 February 2013 it presented a list of claims to the Government requesting, among other things, the amendment of the Act on Pensions, No. 65. The complainant indicates that, as the Government did not offer concrete solutions to the claims included on the list, on 29 March 2013 negotiations began between the COB and the Government, which concluded on 5 April 2013 with the signing of a Memorandum of Understanding in which they undertook to address the claims included on the list. The complainant organization highlights that, in the Memorandum of Understanding, the

Government adopted a decision to review the Act on Pensions, No. 65, and promised that a joint committee of the Ministry of Economy and Finance and the COB would present a technical and financial review of the Act on 19 April 2013, at the latest.

95. The complainant organization indicates that, in view of the failure to meet the deadlines established in the Memorandum of Understanding and the Government's refusal to engage in dialogue, on 29 April 2013 the COB issued a resolution ("National Resolution") declaring a general strike, involving the suspension of labour activities and continuous demonstrations, including roadblocks throughout the country as of 6 May 2013.

96. The complainant organization adds that during the demonstrations of the general strike, union officials were illegally detained, criminal proceedings were filed against them and they suffered persecution. Workers were the victims of brutal acts of repression at the hands of the national police and some workers in the Cochabamba industrial sector received bullet wounds. The complainant adds that, on 17 May 2013, an armed police officer was identified among the ranks of COB demonstrators in the city of La Paz, and on 18 May 2013 the home of a COB official was searched by unidentified persons, two incidents which remain unexplained.

97. The complainant indicates that the strike organized by the COB was declared illegal by Administrative Resolution No. 131-13 of the Ministry of Labour, Employment and Social Welfare, of 17 May 2013, on the grounds that it was not in conformity with the procedure provided under section 105 of the General Labour Act. According to that provision, "any unscheduled stoppage of work in any enterprise by either employers or workers shall be prohibited until all means of conciliation and arbitration provided under the present title have been exhausted, otherwise the stoppage shall be deemed illegal". The complainant alleges that it complied with the provisions of section 105 of the General Labour Act and explains that the procedure established therein had been interrupted by the signing of the Memorandum of Understanding, which prevented proceeding to arbitration. In any case, the complainant insists that the declaration of illegality must be issued by an independent body, as the Committee has requested in previous cases.

98. On 18 May 2013, the complainant requested the Government to engage in dialogue, and on 20 May 2013 the Government sent a letter to the COB in which it promised that a joint committee of the Ministry of Economy and Finance and the COB would present proposals for amendments to the Act on Pensions within 30 days. The COB accepted the Government's proposal, it lifted the strike and declared a recess, which was maintained during the 30-day period proposed by the Government.

99. On 29 May 2013, the COB together with the Trade Union Confederation of Public Health Workers of Bolivia, the National Federation of Social Security Workers of Bolivia, and the National Federation of Workers of the Oil Workers Health Fund lodged an appeal against Administrative Resolution No. 131-13 declaring the strike illegal, and they requested the Government to annul deductions of up to 50 per cent of workers' wages until a ruling on the appeal had been issued. Lastly, on 6 June 2013, a letter was sent to the Minister of Health (No. 188/2013) indicating that the wage deductions of more than 50 per cent could not be carried out until a ruling had been issued in respect of the appeal against Administrative Resolution No. 131-13 declaring the strike illegal. In the letter, the complainant alleged that the wage deductions that had been applied to workers were illegal because they were carried out while the appeal was still pending resolution.

B. The Government's reply

100. In its communication of 29 November 2013, the Government indicates that the complaint presented by the COB lacks solid arguments to support the accusations made and that the

Government has at all times resorted to dialogue as the only means of reaching a solution with regard to the claims of the COB and its member sectors. In this regard, the Government states that it sent an answer, addressing the 2013 list of claims submitted by the COB point by point, in a document entitled "Government response to the national list of claims of the Bolivian Workers' Federation - 2013".

101. The Government indicates that, in the Memorandum of Understanding signed on 5 April 2013, it undertook to address the list of claims, according the same level of interest to all the points, but that the COB referred to the issue of the Act on Pensions as the most important issue on the 2013 list of claims, thereby accelerating without justification the COB's decision of 29 April to declare a general strike, involving the stoppage of labour activities and continuous demonstrations with roadblocks throughout the country as of 6 May 2013. The Government points out that the trade union's resolution itself implies that the Government did not abandon the dialogue proceedings, since it indicates that the COB rejected the "distracting proposals regarding the review of the Act on Pensions which do not meet the demands laid out in the list of claims". The Government insists that, while it was busy enforcing the Memorandum of Understanding, the COB was the one which rejected its proposals, thereby accelerating the general strike.

102. As regards the argument put forward by the complainant that the signing of the Memorandum of Understanding (with which the Government allegedly failed to comply) interrupted the arbitration procedure, the Government recalls that section 105 of the General Labour Act states that "any unscheduled stoppage of work in any enterprise by either employers or workers shall be prohibited until all means of conciliation and arbitration provided under the present title have been exhausted, otherwise the stoppage shall be deemed illegal". The Government insists that the rule is clear in establishing the requirement of carrying out conciliation and arbitration. Given that the means of conciliation and arbitration provided in the abovementioned Act had not all been exhausted, the strike initiated by the COB was declared illegal in a ruling of the Ministry of Labour, Employment and Social Welfare, No. 131/2013, of 17 May 2013.

103. As regards the request made by the complainant to annul the wage deductions, the Government explains that these were applied on the grounds that the strike had been declared illegal and that the deductions applied to those who were not involved in the strike were reimbursed in subsequent wages. The Government also explains that the deductions were carried out before the hierarchical and administrative appeal process had been exhausted because the appeal lodged by the COB is regulated by the Act of Administrative Procedure No. 2341, section 59 of which establishes that "the lodging of an appeal shall not suspend the execution of the contested ruling". The regulation therefore expressly indicates that the deductions could not be suspended.

104. The Government adds that the complainant does not provide documentary evidence of their allegations of criminal proceedings, the persecution of officials and the violation of trade union immunity, quite simply because they did not take place. The Government indicates that the complainant makes allegations but does not establish the identity of those who received gunshot bullet wounds or the link between the Government and reported searches and raids in their offices. The Government declares that police acted in response to the excesses which occurred during the street demonstrations, which involved the use of explosive materials capable of causing irreparable damage to human beings and material objects, and to the illegal measures taken by the union leadership. The Government indicates that the COB carried out and encouraged illegal actions against State property and internal security, such as the physical occupation of the Jorge Wilsterman International Airport in the city of Cochabamba, and calling for a police riot and the creation of a teachers' lobby group, and it even spread false news regarding a death in the Caihuasi blockade. The actions of the Bolivian authorities aimed to ensure the safety of the

population that was not involved in the conflict, safeguard public and private property, and maintain public order, tranquillity and free movement throughout the national territory, all of which are responsibilities that the Political Constitution of the Bolivian State confers on the central Government. The Government explains that the police operated only in public spaces using anti-riot material and equipment which is routinely used by police forces worldwide.

105. The Government points out that the COB alleges that internal regulations and ILO Conventions have been violated but it does not provide the names of the workers affected by those violations and it does not indicate how the State has violated ILO principles. It also adds that the COB has submitted previous complaints against the Government to the ILO, containing the same arguments but without providing concrete evidence of the way in which the Government appears to have violated ILO Conventions. Furthermore, the Government indicates that the COB's complaint makes no mention of the right that its officials are exercising to form a political party in opposition to the Government, known as the "Workers' Party", which will presumably run in the national elections in 2014. The Government indicates that although the State fully respects the exercise of that right, it knows that the COB expedited the general strike of May 2013 in order to place that political party on the current electoral scene. The Government also indicates that the COB had not exhausted all national legal remedies before submitting its complaint to the ILO.

106. Lastly, the Government indicates that, on 20 May 2013, it sent a note to the COB containing a proposal for the resolution of the dispute. This was initially rejected and then, following further negotiations, the COB accepted the proposal on 10 September 2013, when the collective agreement between the Government and the COB was signed, whereby both parties agreed to the amendment of the Act on Pensions, No. 65.

C. The Committee's conclusions

107. *The Committee observes that, in this case, the complainant alleges that, in connection with a general strike involving public demonstrations over a two-week period in May 2013 in defence of the list of claims which it had submitted and which included the amendment of the Act on Pensions, serious acts of violence were carried out against demonstrators, and union officials suffered illegal detentions, criminal proceedings and persecution, in violation of the right to strike and the rights enshrined in Convention No. 87. The complainant also reports that the strike was declared illegal by the Ministry of Labour, Employment and Social Welfare and that workers' wages were deducted on the basis of a declaration of illegality by a non-independent body.*

108. *First, the Committee notes with interest that the Government reports that, on 10 September 2013, the complainant and the Government resolved the dispute which gave rise to this case by signing a collective agreement in which both parties agreed to the amendment of the Act on Pensions, No. 65.*

109. *Regarding the Government's claim that the strike by the COB was illegal, the Committee observes that the complainant and the Government hold differing points of view in this regard: while the Government claims that the complainant organization did not resort to the conciliation or arbitration measures provided in section 105 of the General Labour Act, and that said section clearly establishes the requirement of exhausting all conciliation and arbitration measures before a strike can be declared legal, the COB considers that recourse to arbitration ceased to be legally possible following the signing of the Memorandum of Understanding. Regarding the fact that the Ministry of Labour, Employment and Social Welfare declared the strike illegal on 17 May 2013, the Committee recalls that in a previous complaint against the Government of the Plurinational State of Bolivia, which was submitted in 2009 (see 353rd Report, paragraph 420), it had examined*

similar allegations and recalled the principle according to which, "[R]esponsibility 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 of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 628]. The Committee therefore requests the Government to take the necessary measures, including proposals on legislative measures where necessary, to ensure that the responsibility for declaring a strike legal or illegal does not lie with the Government but with an independent and impartial body. The Committee also notes the appeal submitted by the complainant organization against Administrative Resolution No. 131-13 declaring the strike by the COB illegal. The Committee submits these issues to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

110. *Regarding the allegation that the wage deductions are illegal because they were carried out while the appeal was still pending against Administrative Resolution No. 131-13 declaring the strike by the COB illegal, the Committee notes that the Government indicates that wage deductions applied to those who were not involved in the strike were reimbursed and that the deductions were carried out while the appeal lodged by the COB was still pending because such appeals are regulated by the Act of Administrative Procedure No. 2341, section 59 of which establishes that "the lodging of an appeal shall not suspend the execution of the contested ruling". The Committee recalls that "[S]alary deductions for days of strike give rise to no objection from the point of view of freedom of association principles" [see* ***Digest****, op. cit., para. 654].*

111. *As regards the allegations of serious acts of violence against demonstrators, illegal detentions, criminal proceedings and persecution against union officials, and the search of the home of one of the union officials in relation to the strike of May 2013, the Committee notes that the Government indicates that: (1) some months before calling the general strike, COB officials created a political party in opposition to the Government, known as the "Workers' Party", which will presumably run in the national elections in 2014, suggesting that the strike in May 2013 was politically motivated; (2) the police acted in response to the excesses which occurred during the street demonstrations, which involved the use of explosive materials capable of causing irreparable damage to human beings and material objects; illegal measures were also taken by the union leadership against State property and internal security, such as the physical occupation of the Jorge Wilsterman International Airport in the city of Cochabamba; (3) the police intervened to guarantee public order using anti-riot material and equipment which is routinely used by police forces worldwide; and (4) the complainant denounces but does not prove the serious acts of violence against protesters, illegal detentions, criminal proceedings or the persecution of union officials, neither does it establish a link between the Government and the reported searches, nor provide the names of the workers affected by those violations. As regards the political motivation for the strike referred to by the Government, the Committee indicates that, according to the complaint, the main reason for the strike was the reform of the Act on Pensions, which is a trade union concern, and which gave rise to negotiations that then led to a collective agreement. As regards the alleged detentions, criminal proceedings and other measures against trade union members, including the search of the home of a union member, although the Committee recalls the principle according to which "[N]o one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike." [see* ***Digest****, op. cit., para. 672]. While the Committee regrets the acts of violence mentioned by the complainant and by the Government, it observes that the complainant has not communicated the names of the union members concerned, nor indicated whether they have filed complaints before the courts in this regard.*

The Committee's recommendation

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

> ***While noting with interest that the dispute that gave rise to this case was resolved by the signing of a collective agreement between the Government and the complainant organization, the Committee again requests the Government to take the necessary measures, including legislative measures if necessary, to ensure that the responsibility for declaring a strike legal or illegal does not lie with the Government but with an independent and impartial body. Noting that the complainant organization lodged an appeal against Administrative Resolution No. 131-13 declaring the strike by the COB illegal, the Committee submits these issues to the attention of the Committee of Experts on the Application of Conventions and Recommendations.***

CASE NO. 2318

INTERIM REPORT

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

Allegation: The murder of three trade union leaders and the continuing repression of trade unionists in the country

113. The Committee has already examined the substance of this case on nine occasions, most recently at its October 2013 meeting where it issued an interim report, approved by the Governing Body at its 319th Session [see 370th Report, paras 144–168].

114. As the Government has not replied, the Committee has been obliged to adjourn its examination of this case on several occasions. At its October–November 2014 meeting [see the Committee's 373rd Report, para. 6], the Committee made an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of the case at its next meeting, even if the observations or information requested had not been received in due time. To date, the Government has not sent any information.

115. 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

116. In its previous examination of the case, regretting the fact that, despite the time that had elapsed, the Government had not provided any observation, the Committee made the following recommendations [see 370th Report, para. 168]:

(a) The Committee deeply deplores that, despite the time that has passed since it last examined this case, the Government has not provided its observations, although it has been invited on a number of occasions, including by means of an urgent appeal, to present its comments and observations on the case. The Committee urges the Government to be more cooperative in the future. The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office.

(b) 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 from intimidation and risk to their personal security and their lives, and that of their families.

(c) The Committee requests the Government to conduct an independent and impartial investigation into the prosecution of Born Samnang and Sok Sam Oeun, including allegations of torture and other ill-treatment by police, intimidation of witnesses and political interference with the judicial process and to keep it informed of the outcome and the measures of redress for their wrongful imprisonment.

(d) Furthermore, the Committee once again strongly urges the Government to ensure that thorough and independent investigations into the murders of Chea Vichea, Ros Sovannareth and Hy Vuthy are carried out expeditiously to ensure that all available information will finally be brought before the courts in order to determine the actual murderers and instigators of these trade union leaders, punish the guilty parties and bring to an end the prevailing situation of impunity as regards violence against trade union leaders. The Committee requests to be kept informed in this regard.

(e) As concerns trade union leader Hy Vuthy, the Committee requests the Government to confirm that the Supreme Court ordered the Phnom Penh Municipal Court to reopen the investigation into his death on 3 November 2010 and to keep it informed of any progress made in this regard.

(f) The Committee further urges the Government to provide detailed observations in relation to the latest allegations of the shooting of demonstrating workers by Chhouk Bandith and the impunity which has allegedly characterized his trial.

(g) Recalling the importance it attaches in this case to capacity building and the institution of safeguards against corruption necessary for the independence and effectiveness of the judicial system, the Committee strongly urges the Government to indicate the steps taken in this regard.

(h) 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.

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

(j) 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 once again strongly urges the Government to inform it of the status of their appeals proceedings and to indicate their current employment status.

(k) 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.

(l) Given the lack of progress on these very essential points, the Committee is bound, once again, to call the Governing Body's special attention to the extreme seriousness and urgency of the issues in this case.

B. The Committee's conclusions

117. *The Committee deeply deplores that, despite the time that has passed since it last examined this case, the Government has not provided its observations, although it has been invited on a number of occasions, including through urgent appeals, to present its comments and observations on the case. The Committee urges the Government to be more cooperative in the future. The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office.*

118. *Hence, in accordance with the applicable rules of procedure [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee finds itself obliged to present a report on the substance of the case without the benefit of the information which it had expected to receive from the Government.*

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

120. *However, the Committee observes that the Government provided some updated information in relation to the complaint during the discussion on the implementation by Cambodia of Convention No. 87 before the Committee on the Application of Standards (CAS) of the International Labour Conference in May–June 2014.*

121. *The Committee recalls, once again, with deep concern the seriousness of this case which relates, inter alia, to the murder of trade union leaders, Chea Vichea, Ros Sovannareth and Hy Vuthy, and to the climate of impunity that exists surrounding acts of violence directed towards trade unionists, and the seriously flawed judicial processes evident throughout this case.*

122. *The Committee recalls, with regard to the Chea Vichea murder trial, that it had previously welcomed a judgment on appeal by the Supreme Court which had definitively acquitted Born Samnang and Sok Sam Oeun and the dropping of all charges against them, and ordered the Phnom Penh Municipal Court to reopen the investigation. The Committee notes the information provided by the Government to the CAS to the effect that the competent authorities are still investigating to determine culpability for the murder. The Committee strongly urges the Government to keep it duly informed of the investigation into the murder of Chea Vichea and to ensure that the perpetrators and the instigators of this heinous crime are brought to justice. The Committee also expects that the Government will conduct an independent and impartial investigation into the prosecution of Born Samnang and Sok Sam Oeun, including allegations of torture and other ill-treatment by police, intimidation of witnesses and political interference with the judicial process, and requests the Government to keep it informed of the outcome and the measures of redress provided for their wrongful imprisonment.*

123. *Furthermore, the Committee once again strongly urges the Government to ensure that thorough and independent investigations into the murders of Ros Sovannareth and Hy Vuthy are also carried out expeditiously and to keep it duly informed of the progress made in this regard.*

124. *In its previous examination of the case, the Committee had noted with concern allegations regarding the shooting of workers engaged in a strike by former Governor Chhouk Bandith and the circumstances related to his subsequent trial. The Committee notes the Government's statement to the CAS that Chhouk Bandith had been sentenced by the appeals court to 18 months in prison and required to pay 38 million Cambodian riels (KHR) in compensation to the three victims. However, the police was still searching for him. The Committee requests the Government to keep it informed in this regard.*

125. *The Committee deeply deplores the absence of information from the Government on steps taken to investigate into the assault of a number of 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) of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) and of the Free Trade Union of the Suntex garment factory reported by the complainant in October 2006, and despite repeated requests from the Committee since June 2007. The Committee further deplores the absence of information from the Government on the present employment status of three activists of the Free Trade Union of Workers of the Genuine Garment Factory (FTUWGGF) (Lach Sambo, Yeom Khun and Sal Koem San) who were dismissed in 2006 following their convictions for acts undertaken in connection with a strike at the Genuine garment factory.*

126. *Recalling that the above events date back to 2006, the Committee is bound to express its deep concern with the lack of cooperation of the Government to investigate into the matters in a transparent, independent and impartial manner. The Committee expects that the Government will act more promptly in cases of violence and intimidation against the trade union movement in the future and that it will keep it informed of the steps taken to resolve these long outstanding matters.*

127. *As a general matter regarding all the issues still under examination in the present case, the Committee firmly expects the Government to commit itself to bring to an end the prevailing situation of impunity in the country, including, in particular, impunity in relation to violent acts against trade unionists, by promptly and persistently instituting independent judicial inquiries in order to fully uncover the underlying facts and circumstances, identify those responsible, punish the guilty parties, and prevent the repetition of such acts. The Committee further stresses the importance of the Government taking meaningful measures as a matter of urgency 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 from intimidation and risk to their personal security and their lives, and that of their families.*

The Committee's recommendations

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

(a) The Committee deeply deplores that, despite the time that has passed since it last examined this case, the Government has not provided its observations, although it has been invited on a number of occasions, including through urgent appeals, to present its comments and observations on the case. The

Committee urges the Government to be more cooperative in the future. The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office.

(b) In light of the continuing failure of the Government to provide the information requested by the Committee in the present case and the seriousness of the matters raised since June 2005, the Committee invites the Government, by virtue of its authority as set out in paragraph 69 of the procedures for the examination of complaints alleging violations of freedom of association, to come before the Committee at its next session in May 2015 so that it may obtain detailed information on the steps taken by the Government in relation to the pending matters.

(c) As a general matter regarding all the subsequent issues, the Committee firmly expects the Government to commit itself to bring to an end the prevailing situation of impunity in the country, including, in particular, impunity in relation to violent acts against trade unionists, by promptly and persistently instituting independent judicial inquiries in order to fully uncover the underlying facts and circumstances, identify those responsible, punish the guilty parties, and prevent the repetition of such acts. The Committee further stresses the importance of the Government taking meaningful measures as a matter of urgency 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 from intimidation and risk to their personal security and their lives, and that of their families.

(d) The Committee strongly urges the Government to keep it duly informed of the investigation into the murder of Chea Vichea and to ensure that the perpetrators and the instigators of this heinous crime are brought to justice.

(e) The Committee expects that the Government will conduct an independent and impartial investigation into the prosecution of Born Samnang and Sok Sam Oeun, including allegations of torture and other ill-treatment by police, intimidation of witnesses and political interference with the judicial process, and requests the Government to keep it informed of the outcome and the measures of redress provided for their wrongful imprisonment.

(f) The Committee once again strongly urges the Government to ensure that thorough and independent investigations into the murders of Ros Sovannareth and Hy Vuthy are also carried out expeditiously and to keep it duly informed of the progress made in this regard.

(g) The Committee requests the Government to keep it informed on the effect given to the sentence against Chhouk Bandith by the appeals court.

(h) The Committee expects that the Government will act promptly in cases of violence and intimidation against the trade union movement in the future and that it will keep it informed of the steps taken to resolve the long outstanding allegations of assault against the leaders and members of the FTUWKC and the Free Trade Union of the Suntex garment factory.

(i) Given the lack of progress on these very essential points, the Committee is bound, once again, to call the Governing Body's special attention to the extreme seriousness and urgency of the issues in this case.

CASE NO. 2655

INTERIM REPORT

Complaint against the Government of Cambodia presented by the Building and Wood Workers' International (BWI)

Allegations: Unfair dismissals, acts of anti-union discrimination and the refusal to negotiate with the trade union concerned by restoration authorities: the Authority for the Protection and Management of Angkor and the Region of Siem Reap (APSARA), the Japan–APSARA Safeguarding Angkor Authority (JASA), and the Angkor Golf Resort

129. The Committee has already examined the substance of this case on five occasions, most recently at its March 2014 meeting where it issued an interim report, approved by the Governing Body at its 320th Session [see 371st Report, paras 213–221].

130. As the Government has not replied, the Committee has been obliged to adjourn its examination of this case on several occasions. At its October–November 2014 meeting [see 373rd Report, para. 6], the Committee made an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of the case at its next meeting, even if the observations or information requested had not been received in due time. To date, the Government has not sent any information.

131. 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

132. In its previous examination of the case, regretting the fact that, despite the time that had elapsed, the Government had not provided any observation, the Committee made the following recommendations [see 371st Report, para. 221]:

(a) The Committee deeply regrets that the Government has not provided the information requested, or adopted the measures requested, and urges the Government to be more cooperative in the future and to provide information without delay on the measures taken to implement the Committee's recommendations.

(b) The Committee urges the Government and the complainant to provide information on the implementation of the Arbitration Council's award (No. 175/09-APSARA), issued on 5 February 2010, in relation to the dispute involving the APSARA authority, as well

as on any appeal that may have been made to the courts by the workers in relation to the JASA arbitration decision (No. 177/09-JASA) of 22 January 2010.

(c) The Committee once again recalls that acts calculated to make the employment of a worker subject to the condition that he or she not join a union, or shall relinquish their trade union membership, constitutes a violation of Article 1 of Convention No. 98, and strongly urges the Government to ensure that any infringement found in this respect will be sufficiently and appropriately sanctioned.

(d) As to the elections in the JASA union, the Committee once again urges the Government to take the necessary measures, including the issuance of appropriate on-site instructions, to ensure that the union may elect its representatives in full freedom, and that the workers may participate in these elections free from fear of dismissal or reprisal of any kind, and to indicate the steps taken in this regard and to inform it as to when the elections of the union officers were held.

(e) Furthermore, the Committee strongly urges the Government to take the necessary measures to ensure that both the APSARA and the Angkor Golf Resort engage in good faith negotiations with their respective unions, and to keep it informed in this regard.

(f) Finally, the Committee strongly urges the Government to take steps without delay to adopt an appropriate legislative framework to ensure that workers enjoy effective protection against acts of anti-union discrimination, including through the provision of sufficiently dissuasive sanctions and rapid, final and binding determinations. The Committee once again invites the Government to further avail itself of the technical assistance of the Office in this respect.

(g) The Committee firmly urges the Government to provide information without delay on the measures taken to implement these recommendations and, given that the allegations refer to enterprises, to solicit information from the employers' organization concerned with a view to having at its disposal the organization's views, as well as those of the enterprise concerned on the questions at issue. The Committee further invites the Government to accept an ILO technical assistance mission to facilitate the resolution of the pending matters in this case.

B. The Committee's conclusions

133. *The Committee deeply deplores that, despite the time that has passed since the last examination of the case, the Government has not provided the information requested, despite being invited to do so, including by means of an urgent appeal. The Committee urges the Government to be more cooperative in the future. The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office.*

134. *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 finds itself obliged to present a report on the substance of the case without the benefit of the information which it had expected to receive from the Government.*

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

136. *The Committee deeply regrets that this is the fifth time in succession it has been obliged to consider this case in the absence of any response from the Government despite the seriousness of the alleged acts (acts of anti-union discrimination at three workplaces, including dismissals of trade union leaders and activists).*

137. *The Committee underlines the considerable length of time that has elapsed since the dismissals of the workers concerned – respectively, in February 2005 (as to the dispute involving the Japan–APSARA Safeguarding Angkor Authority (JASA)), December 2006 (as regards the dispute involving the Authority for the Protection and Management of Angkor and the Region of Siem Reap (APSARA)) and April 2007 (as to the Angkor Golf Resort). The Committee further observes the length of time that has elapsed since the Department of Labour Dispute and Siem Reap Provincial Department of Labour and Vocational Training had submitted the disputes involving the APSARA authority and the JASA organization, as well as the case concerning the Angkor Golf Resort, to the Arbitration Council (respectively on 22 December 2009 and 11 January 2010).*

138. *The Committee recalls that in March 2012 it had noted the Arbitration Council's award (No. 175/09-APSARA), issued on 5 February 2010, in relation to the dispute involving the APSARA authority, as well as arbitration decision (No. 177/09-JASA) of 22 January 2010 in relation to the JASA authority. The Committee noted in particular that the Arbitration Council ordered the APSARA authority to reinstate three workers it had dismissed, while in relation to the JASA case, the Council rejected the workers demand for re-employment. Since March 2012, the Committee has been requesting the Government and the complainant to provide information on the implementation of the Arbitration Council's award in relation to the APSARA authority, and on any appeal lodged by the workers in relation to the JASA arbitration decision. In March 2014, the Committee acknowledged that the parties reached an agreement with respect to the Angkor Golf Resort's case.*

139. *The Committee further notes that during the discussion on the implementation by Cambodia of Convention No. 87 before the Committee on the Application of Standards (CAS) of the International Labour Conference in May–June 2014, the Government had indicated that representatives of the Building and Wood Workers Trade Union of Cambodia (BWTUC) – affiliated to the BWI – met with the Ministry of Labour and Vocational Training twice in 2014 and requested more time to review the allegations.*

140. *Taking into account the absence of a reply from either the Government or the complainant in respect of its previous requests for information, the Committee once again reiterates its previous recommendations and requests both the Government and the complainant to keep it informed of any developments relating to the pending matters.*

The Committee's recommendations

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

(a) The Committee deeply deplores that, despite the time that has passed since the last examination of the case, the Government has not provided the information requested, despite being invited to do so, including by means of an urgent appeal. The Committee urges the Government to be more cooperative in the future. The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office.

(b) In light of the continuing failure of the Government to provide the information requested by the Committee in the present case, the Committee invites the Government, by virtue of its authority as set out in paragraph 69 of the Procedures for the examination of complaints alleging violations of freedom of association, to come before the Committee at its next session in May 2015 so that it may obtain detailed information on the steps taken by the Government in relation to the pending matters.

(c) The Committee urges the Government and the complainant to provide information on the implementation of the Arbitration Council's award (No. 175/09-APSARA), issued on 5 February 2010, in relation to the dispute involving the APSARA authority.

(d) The Committee urges the Government to take the necessary measures to ensure that both the APSARA and the Angkor Golf Resort engage in good faith negotiations with their respective unions, and to keep it informed in this regard.

(e) Given that the allegations in this case refer to enterprises, the Committee urges the Government to solicit information from the employers' organization concerned with a view to having at its disposal the organization's views, as well as those of the enterprise concerned on the questions at issue.

(f) Taking into account the absence of a reply from either the Government or the complainant in respect of its previous requests for information, the Committee once again reiterates its previous recommendations and requests both the Government and the complainant to keep it informed of any developments relating to the pending matters.

CASE NO. 3015

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

Complaint against the Government of Government of Canada presented by
- **the Canadian Office and Professional Employees Union (CTC)**
- **the Syndicat des employées et employés professionels-les et de bureau – Québec (SEPB-Québec) and**
- **the Syndicat des employées et employés professionels-les et de bureau, section locale 573 (SEPB CTC–FTQ)**

supported by
- **the Québec Federation of Labour (FTQ)**

Allegations: The complainant alleges that several provisions of the Anti-corruption Act violate the right to freedom of association and collective bargaining of construction workers by preventing an employees' association from affiliating to certain trade union organizations by revoking existing certification, hindering collective bargaining and allowing Parliament to interfere in the activities of an employees' association

142. The complaint is contained in a communication dated 13 March 2013 from the Canadian Office and Professional Employees Union (CTC) (hereinafter "the Canadian Trade Union") on its own behalf and that of the Syndicat des employées et employés professionnels-les et de bureau – Québec (SEPB-Québec) and the Syndicat des employées et employés professionnels-les et de bureau, section locale 573 (SEPB CTC–FTQ (hereinafter "SEPB-573"). It is also supported by the Quebec Federation of Labour (FTQ).

143. The Government of Canada submitted the observations of the Government of Quebec in a communication dated 6 February 2014.

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

A. The complainant's allegations

145. In its communication of 13 March 2013, the Canadian Trade Union denounces the adoption by the Quebec Parliament on 10 June 2011 of the Anti-corruption Act, L.Q. 2011, c. 17 (hereinafter "the Anti-corruption Act") and alleges that certain of its provisions infringe the principles of freedom of association enshrined in Convention No. 87.

146. The complainant wishes to note that from the outset, the trade union organizations concerned were not properly consulted during consideration of the Anti-corruption Bill as they did not have sufficient time to prepare for the consultations conducted by the Committee on Institutions. Sessions began just six days after the principle of the Bill was

adopted, and no serious consultations or negotiations were subsequently held with the complainants, although the legislature was well aware when it passed the Act that the complainants were strongly opposed to many of its provisions. In the Canadian Trade Union's view, a consultation held in good faith would have allowed the legislature and the trade unions access to all of the information necessary to adopt well-founded legislation that reflects the actual situation.

147. In this regard, the Canadian Trade Union recalls the context in which the Anti-corruption Act was passed. It aimed to strengthen action to prevent and tackle corruption in public sector contracts and was adopted after scandals in the construction sector were uncovered by the Quebec media. According to the Canadian Trade Union, those scandals in no way implicated the employees of the Commission de la construction du Québec (CCQ). The Anti-corruption Act amended the Act respecting labour relations, vocational training and workforce management in the construction industry (hereinafter "Act R-20"), which governs labour relations in the construction sector by, in particular, setting up an independent audit team within the CCQ charged with conducting audits in the construction industry and providing that its members may no longer belong to the same general collective bargaining unit as all other CCQ employees. The complainant refers to extracts from debates in the National Assembly and the Committee on Institutions and emphasizes that it was the wish of the Quebec legislature for the CCQ employees appointed to the new team not to join a representative association or an organization to which a representative association is affiliated. The complainant recalls in this regard the remarks made by the Quebec Minister of Public Security, who stated that it was important to understand that, for reasons of independence, those who exercise supervision must not be members of the same trade union unit as those who are under supervision. The Canadian Trade Union contends that the legislature relied on false premises when passing the contested provisions as investigative personnel do not supervise trade union organizations and SEPB-573, which represents CCQ employees, is not affiliated to any representative association or any group of construction employees. The only role played by CCQ employees with regard to trade union organizations is to organize and supervise ballots and to ascertain the representativeness of representative associations. The Canadian Trade Union further notes that in principle the contested provisions should apply only to members of the independent audit team, to which five CCQ employees have been appointed. Yet the provisions in question concern not only these five employees but all investigative staff as well, around 300 people in total, and affect the rights of approximately 600 other CCQ employees.

148. More substantially, the complainant claims that certain provisions of the Anti-corruption Act violate freedom of association and collective bargaining. It asserts that these provisions have the effect of preventing an employees' association from affiliating to certain trade union organizations, revoking an existing trade union certification, hindering collective bargaining and allowing Parliament to interfere in the management of the activities of an employees' association, in breach of international conventions.

149. The complainant contests in particular the following sections of the Anti-corruption Act:

– Section 61 amending section 85 of Act R-20. Before it was amended, this section provided that all CCQ employees would form a single collective bargaining unit for the purposes of the certification granted under the Labour Code; SEPB-573 has constituted such a unit since 1972. After its amendment on 11 June 2011 by section 61 and again in December 2011 by the Act to eliminate union placement and improve the operation of the construction industry, section 85 now states that CCQ employees who are authorized to exercise investigative powers are to constitute a separate collective bargaining unit for the purposes of the certification granted under the Labour Code, and the association certified to represent those employees may not be affiliated to a representative association or an organization to which such an

association or any other group of construction employees is affiliated or otherwise linked, nor enter into a service agreement with such an association or organization.

– Sections 68 and 69, first paragraph, which provide that SEPB-573 will continue to represent all CCQ employees but that it may no longer represent investigative personnel in collective agreement negotiations as of 1 September 2011.

– Section 70, which provides that the collective agreement ceases to apply to investigative personnel six months from 1 September 2011, the date of entry into force of section 61, unless a new employees' association is certified to represent investigative personnel, in which case the existing collective agreement, should there be one, will continue to apply until a new collective agreement is concluded. If there is no existing collective agreement, the rights won by employees cannot be transferred.

– Section 71, which transfers assets belonging to SEPB-573 to an association certified to represent investigative personnel, where one exists, in proportion to the number of employees that SEPB-573 no longer represents. This would disregard the provisions of the SEPB-573 constitution and rules.

150. Moreover, the Canadian Trade Union submits that by passing the Act, the Quebec Government has breached its obligations under the Canadian Charter of Rights and Freedoms and the Quebec Charter of Rights and Freedoms as well as other international conventions by: (1) preventing the representation of investigative personnel by the employees' association that they have chosen (sections 68 and 69); (2) preventing the employees' association representing investigative personnel from affiliating to the organization of its choice (section 61); (3) forcing the break-up of the collective bargaining unit in a discriminatory fashion despite the serious impact this has on the negotiating power of investigative personnel (sections 60, 68 and 69); (4) specifying that the properly negotiated collective agreement will cease to be applicable to investigative personnel if a new association is not certified to represent them (section 70); and (5) forcing the union to hand over its funds (section 71).

151. The complainant maintains that the right to negotiate conditions of work freely with the employer is an essential element of the freedom of association. The employer must recognize employees' representative organizations for the purposes of collective bargaining. Here, sections 68 and 69 not only break up the collective bargaining unit, but they also prevent the association selected by employees (namely, SEPB-573) from representing some CCQ employees in collective bargaining. A collective bargaining process where employees do not have a choice of bargaining agent also contravenes the principles of freedom of association.

152. The Canadian Trade Union explains that this Act violates employees' freedom of association by withdrawing the existing rights of SEPB-573 arising from certification. The Canadian Trade Union adds that certification is central to enjoyment of the freedom protected by international instruments. The certified association has been suddenly and arbitrarily stripped of its status as a bargaining agent while employees have lost the power conferred by association. In practice, this is tantamount to using legislation to withdraw an existing certification, which runs contrary to the principles of freedom of association.

153. Moreover, the Canadian Trade Union alleges that section 61 of the Act deprives employees of their right to found and join the organization of their choice in that it prevents the trade union certified to represent investigative personnel from affiliating to the FTQ. That affiliation is essential to allow workers, through the organization of which they are members, to promote the occupational interests of members and to further Quebec

workers' social, economic and political concerns, in addition to fighting the various forms of discrimination. The complainant recalls that the FTQ, which, through its role of representative to the Government that results from its high level of representativeness (through its affiliate unions, it has 550,000 members) in the construction sector, wields power that is vital in collective bargaining. If the association representing investigative personnel cannot affiliate to the FTQ or to another labour confederation of its choice, those employees will lose the right to become members of an association that enjoys a high degree of representativeness in the sector and vital collective bargaining power with a Quebec public authority. The complainant further asserts that that the investigative personnel's association might also benefit from the FTQ's greater financial resources. Hence, by banning the association representing investigative personnel from becoming members of the organization of their choice, the Government of Quebec is violating Convention No. 87.

154. Furthermore, the complainant maintains that the break-up of the collective bargaining unit constitutes discriminatory treatment under Article 2 of Convention No. 87 as other employees working for ministries or organizations who are appointed to audit or investigative teams by the Government are not forbidden to belong to general collective bargaining units or to become members of them, with the exception of peace officers. As an example, the Canadian Trade Union cites the fact that employees of the Ministry of Revenue and the Régie du bâtiment, who cooperate with the Anti-corruption Commissioner in the same way as CCQ investigative personnel, are not subject to any restriction. Similarly, several state employees with investigative powers are members of collective bargaining units alongside other employees who do not have those powers and may join the trade union organizations of their choice with no statutory prohibition. Thus, for instance, inspectors of the Commission de la santé et de la sécurité du travail (CSST) may legally be members of the same unit as all of that organization's staff. In the Canadian Trade Union's view, this constitutes a flagrant inconsistency proving that employees responsible for tackling corruption do not necessarily and urgently need to belong to separate collective bargaining units or to be restricted in their association's choice of affiliation.

155. The complainant moreover asserts that, by stating in section 70 of the Anti-corruption Act that the properly negotiated collective agreement may cease to apply to investigative staff unless the staff designate another association to represent them, the legislature potentially grants itself the power to revoke unilaterally the conditions of work that have been negotiated by SEPB-573 since 1972. This is a serious and irreparable infringement of the right to a collective bargaining process.

156. The complainant also claims that, by impelling SEPB-573 to transfer funds pursuant to section 71, the legislature is improperly interfering in the management and functioning of the employees' association in breach of the principles of freedom of association, which require the public authorities to refrain from interfering in the management of employees' associations. This interference is in no way warranted as the SEPB-573 constitution makes the necessary provision for the union's funds in situations of this kind.

157. Lastly, the complainant argues that a state of emergency alone could justify the institution of the contested provisions. However, it notes that there has been no state of emergency that would justify their adoption. Furthermore, the legislature itself postponed their entry into force by several months, thus indicating that their application was by no means urgent. The complainant recalls that the CCQ already implemented measures to ensure employees' independence, in particular through strict policies on the impartial handling of information and the duty to submit a declaration of interests form.

158. In the light of the foregoing, the complainants request the Committee to find that sections 61, 68, 69, 70 and 71 of the Anti-corruption Act violate the applicable conventions and the principles of freedom of association, and to recommend that they are repealed or amended so as to bring them into line with those conventions and principles.

B. The Government's reply

159. In its communication dated 6 February 2014, the Government of Canada submitted a reply from the Government of Quebec, in which the latter maintains that the contested provisions of the Anti-corruption Act have not affected or infringed workers' rights of association, including, among others, the rights recognized under Convention No. 87. It states that in essence, the Anti-corruption Act aims to strengthen action to prevent and fight corruption with respect to public sector contracts. The Government of Quebec emphasizes that to this end, the Act amends Act R-20 among other legislation so as to establish an independent audit team within the CCQ that is charged with carrying out audits of the construction industry and to which approximately 300 investigators employed by the CCQ have been attached. The Act specifies that members of the Commission's personnel assigned to the independent team must exercise their functions on an exclusive basis and are to belong to a separate collective bargaining unit with a view to ensuring their complete independence.

160. The Government of Quebec recalls the origins of and justification for the Anti-corruption Act. The Act was passed against a backdrop of fraud and irregularities presumed to implicate, among others, top-ranking officials of the City of Montreal and several Quebec municipalities in tendering and contract awards in the construction industry, with possible links to organized crime. The Government of Quebec explains that the ban on investigative personnel belonging to the same collective bargaining unit as other construction sector employees in essence sought to ensure integrity and transparency and to avoid the emergence of any conflicts of interest, so it would be inconsistent and contrary to the public interest to allow investigators assigned to the new independent audit team to belong to the same union as other employees who may be targeted by an investigation. The Government of Quebec underlines that this practice is not new: as regards accountancy audits, for example, the Auditor General Act stipulates that the Quebec Auditor General, whose duties include ensuring parliamentary oversight of public funds and other public property, is answerable to the National Assembly rather than the Government of Quebec. Furthermore, this measure is one of a series of other broader measures ordered by the Government of Quebec to shed light on the situation and resolve it. It was against this background that it was decided to set up the Commission of Inquiry on the awarding and management of public contracts in the construction industry, charged with investigating possible collusion and corruption involving government bodies and enterprises, as well as the Anti-corruption Squad, an elite unit responsible for coordinating the Government's forces and expertise in the fight against corruption.

161. The Government of Quebec further maintains that the establishment of a separate collective bargaining unit for employees with investigative powers complies with the objectives of the United Nations Convention against Corruption, which Canada has ratified. The Government recalls that, under Article 6 of that Convention, each state party is to ensure the existence of a body or bodies that prevent corruption and to grant these bodies the independence necessary to protect them from any undue influence. Furthermore, Article 7 of the same Convention obliges each state party to endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest. Hence, in setting up a separate collective bargaining unit for employees of the Commission de la construction du Québec who exercise investigative powers, the Government of Quebec was pursuing precisely the objectives outlined by the United Nations Convention against Corruption.

162. The Government of Quebec cites the following decisions handed down by the Quebec courts. In a decision of 25 August 2011 on an action in nullity of the six contested sections of the Anti-corruption Act lodged by SEPB-573 on the same grounds as the complaint to the Committee, the Superior Court of Quebec recognized that the implementation of the Act would disadvantage the union and some of its members. However, on reviewing the Act's history and objectives and applying the balance of convenience test, the Court prioritized the wider objective of the Act, namely, the protection of the public by shielding investigative personnel from undue influence from pernicious elements liable to interfere with construction sector trade unions. In the Court's view, the public interest must trump the right of investigators of the Commission de la construction du Québec to join a trade union.

163. The Government of Quebec adds that the same position was reiterated by the Commission des relations du travail (CRT), an independent judicial body set up under the Labour Code and charged with regulating industrial relations in Quebec. In a decision of 24 September 2012 on two applications for certification lodged at the same time on 1 September 2012 by SEPB-573 and section locale 611 of the Syndicat des employées et employés professionnels-les et de bureau to allow them to represent all CCQ employees (including investigative personnel), the CRT acknowledged that the status and role conferred on investigators under the Act would be likely to create conflicts of interest jeopardizing their independence if they were allowed to belong to a bargaining unit that included other employees who could be subject to an investigation.

164. An application for judicial review of that CRT decision was filed to the Superior Court. In a judgment of 9 January 2013, the Court found that the Anti-corruption Act did not infringe the right of association recognized under the Canadian and Quebec Charters of Rights and Freedoms but rather adapted it to the role of the employees concerned: "In order for a measure to violate the right of freedom of association, it is therefore not sufficient that it restrict access to one trade union in particular: it must be shown above all that the measure has significant repercussions on the collective bargaining process in that it compromises workers' right to associate with a view to achieving common objectives". Here, the employees concerned were not subject to any restriction in that regard since their freedom to join forces so as to establish a position of strength in collective bargaining was in no way compromised.

165. The Government of Quebec indicated that an application for leave to appeal the Superior Court's decision was granted and proceedings were ongoing before the Quebec Court of Appeal.

166. In support of its argument, the Government of Quebec also quotes the principle established by the Freedom of Association Committee that a group of workers may be denied the right to belong to the same trade unions as other workers on two conditions: (1) that they have the right to set up their own organizations; and (2) that this category of workers is not defined too broadly.

167. The Government of Quebec underscores that these two conditions are completely met in the case at issue. Firstly, investigative personnel have the right to set up their own organization and have in fact done so as the CRT certified the Syndicat du personnel d'enquête de la CCQ on 29 May 2013. Secondly, as membership of this bargaining unit is reserved for investigators alone, and is hence restricted, the second condition according to which the category of staff must not be defined too broadly has also been satisfied.

168. As regards the allegation that the Anti-corruption Act was adopted without proper consultation of the unions concerned, the Government of Quebec points out that the

complainants had the opportunity to participate in and file and present their submissions to the parliamentary commission set up to consider the bill.

169. In conclusion, the Government of Quebec submits that the measures instituted by the Anti-corruption Act do not breach Convention No. 87 in that these measures primarily seek to protect the public interest by shielding investigative personnel from any undue influence and by securing a minimum of transparency, neutrality, rigour and independence in the investigations system at the same time.

C. The Committee's conclusions

170. *The Committee notes that the complainant alleges that certain provisions of the Anti-corruption Act promulgated by the Government of Quebec infringe the rights to freedom of association and collective bargaining of construction workers. The Committee notes that in response, the Government of Quebec maintains that the Anti-corruption Act was passed against a backdrop of suspected corruption and fraud in the construction industry involving the highest authorities of the City of Montreal with a possible link to organized crime, and that the aim pursued was to protect the public interest by shielding investigative personnel charged with conducting audits in the construction sector from any undue influence.*

171. *The Committee notes that the complainant avers that from the outset, the trade union organizations concerned were not properly consulted by the Government of Quebec, having just six days to prepare for consultations conducted by the Commission on Institutions tasked with considering the Anti-corruption Bill. In this respect, the Committee notes that the Government of Quebec maintains that the complainants had the opportunity to participate in and to file and present their submissions to the parliamentary commission set up to examine the bill in question.*

172. *The Committee observes that, according to the complainant, sections 68 and 69 of the Anti-corruption Act have the effect of breaking up the collective bargaining unit, thereby preventing the organization chosen by the employees (SEPB-573) from representing some CCQ employees in collective bargaining. In this regard, the Committee takes note of the response of the Government of Quebec, stating that as part of efforts to strengthen action to prevent and combat corruption in public sector contracts, it was decided, among other measures, to create within the Commission de la construction du Québec an independent audit team to which some CCQ staff members would be appointed and would exercise their functions on an exclusive basis, thereby necessitating the creation of a separate collective bargaining unit in order to ensure their complete independence. According to the Government of Quebec, it would be inconsistent and contrary to the public interest to allow investigators attached to this team to belong to the same union as persons who may be targeted by an investigation.*

173. *The Committee takes note of the various judicial decisions cited by the Government of Quebec in its response. The Committee notes the decision of the Superior Court of Quebec of 25 August 2011 which, when hearing the action in nullity of the contested sections of the Anti-corruption Act, prioritized "the wider objective of the Act, that is, the protection of the public by shielding investigative personnel from undue influence from pernicious elements liable to interfere with construction-sector trade unions" (paragraph 85 of the Judgment). Although it recognized that the implementation of the Act would have some drawbacks, the Court considered that public interest must trump the right of CCQ investigators to belong to trade unions and hence found that "the balance of convenience favours the upholding of the contested provisions" (paragraph 86 of the Judgment).*

174. *The Committee further takes note of the Decision of the CRT of 24 September 2012 to reject a certification application filed by SEPB-573 seeking to represent all CCQ employees, including investigative personnel. The CRT acknowledged that the status and role conferred on investigators under the Act would be likely to create conflicts of interest jeopardizing their independence if they were part of a bargaining unit that included other employees. Moreover, "even should the freedom of association of the latter be infringed" (paragraphs 78 and 218 of the Decision), this violation is justified in view of section 1 of the Canadian Charter of Rights and Freedoms and section 9.1 of the Quebec Charter of Rights and Freedoms, which allow the rights that they recognize to be restricted within reasonable limits.*

175. *The Committee observes that this Decision by the CRT was submitted for judicial review by the Quebec Superior Court. In contrast to the CRT, the Superior Court ruled solely on the second paragraph of section 85 of Act R-20 as amended. In a Decision of 9 January 2013, it found that this provision did not infringe the right of association recognized in the Canadian and Quebec Charters but rather adapted it to the distinctive duties of the employees concerned: those employees were still at liberty to join forces so as to establish a position of strength in collective bargaining on their conditions of work. The Court further considered that "even presuming a violation of the freedom of association, this violation would be justified in the light of section 1 of the Canadian Charter and section 9.1 of the Quebec Charter" (paragraph 179 of the Judgment).*

176. *In this respect, the Court recalled that, where it is established that a right or freedom guaranteed by the Charter is violated, this violation is considered justified if it is shown that: (a) the aim of the act is urgent and real; (b) a rational connection links the aim to the means chosen by the legislature to achieve that aim; (c) the contested act minimally infringes the right or freedom guaranteed; and (d) there is proportionality between the aim of the act and the measures that it specifies. In the Court's view, "it clearly appears that the general aim of the act is to combat corruption, which undermines democracy by attacking its very functioning. The aim pursued by the legislature, namely, to institute measures to curb and prevent it, and not just to punish perpetrators, constitutes a real and urgent aim." (paragraphs 127 and 158 of the Judgment). Secondly, when determining if a rational connection existed between that aim and the means chosen by the legislature to achieve it, the Court considered that "the existence of a rational connection is obvious: severing links is apt to prevent conflicts of interest" (paragraph 161 of the Judgment).*

177. *The Court later examined whether it had been shown that the means chosen by the legislature only minimally infringed the right in question and that those means had been carefully adapted to the aim pursued. In this regard, the Court recalled that "as the Supreme Court has stated, the task of the tribunal is not to choose the method that is absolutely the least detrimental, but to ensure that the method chosen by the legislature is one of various reasonable solutions available. In the instant case, the means chosen by the legislature – the establishment of a separate bargaining unit and the prohibition of affiliation to an association representing the construction sector – are possibly the only means among those suggested that could create the necessary distance between investigative personnel and those whom they supervise. The introduction of a code of ethics, for example, would not be certain to prompt an inspector, for instance, to resist undue pressure exerted by a representative of the same family of trade unions, any more than would disciplinary measures implemented after the fact. Further, the method chosen by the legislature applies solely to investigative personnel and not to all CCQ staff, and therefore is less prejudicial than that alternative. The claimant SEPB-573 would have preferred other measures with a more restricted effect, applicable, for instance, to the employees of the independent team alone. However, the Court takes the view that this solution would not have fulfilled the aims of the act, which are far wider than the claimant would suggest. Thus, the measure chosen by the legislature is one of various reasonable*

solutions available to it and, consequently, the criterion of minimal prejudice is met" (paragraphs 170–174 of the Judgment).

178. *As to the last criterion of proportionality between the aim of the act and the measures it specifies, the Court stated that "it is at this stage that the achievement of the aim may be weighed up against the effect on the right in question" (paragraph 175 of the Judgment). Having established firstly the positive effects of section 85, which forms part of efforts to tackle corruption by isolating some of the people most likely to be confronted by this phenomenon and, secondly, the advantage conferred by affiliation, the Court found that "the balance tips in favour of the act" (paragraph 178 of the Judgment), since members of the claimant SEPB-573 maintain the same rights as other workers and may even become members of the association of their choice, save the five associations that represent the sector in which they act as supervisors and investigators. Thus, in the Superior Court's view, even had the freedom of association been infringed, this violation would have been justified in light of section 1 of the Canadian Charter and section 9.1 of the Quebec Charter.*

179. *The Committee notes that this decision of the Superior Court was the subject of an appeal lodged by SEPB-573 with the Quebec Court of Appeal, which dismissed it in a decision of 25 February 2014. First, the Court of Appeal analysed the relevant Canadian jurisprudence, and, relying on several international conventions ratified by Canada, including Convention No. 87, came to the conclusion that "section 85, second paragraph of Act R-20 (as amended) violates the freedom of association" (paragraph 76 of the Judgment). Next, applying the test developed by the Supreme Court in R. v. Oakes, the Court of Appeal determined that the violation of that right was justified. It found, as had the Superior Court, that in the instant case "the violations of the Canadian Charter are reasonable and justifiable in a free and democratic society" (paragraph 79 of the Judgment). Like the Superior Court, the Court of Appeal recalled that "the employees are free to become members of any union: they may join associations other than the five associations representing the sector for which they act as supervisors and investigators" (paragraph 108 of the Judgment).*

180. *The Committee considers that, in the case at hand and having regard to the aim of preserving the investigators' independence, it is not necessarily incompatible with the provisions of Article 2 of Convention No. 87 and Article 4 of Convention No. 98 to have created a special collective bargaining unit with a restriction on the choice of unions which the investigators may join, on the condition that they have the right to set up their own organization. The Committee observes that, in the present case, the investigative personnel could indeed establish their own organization, as on 29 May 2013, the CRT approved a certification application submitted by the Syndicat du personnel d'enquête de la CCQ.*

181. *The Committee further takes note of the allegation submitted by the complainant that the Government of Quebec has interfered in the management and functioning of SEPB-573 by forcing it, pursuant to section 71 of the Anti-corruption Act, to transfer funds belonging to the union. The Committee notes that, according to the complainant, its constitution contains provisions specifying what should become of the union's funds in such circumstances. Noting that the Government of Quebec has not provided a response to this allegation, and in light of the foregoing, the Committee considers that the redistribution of union property prescribed by the third paragraph of section 71 is fair.*

182. *The Committee takes note of the complainant's allegations that section 61 of the Anti-corruption Act infringes the right of a workers' organization to affiliate to a federation of its choice in that it prevents the union certified to represent investigative personnel from affiliating to the FTQ. According to the complainant, the FTQ, owing to its*

size (550,000 members of unions affiliated to it) and its status as representative to the Government of Quebec, is a formidable negotiating partner with a strong bargaining position, and affiliation would assist the association representing investigative personnel in promoting the social, economic and political interests of the workers that it represents. The Committee notes the response of the Government of Quebec, which submits that there must be a completely "watertight separation" between employees who exercise investigative powers and other construction workers in order to ensure the integrity of those investigators and the transparency, neutrality and independence of the investigations system, thus avoiding the emergence of any conflicts of interest. The Committee recalls the general principle according to which a workers' organization must have the right to affiliate to the federation or confederation of its choice, subject to the constitution of the organization concerned, without prior authorization. It is for federations and confederations themselves to decide whether or not to accept the affiliation of a trade union, in accordance with their own constitutions and rules. [See ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paragraph 722.] While taking note of the abovementioned judicial decisions, the Committee notes with concern that section 85 of Act R-20, as amended by section 61 of the Anti-corruption Act, restricts the right of the Syndicat du personnel d'enquête to affiliate to the federation of its own choice and to ensure its effective representation at a higher level. Given that the importance of guaranteeing independence by setting up a separate collective bargaining unit with its own representative unit should not be of such nature as to impede the right of investigators to affiliate to a higher level organization, the Committee requests the Government to obtain information from the Government of Quebec on the manner in which the right of the Syndicat du personnel d'enquête to affiliate to the federation of its choice is ensured in practice and to keep the Committee informed in this regard.*

The Committee's recommendation

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

The Committee requests the Government to obtain information from the Government of Quebec on the manner in which the right of the Syndicat du personnel d'enquête to affiliate to the federation of its choice is ensured in practice and to keep the Committee informed in this regard.

CASE NO. 3057

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

Complaint against the Government of Canada presented by
– the National Union of Public and General Employees (NUPGE) supported by
– the Public Service International (PSI)
– the Canadian Labour Congress (CLC) and
– the Alberta Federation of Labour (AFL)

Allegations: The complainant organization alleges that the Government of Alberta adopted the Public Sector Services Continuation Act (Bill 45) with the intent to further limit collective rights of public sector employees in the province

184. The complaint is contained in a communication dated 13 February 2014 from the National Union of Public and General Employees (NUPGE) on behalf of its Alberta component – the Health Sciences Association of Alberta (HSAA/NUPGE). Public Service International (PSI), the Canadian Labour Congress (CLC) and the Alberta Federation of Labour (AFL) associated themselves with the complaint in communications dated 20 February and 9 April 2014.

185. The Government of Canada transmitted observations of the government of Alberta in a communication received by the Office on 22 January 2015.

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

A. The complainant's allegations

187. In its communication dated 13 February 2014, the NUPGE explains that it is one of Canada's largest unions with over 340,000 members and that HSAA, its component in Alberta, represents 25,000 paramedical technical, paramedical professional and general support employees in more than 240 disciplines. These workers are employed in the public and private health-care sectors in Alberta. Almost all belong to a province-wide bargaining unit, are covered by one collective agreement and are governed by the Labour Relations Code (LRC), which like the Public Service Relations Act (PSERA), prohibits employees in the health-care sector from striking.

188. The NUPGE explains that its complaint concerns the Public Sector Services Continuation Act (Bill 45). The complainant further seeks to have the Committee re-examine the strike restrictions imposed on about 200,000 public sector employees in Alberta.

189. The NUPGE explains that the Bill was introduced by the government in the Alberta legislative assembly on 27 November 2013 with less than one-day notice and without consultation with the HSAA or any other unions impacted by the legislation. The only prior notice of this Bill came on 26 November 2013, when the Minister of Human

Resources introduced a motion to limit debate and enforce closure, even before the Bill has been tabled and seen by members of the legislature. The Act was rammed through the legislature with little debate and passed on 4 December 2013.

190. According to the NUPGE, the Public Sector Services Continuation Act (Bill 45) places further restrictions on some 200,000 unionized public sector employees in Alberta who were already denied the right to strike, and broadens the definition of a strike to include "any slowdown or any activity that has the effect of restricting or disrupting production or services". The union further alleges that the Act alters the definition of "strike" by removing the requirement that the intent behind any strike activity is to compel terms and conditions of employment through withholding of work or services. According to the complainant, it also denies individuals the fundamental right to freedom of expression by introducing for the first time in Canada a vague legal concept of "strike threat", which makes it illegal to canvass the opinion of "employees to determine whether they wish to strike", or for an individual to freely express a view that calls for or supports strike action. The union claims that even those who are not directly involved with the union, like academics or public policy commentators, could be prosecuted for suggesting that a strike is the only means to protect the public interest or to draw attention to unsafe working conditions that put the health workers and the general public at risk.

191. The NUPGE alleges that the Act imposes "draconian" fines on unions, their members and even on citizens unrelated to the unions, who encourage or support an "illegal strike" or "strike threat". In this respect, according to the union:

- section 6(1) and (2) provides for an automatic minimum of three months' suspension of union dues of the entire bargaining unit for the first day or partial day that a strike or strike threat occurs, and an additional one-month dues suspension for each "day or partial day" of a strike or strike threat;

- section 9(8) provides for 1 million Canadian dollars (CAD) to be paid in Court under an abatement order for each day that the strike or strike threat occurs, without providing for any maximum amount; and

- section 18(1)(a)(i) and (ii), provides for a fine of CAD250,000 plus CAD50 for each day of a strike multiplied by the number of employees involved in the strike.

192. According to the complainant, these fines will be imposed regardless of whether the union actually knew of, caused, counselled, or consented to the strike or strike threat. They will also be imposed regardless of whether the union had any control over the employees involved in a strike or strike threat, or how many employees were engaged in a strike or strike threat. The NUPGE adds that the Act imposes a reverse onus on HSAA, or other union, if it wishes to challenge the penalties. A union must first satisfy the Labour Relations Board (LRB) that it gave express instructions against a strike or a strike threat before the strike or strike threat happened (section 6(3)(a)), which means that the union has to prove that it had given an advance notice against strike action or making a strike threat regardless of whether it knew of, caused, counselled, or consented to the strike or strike threat. According to the NUPGE, this makes it effectively impossible for the union to avoid the minimum three-month dues suspensions in situations of an illegal strike or other unauthorized strike or strike threat. It further makes a union liable for the actions of non-members who engage in an unauthorized strike or strike threat, and effectively confiscates its funds by holding them in a "liability fund" for up to two years before the employers are even required to make an application to Court for judgment against a union for a strike or strike threat, regardless of whether it knew of, caused, counselled, or consented to the strike or strike threat, or had any advance notice of the strike or strike threat (section 11(3)). The NUPGE further argues that the Act automatically imposes personal

fines on union officers or representatives and the individual bargaining unit employees, even if they had advised bargaining unit members not to refuse work, or not to stop working. If the LRB determines that a strike has occurred, the union officers and representatives would still be subject to fines even if the refusal to work or to continue working are undertaken by the members in order to comply with their legal obligations under the Occupational Health and Safety Act and/or the Health Discipline Act.

193. It further indicates that, on 8 January 2014, a constitutional challenge in the Alberta Court of Queen's Bench was lodged against the Act arguing that it violates Canada's Charter of Rights and Freedoms by denying its members' right to freedom of expression, freedom of association, liberty and fundamental principles of justice.

194. The NUPGE alleges that even prior to the introduction of Bill 45, public sector labour relations in Alberta were governed by two of the most restrictive collective bargaining laws in Canada: the PSERA (1977) which governs the collective bargaining process for some 60,000 unionized provincial government employees, and the LRC (2000), which governs the collective bargaining process for the other 100,000 unionized public sector employees not covered by the PSERA. The complainant recalls that almost all of the HSAA's members are covered by the LRC.

195. With regard to the PSERA, the complainant considers the following provisions to be restrictive for the reasons it outlines below:

- section 70, as it prohibits public employees (the majority of which, according to the union, do not provide essential services) and their unions from participating in a strike or causing a strike;

- part 6, division 2, pursuant to which, if the outcome of the collective bargaining process does not reach a negotiated settlement on terms and conditions of employment, the only dispute resolution mechanism available to unionized public sector employees is compulsory arbitration;

- section 69, because it allows employers to suspend for up to six months the deduction and remittance of union dues, assessments, or other fees payable to the union, if the members of the union participate in an illegal strike; and

- section 71, which provides for penalties imposed on any union officer, or representative of a union (up to $10,000), or any other person, who causes a strike (up to $1,000 a day for each day the strike continues).

196. With regard to the LRC, the NUPGE considers that, the following provisions are restrictive for the reasons it outlines below:

- part 2, division 16, because it prohibits health care workers not covered by the PSERA from participating in a strike or causing a strike (the majority of which, according to the union, do not provide essential services);

- section 97, as it makes compulsory arbitration the only dispute resolution mechanism available to unionized public sector employees;

- section 114, as it gives the LRB the authority to direct an employer to suspend the deduction and remittance of union dues for up to six months from employees covered by section 96 who have participated in a strike;

- section 116, as it gives the government the authority to direct the LRB to revoke the certification of a union that causes or participates in a strike; and

– section 160, because it establishes penalties identical to those contained in section 70 of the PSERA for any union officer or representative or any other person who causes or attempts to cause a strike.

197. With regard to both pieces of legislation the NUPGE refers to Cases Nos 893, (examined by the Committee in its Report No. 187, November 1978), and 1234 and 1247 (examined by the Committee in its Report No. 241, November 1985) dealing with the PSERA and the Labour Relations Act (predecessor of the LRC). The complainant requests the Committee, in dealing with this complaint, to take into account these cases and the failure of successive governments to act on the recommendations of the ILO Governing Body.

B. The Government's reply

198. In a communication received by the Office on 22 January 2015, the Government of Canada submits an interim response on behalf of the government of Alberta. The government of Alberta indicates that Bill 45 has not been proclaimed in force as this legislation is currently subject to litigation before the Alberta courts.

199. The government of Alberta explains that the LRC and the PSERA contain measures to hold unions and individuals who break the law accountable. However, the government of Alberta's past experiences with illegal strikes in the public sector indicated a further need to deter and halt illegal strike activity. Bill 45 would apply to unionized public sector workers in Alberta who are already prohibited from striking under the LRC and PSERA. The legislation was introduced to help ensure the continuation of public services by further deterring illegal strikes that have the potential to seriously impact the health and safety of Albertans.

200. The government of Alberta considers that the NUPGE analysis of Bill 45 misstates what Bill 45 means and does. While the government of Alberta understands that the Committee on Freedom of Association is free to reach its own conclusions regarding whether Bill 45 violates Convention No. 87, it considers that the Committee's reasoning must be based on how Bill 45 is understood under domestic law. In particular, unlike the LRC, but similar to the PSERA and to many other labour relations statutes across Canada, Bill 45 does not require that a "strike" be specifically directed at obtaining better terms and conditions of employment, but extends as well to a concerted withdrawal of labour that is designed to achieve goals unrelated to collective bargaining, such as political strikes. It does not follow from this, as the NUPGE claims, that this expanded definition could prevent employees from complying with other statutory and legal obligations including the right to refuse to perform unsafe work as provided for in Alberta's Occupational Health and Safety Act, or avoiding actions or inactions that would result in unprofessional conduct under Alberta's Health Professions Act. While a refusal to work or a diminution of services may constitute unprofessional conduct, actions or inactions genuinely taken in order to comply with professional responsibilities do not constitute a strike. Nor does a genuine refusal to perform unsafe work. For these reasons, the government of Alberta disagrees with the interpretation asserted by the NUPGE.

201. The government of Alberta further considers that there is nothing vague or novel about Bill 45's definition of "strike threat". Particularly in health care, a credible threat of a strike may have effects as great as an actual strike – alternative arrangements need to be made to assure patient care, and patients may have to be moved out of province. Furthermore, throughout Canada bargaining agents are responsible to not, variously "counsel", "procure", "support", "authorize" or "encourage" unlawful strikes in their bargaining units, and may be liable if they do not make all reasonable efforts to bring a strike to an end. It further refutes the allegation that Bill 45 renders a union responsible for a strike or strike threat "regardless of whether the union actually knew of, caused, counselled, or consented

to the strike or strike threat", or "regardless of whether the union had any control over the employees involved in a strike or strike threat". A union may avoid penalties if it expressly and consistently repudiates strikes and strike threats as a means for bargaining unit employees to achieve workplace or other goals and if it does not encourage a particular strike or strike threat. Bill 45 creates a regime of strict (not absolute) responsibility for bargaining agents for strikes and strike threats in a bargaining unit.

202. The government of Alberta points out that, given that Bill 45 is not in force and is the subject of domestic litigation, it is continuing in its process of review. It intends to provide further information to the Committee within a reasonable period of time.

C. The Committee's conclusions

203. *The Committee notes that the allegations in this case, submitted by the NUPGE in a communication dated 13 February 2014, relate to the adoption, in December 2013, of the Public Sector Services Continuation Act (Bill 45). The Committee notes that according to the complainant, this piece of legislation was adopted without prior consultation with the workers' organizations. This appears to be supported by the evidence submitted by the complainant and is not refuted by the Government. In this respect, the Committee, on a number of occasions, has emphasized the value of consulting organizations of employers and workers during the preparation and application of legislation which affects their interests. It considered, in particular, that it was essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the appropriate organizations of workers and employers [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 1072 and 1075]. The Committee expects that in the future, the Government will engage, at an early stage of the process, in full and frank consultations with the relevant workers' and employers' organizations on any questions or proposed legislation affecting trade union rights so as to permit the attainment of mutually acceptable solutions.*

204. *The Committee notes that according to the NUPGE, this Bill 45 places further restrictions on unionized public sector employees in Alberta, who were already denied their right to strike either under the PSERA or the LRC.*

205. *The Committee observes that pursuant to its section 1(1)(f), Bill 45 applies to the employees to whom division 16 of part 2 of the LRC applies, as well as to employees covered by the PSERA. Whereas the latter governs public service, government agencies and Crown corporations of Alberta (with the exception of bodies listed in a schedule to the PSERA), the former applies to firefighters, all employees of approved hospitals as defined in the Hospitals Act, as well as employees of the regional health authorities and ambulance attendants as defined in the Emergency Health Services Act (section 96(1) of the LRC).*

206. *Pursuant to section 96(2) of the LRC, no employees or trade union to which division 16 of part 2 applies shall strike, cause a strike or threaten to cause a strike. Section 70 of the PSERA prohibits strikes (causing, attempting to cause or consenting to strikes) in the public services and instead establishes compulsory binding arbitration as the method of resolving collective bargaining disputes (part 6, division 2).*

207. *The Committee notes that in its section 4, Bill 45 reaffirms that: (1) no employee and no trade union or officer or representative of a trade union shall cause or consent to a strike; (2) no employee and no officer or representative of a trade union shall engage in or continue to engage in any conduct that constitutes a strike threat or a strike; and (3) no*

trade union shall engage in or continue to engage in any conduct that constitutes a strike threat.

208. *With regard to various sanctions for strike action provided by Bill 45, the Committee notes that pursuant to section 6, in the case of a strike threat or a strike, deduction from payroll of union dues, assessments and other fees that would otherwise be payable by employees in the bargaining unit, and their remittance to the trade union concerned shall be suspended by the employer for a period of three months for the first day or partial day on which the strike threat or strike occurs, plus one additional month for each additional day or partial day on which the strike threat or strike continues unless the union satisfies the LRB that the strike threat or strike occurred against the express instructions of the trade union given before the strike threat or strike began; that all the actions of the trade union and its officers and representatives have been consistent with those express instructions since the instructions were given, and that neither the trade union nor any of its officers or representatives has contravened section 4 of Bill 45 in respect of the strike threat or strike.*

209. *In addition, pursuant to section 9 of Bill 45, where, on an originating application made by the minister, an employer or an authorized person, the court is satisfied that a strike threat or a strike has occurred or is occurring, the court shall make a declaration to that effect and shall make an abatement order requiring the trade union to pay into court CAD1,000,000 for each day or partial day on which a strike threat or a strike occurs or continues, unless the union satisfies the court that the strike threat or strike occurred against the express instructions of the trade union given before the strike threat or strike began; that all the actions of the trade union and its officers and representatives have been consistent with those express instructions since the instructions were given, and that neither the trade union nor any of its officers or representatives has contravened section 4 of Bill 45 in respect of the strike threat or strike. An abatement order:*

...

(b) must include the following orders, as applicable:

(i) if a strike threat is occurring, an order requiring the employees and the trade union and its officers and representatives to immediately cease engaging in all conduct that constitutes a strike threat;

(ii) if a strike is occurring:

(A) an order that the trade union immediately instruct the employees who are on strike to end their strike;

(B) an order that the trade union immediately instruct all employees in the bargaining unit to continue or resume, as the case may be, the duties of their employment without slowdown or other diminution of services; and

(C) an order that all employees in the bargaining unit immediately continue or resume, as the case may be, the duties of their employment without slowdown or other diminution of services; and

(c) may include any other order or direction the Court considers necessary or appropriate in the circumstances.

210. *The Committee understands that the amount determined by the court is kept in a liability fund established pursuant to section 10 of Bill 45 and that an employer who suffered "eligible losses" may apply to the court within a two-year period after the day on which a strike threat or strike ends pursuant to section 11 of Bill 45. This remedy given to an employer is in addition to any other remedies available in law to the employer for the recovering of losses from the trade union in respect of a strike threat or a strike (section 12). Where the court determines that an employer has suffered eligible losses, the court shall grant judgment in favour of the employer against the trade union for the amount of the eligible losses as determined by the court to be paid out of a liability fund,*

unless the union satisfies the court that the strike threat or strike occurred against the express instructions of the trade union given before the strike threat or strike began, that all the actions of the trade union and its officers and representatives have been consistent with those express instructions since the instructions were given, and that neither the trade union nor any of its officers or representatives has contravened section 4 of Bill 45 in respect of the strike threat or strike. After the expiration of two years, any amount remaining in the liability fund is returned to the union.

211. *The Committee notes that pursuant to section 16 of Bill 45, administrative penalties may be imposed by the minister or an appointed delegate on an employee who has contravened section 4 in the amount not exceeding the amount determined by multiplying the number of days or partial days on which the contravention occurred, or continued by an amount equal to one day's pay for that employee. The Committee understands that pursuant to subsection (8), a person on whom an administrative penalty is imposed and who pays the administrative penalty shall not be charged under Bill 45 with an offence in respect of the same contravention pursuant to section 18 (outlined below).*

212. *The Committee notes the penalties imposed under section 18(1) of Bill 45 on a person or a trade union or other organization that contravenes or fails to comply with the abovementioned provisions of sections 4, 6 and 9:*

(a) in the case of an employer or trade union, to a fine of the sum of:

(i) $250 000; and

(ii) the amount determined by multiplying $50 by the number of employees who, on the day the offence occurs or, in the case of an offence that continues for more than one day, on the last day or partial day on which the offence occurs or continues, belong to the bargaining unit to which the offence relates for each day or partial day on which the offence occurs or continues;

(b) in the case of an officer or representative of a trade union, including an officer or representative who is an employee within the bargaining unit to which the offence relates, to a fine of $10 000 for each day or partial day on which the offence occurs or continues;

(c) in the case of an employee who is not an officer or representative referred to in clause (b), to a fine not exceeding the amount determined by multiplying the number of days or partial days on which the offence occurs or continues by an amount equal to one day's pay for that employee; or

(d) in the case of a person to whom or an organization to which none of clauses (a), (b) or (c) applies, to a fine of $500 for each day or partial day on which the offence occurs or continues.

213. *At the outset, the Committee considers it necessary to draw a distinction between cases where strike action should, as a fundamental right of workers and their organizations, remain lawful, and those, where restrictions and even prohibitions may be imposed on the exercise thereof. The Committee recalls that it has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests [see **Digest**, op. cit., para. 521]. It nevertheless considered that the right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population) [see **Digest**, op. cit., para. 576].*

214. *The Committee recalls that in has examined the PSERA's provisions prohibiting strikes in the public services in Cases Nos 893 (see Reports Nos 187, 194, 202 and 204) and 1247 (see Report No. 241). In Case No. 1247, with reference to Case No. 893, the Committee considered that the right to strike is an essential means by which workers may defend their*

occupational interests. It also recalled that, if limitations on strike action are to be applied by legislation, a distinction should be made between publicly-owned undertakings which are genuinely essential, that is, those which supply services whose interruption would endanger the life, personal safety or health of the whole or part of the population, and those which are not essential in the strict sense of the term and requested the Government to consider the possibility of introducing an amendment to the PSERA in order to confine the prohibition of strikes to services which are essential in the strict sense of the term.

215. *As regards the prohibition on the right to strike by certain categories of workers under the LRC, the Committee recalls that while firefighting and ambulance services as well as hospital sector may be considered to be essential services, within those essential services, certain categories of employees, such as hospital labourers and gardeners, should not be deprived of the right to strike [see* ***Digest****, op. cit., para. 593].*

216. *With regard to the various sanctions imposed by Bill 45, the Committee considers that while unlawful exercise of the right to strike may give rise to certain sanctions, the national legislative provisions declaring a strike unlawful should themselves be in conformity with the principles of freedom of association, which, as indicated above is not the case as concerns some aspects of the PSERA, LRC and thus the new Bill 45, which prohibit the right to strike of employees other than those exercising authority in the name of the State and those providing essential services in the strict sense of the term. The Committee therefore regrets that by adopting Bill 45, the Government has reaffirmed the prohibition on collective action including on employees who should enjoy the right to strike pursuant to the freedom of association principles enunciated above.*

217. *The Committee expresses concern at the level of sanctions for strike action or even threat of a strike, imposed by Bill 45, which could not only have a significant damaging effect on the financial resources of the union but may very well hinder the union's capacity to undertake lawful strike action due to the uncertainty in the interpretation of Bill 45. With regard to the sanction of deduction from payroll of trade union dues foreseen in section 6 of Bill 45, the Committee recalls that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided [see* ***Digest****, op. cit., para. 475]. The Committee further recalls that penal sanctions should not be imposed on any worker for participating in a peaceful strike. Finally, the Committee emphasizes that legislative provisions which impose sanctions in relation to the threat of strike are contrary to freedom of expression and principles of freedom of association.*

218. *Noting the Government of Alberta's indication that Bill 45 is not currently in force and is the subject of domestic litigation, the Committee requests the Government to keep it informed of the outcome of the judicial proceedings and expects that its conclusions above will be taken into account within the framework of the review of Bill 45.*

The Committee's recommendations

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

(a) The Committee expects that in the future the Government will engage, at an early stage of the process, in full and frank consultations with the relevant workers' and employers' organizations on any questions or proposed legislation affecting trade union rights so as to permit the attainment of mutually acceptable solutions.

(b) Noting that the Public Sector Services Continuation Act (Bill 45) is not currently in force and is the subject of domestic litigation, the Committee requests the Government to keep it informed of the outcome of the judicial proceedings and expects that its conclusions above will be taken into account within the framework of the review Bill 45.

CASE NO. 2946

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

Complaint against the Government of Colombia presented by
– the Single Confederation of Workers of Colombia (CUT) and
– the Workers' Trade Union Confederation of the Oil Industry (USO)

Allegations: The complainant organizations denounce acts of anti-union discrimination, mass dismissals, pressure and persecution to give up trade union membership in Ecopetrol SA and various subsidiary companies (Pacific Rubiales Energy-Meta Petroleum Corp, Cepcolsa, Montajes JM SA, Petrominerales, Reficar SA, CBI, Consorcio Lithos, Tiger-Sepam, Propilco SA), the lack of effective protection by the public authorities against these acts and the violation of the right to strike in the oil sector

220. The complaint is contained in communications of 10 February and 8 June 2012, and 1 October 2013, submitted by the Single Confederation of Workers (CUT) and by the Workers' Trade Union Confederation of the Oil Industry (USO).

221. The Government sent its observations in communications of February 2013, 2 and 29 July 2013, 3 March 2014 and 27 October 2014.

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

A. The complainants' allegations

223. The complainants allege a series of violations against the exercise of freedom of association in the oil sector, in particular in the enterprise Ecopetrol and in several of its associated and contractor enterprises. Regarding the workers of the enterprise Pacific Rubiales Energy-Meta Petroleum Corp., the complainants allege that: (i) as a result of a labour dispute, in July 2011, approximately 4,000 workers of contractor and subcontractor enterprises providing services for Pacific Rubiales became members of the USO, which presented the enterprise with a list of demands; (ii) on 19 September, in view of the

enterprise's delay in entering into negotiations, the workers held a permanent assembly (work stoppage); (iii) on 20 September, the work stoppage was lifted following an agreement between the Government, the USO and the enterprise, establishing a month of negotiations between the USO and the enterprise, as well as permission for the USO to enter the Campo Rubiales oilfield; (iv) no agreement had been reached by the end of the month of negotiations, while, in parallel, the enterprise announced that it had signed an agreement with another trade union; (v) in protest against this situation, the workers of the contractor and subcontractor enterprises staged a work stoppage on 25 October 2011, which was violently repressed and 13 workers were detained by the national army; (vi) in November 2011, the enterprise terminated its contract with Montajes JM, the contractor enterprise with the highest number of USO members, with a view to working with non-unionized staff; (vii) on 1 December 2011, Pacific Rubiales signed an agreement on wages with the presidents of Asojuntas and Asotransfuturo, while no agreement was reached in the negotiations with the USO; (viii) since large numbers of workers started joining the USO, forms of anti-union discrimination have been used by contractor enterprises working for Pacific Rubiales, such as pressuring union members to give up their work contract; (ix) on many occasions, the enterprise has restricted the access of USO members to the oilfield, resulting in workers leaving the trade union in large numbers; and (x) the aforementioned violations have been the subject of labour administration complaints brought by the USO before the Ministry of Labour.

224. In a communication of 8 June 2012, the complainants mention specific cases of restrictions on the access of unionized workers (Norlay Acevedo Gaviria and Diego Iván Ríos Rivera) to the Campo Rubiales oil field, and the non-renewal of work contracts in retaliation for the trade union activities of certain workers (José Dionel Higuera Gualdrón, who has purportedly been blacklisted, and Alexander Barreto Ballesteros).

225. Regarding the workers in the Cepcolsa enterprise, which operates in Puerto Gaitán through a series of contractor enterprises, including Montajes JM, the complainants allege that: (i) on 19 June 2011, the 481 workers of the aforementioned contractor enterprise for Cepcolsa who were members of the USO (out of a total of 817 workers) declared a work stoppage due to lack of progress in the negotiations on the improvement of their working conditions; (ii) on 23 June 2011, as a result of that protest, the main enterprise decided to suspend its contract with the contractor enterprise, resulting in the dismissal of the 817 workers (a recurrent practice in the oil industry to get rid of unionized staff); (iii) on 12 June 2011, in reaction to demonstrations, and following a meeting with the USO and the Regional Director of the Ministry of Social Protection (now the Ministry of Labour), the contractor agreed to reinstate the workers, which it then failed to do, and (iv) the enterprise has refused to negotiate with the USO regarding the working conditions of subcontracted workers.

226. Regarding the workers of Petrominerales, which operates through 35 contractor enterprises, the complainants allege that: (i) since the creation of the USO's Barranca de Upía USO subcommittee in September 2010, various anti-union acts have been carried out, comprising pressure and threats to make workers give up their union membership and the dismissal by the enterprise and its contractors of some 40 unionized workers in December 2010; (ii) in the negotiations between the main enterprise, the USO and the local communities, the enterprise refused to discuss the wages of the contractors' workers, even though the tender criteria are defined by the main enterprise directly, and (iii) shortly after the negotiations began, the USO received and continues to receive threats from a criminal gang known as the *"Aguilas Negras"* (Black Eagles), but the authorities have failed to make any inquiries in that regard.

227. With regard to Ecopetrol's Barrancabermeja refinery, which has 10,000 workers, 8,000 of whom work for contractor enterprises, the complainants allege that: (i) since 2008, there

have been constant violations of freedom of association, including threats of non-renewal of contracts if workers become USO members; (ii) a member of the USO national executive committee was dismissed in 2009; (iii) eight disciplinary proceedings were initiated against union officials for publicizing the union newsletter using megaphones and for meeting with workers in designated safe areas; (iv) the police violently repressed a trade union demonstration on 9 November 2011, and there were reprisals against the USO; (v) a collective agreement was applied to workers who gave up their trade union membership, granting them better wage conditions and benefits than those under the USO–Ecopetrol collective agreement; (vi) as a result of an information session and a peaceful march organized on 16 May 2012 in the vicinity of the Barrancabermeja refinery, the enterprise took reprisals against 11 workers by sending them a third warning letter, which, under the enterprise's internal regulations, allows it to terminate the contracts of the addressees, with a view to intimidating them.

228. Regarding the Ecopetrol workers in Cartagena, the complainants allege that: (i) various union officials were the subject of disciplinary proceedings based on information obtained illegally using security cameras and microphones; (ii) five officials and three members were wounded by the police during the national demonstration held on 9 November 2011; (iii) on 10 November 2011, all unionized workers were denied access to the Cartagena refinery, which resulted in an official report of a work stoppage, ascribed to the employer; (iv) on 23 May 2012, Wilmer Hernández Cedrón, the USO Education Secretary, and Joaquín Padilla Castro, the Secretary for Press and Propaganda of the Cartagena subcommittee, were questioned over accusations of physical aggression and entering an area of the refinery without permission.

229. With regard to the Reficar workers, the complainants allege that: (i) the USO is banned from conducting its union activities in the refinery of that enterprise (by means of orders to deny union officials access and bans on putting up information posters and distributing the USO newsletter) and, since April 2010, 35 disciplinary proceedings have been initiated against the USO's Cartagena subcommittee for conducting union activities on the enterprise's property; (ii) 119 workers were dismissed in March 2010 for participating in a day's work stoppage which continued for a month and a half; (iii) the USO–Ecopetrol collective labour agreement does not apply to the workers of the enterprises belonging to the business group, as Reficar claims that the enterprise's activities are not part of the oil industry.

230. The complainants also allege other violations of freedom of association by the contractor and subcontractor enterprises used by Reficar, as in the case of CBI Chicago Bridge and Iron and its respective subcontractor enterprises: (i) in August 2011, Fredy Rogers and Edison Escobar were selectively dismissed on account of their USO membership; (ii) having sent various requests for intervention to the Ministry of Labour to resolve the dispute, CBI workers held a permanent assembly and work stoppage in March 2012, as a result of which the enterprise dismissed 189 USO members; (iii) the enterprise requested that the work stoppages of 2012 be declared illegal. Although the High Court of Cartagena, in a ruling of 15 November 2012, determined that the stoppage was not illegal, the Labour Appeals Chamber of the Supreme Court of Justice revoked the court ruling and determined that the stoppage was illegal, thereby violating due process by making an evidentiary assessment which ran counter to the evidence, and violating freedom of association and the right to strike; (iv) in July 2011, Consorcio Lithos refused to deduct the union dues of its workers who were USO members; and (v) as a result of the union's filing of a complaint of a series of labour violations before the Ministry of Labour, the Tiger-Sepam enterprise dismissed some 200 USO members.

231. With regard to the Propilco workers, the complainants allege that: (i) in May 2011, 112 workers who were providing services in that enterprise through temporary employment agencies became members of the USO and were immediately dismissed on the pretext that the commercial contract between those enterprises and Propilco had been terminated, a tactic which had been used on various occasions to prevent workers in the sector from joining the USO; (ii) in July 2011, the enterprise and one of its subsidiaries rejected the list of demands presented by the USO, arguing that they are not part of the oil industry; (iii) on 31 August 2011, the enterprise dismissed Miguel Pacheco, who had been chosen to negotiate the list of demands; (iv) as a result of the list of demands, the enterprise and its subsidiary instituted legal proceedings to request that the USO's statutory reform be declared illegal, that the enterprises be exonerated from the obligation to negotiate the list of demands and that the USO be ordered to pay the personal and material damages arising from trade union membership; (v) on 29 September 2011, the USO's Cartagena subcommittee filed a complaint against Ecopetrol, as the main enterprise, and against Propilco before the Public Prosecution Service for violation of freedom of association and collective bargaining; and (vi) on 4 May 2012, Edilberto Ulloque, the last remaining USO member in the enterprise, was dismissed due to instances of alleged misconduct years earlier.

232. Based on the events described in the paragraphs above, the complainants conclude their allegations by denouncing the following violations of ILO Conventions Nos 87 and 98: (i) the violation of freedom of opinion and expression through the restriction of the circulation of the USO newsletters, the dismissal of workers for having distributed them, the hiding of USO banners and the stigmatization of union officials who filed labour complaints; (ii) restrictions on the right to join trade unions, not only due to the aforementioned restrictions on the circulation of trade union information but also due to the temporary nature of contracts, which allows enterprises to demand that workers give up their USO membership to obtain the signature or renewal of their contracts and, lastly, due to pressure to join another union, known for its close relationship with the employers; (iii) lack of protection against anti-union discrimination, in particular against the practice of blacklisting, threats of non-renewal of fixed-term contracts without the existence of adequate mechanisms to provide fast and effective protection against such acts. In this regard, the complainant alleges that complaints filed before the labour inspectorate take two to three years to be examined; (iv) the violation of the right to strike, in so far as the labour legislation (in particular section 430(h) of the Labour Code) continues to prohibit strikes in the oil sector and that 24-hour work stoppages organized by workers in the sector lead to disproportionate police repression, non-renewal of the contracts of workers that participate in them, and stigmatization.

B. The Government's reply

233. In a communication of February 2013, the Government transmits the replies of the Ecopetrol, Meta Petroleum Corp., Petrominerales, Reficar and Cepcolsa enterprises. In its reply, Ecopetrol indicates that: (i) the allegations regarding the group's contracting policy (using contractor enterprises and contracts limited to specific projects) do not concern freedom of association or the content of ILO Conventions Nos 87 and 98 and are, therefore, outside the Committee's mandate; (ii) the organization's allegations are based on vague complaints without reference to concrete evidence; (iii) the allegations of anti-union disciplinary proceedings against union officials and members do not tally with the reality, since the single disciplinary code (applicable to the enterprise's direct employees since they hold public servant status) does not indicate that union membership or activity provides grounds for disciplinary action; (iv) entry into safe areas is regulated in order to protect the persons working there, and the disciplinary inquiries referred to in the complaint do not constitute anti-union persecution but instead seek to ensure that industrial safety standards are met; (v) the enterprise respects the unions' right to circulate their

newsletter and other information; however, certain trade union activities during working hours and in workplaces, without the enterprise's authorization, can result in work stoppages and affect the trade union rights of other workers; (vi) the USO, without regard for constitutional and legal considerations, has been promoting work stoppages in an enterprise which provides an essential public service (see ruling C-450 of 1995 of the Constitutional Court); (vii) in addition, constant work stoppages make a mockery of the five-year collective agreement signed in 2009 by Ecopetrol and the USO and violate the principle of bargaining in good faith; (viii) the work stoppage on 9 November 2011 – which continued until 18 November – was not peaceful, and required the intervention of the police in order to maintain public order and safeguard the enterprise's premises; (ix) Agreement No. 01 of 1977, recognized by the Council of State, does not provide for wages above those in the collective labour agreement; (x) the accusations that video cameras were installed on the enterprise's premises in order to take disciplinary action against unionized workers are false since the cameras were installed purely for security reasons; (xi) more generally, Ecopetrol reaffirms its commitment to developing collective labour relations based on mutual trust, as illustrated by the Agreement to promote relationships of trust, signed on 24 April 2009 with the USO and other stakeholders; the Ecopetrol-USO collective agreement for the period 2009–14; and the agreement on dismissed workers (collective labour dispute 2002–04) and the agreement on enterprise, production and worker welfare development, signed that same year.

234. In its reply, Meta Petroleum Corp. indicates that: (i) it is responsible for operations in the Quifa and Rubiales oilfields, while Pacific Rubiales Energy Corp. is a Canadian enterprise which does not exist in Colombia and which does not have employees in the country, therefore it is impossible, both in fact and in law, for Pacific Rubiales Energy Corp. to violate freedom of association in Colombia; (ii) there are no USO members under contract with Meta Petroleum Corp. and the enterprise has not been notified by the USO of any of its workers becoming USO members; (iii) the enterprise has always had internal mechanisms to address the demands of its workers; furthermore, the enterprise encourages its subcontractor enterprises to address the demands of their own workers; (iv) the various work stoppages initiated by workers of contractor and subcontractor enterprises were not preceded by the presentation of a list of demands nor by the notification of specific complaints or demands. Instead, the USO took the law into its own hands and proceeded to stage a violent work stoppage on 18 July 2011. This not only violated the freedom of movement and the right to work of employees in the field but also endangered the security of the entire community by not complying with the industrial security requirements for operations in oil fields; (v) the enterprise restricted access to the oil field to avoid acts of violence; (vi) the USO members who entered the oil field did not act like union officials but like agitators, encouraging violence, damaging property and injuring workers; (vii) as a result of these acts, various contractor enterprises filed criminal complaints with the Public Prosecution Service, which are currently under examination; (viii) notwithstanding the above, the enterprise agreed to engage in dialogue with the USO on 19 July 2011, which resulted in an agreement which the enterprise strictly adhered to; (ix) however, the USO broke with that agreement by carrying out further violent acts in the oil field in September and October 2011; (x) in view of the serious danger and vandalism in Campos Rubiales and Quifa, a staff entry and exit policy was adopted and applied to everyone, regardless of trade union membership, but with the requirement of being under contract with a contractor or subcontractor enterprise; (xi) the termination by the enterprise of the other civil or commercial contracts with contractor enterprises is part of the standard contracting system and the nature of activities carried out on the oil field, and it is totally unrelated to the exercise of freedom of association; (xii) on 6 October 2011, the enterprise signed an agreement with the Union of Workers of the National Energy Industry and Domestic Public Services (UTEN) to standardize the labour activities which make the enterprise's contractors and subcontractors entitled to non-statutory and wage benefits; the number of UTEN members exceeds 50 per cent of the enterprise's workers, the relationship between

the enterprise and UTEN is one of respect enabling the conclusion of collective and labour agreements, as was the case in 2011, 2012 and 2013; (xiii) the enterprise has never induced anyone to give up their trade union membership, as attested by the increase in the number of the unionized workers in the enterprise (3,662 additional members between January 2012 and February 2013); (xiv) neither the enterprise nor the contractor enterprises apply entry or hiring restrictions based on trade union membership or activities. This applies to Norlay Acevedo Gaviria, Diego Iván Ríos Rivera, José Dionel Higuera Gualdrón and Alexander Barreto Ballesteros.

235. In its reply, Petrominerales indicates that: (i) the complaint is not receivable because it contains vague allegations and lacks substantiating evidence; the enterprise collaborates with Ecopetrol on various projects but not in Barranca de Upía, which is the subject of the complaint; (ii) the fact that it collaborates with Ecopetrol on various projects does not in itself mean that the enterprise is necessarily under the obligation to negotiate with the USO; (iii) Petrominerales is not a contractor or subcontractor enterprise of Ecopetrol, therefore the sections of Ecopetrol's collective agreements concerning its contractors and subcontractors do not apply to it; (iv) the allegation that since 2010 the enterprise has required its workers to give up their USO membership is unsubstantiated, given that there are no USO members among its workers; (v) likewise, the allegation that the enterprise pressures its contractor and subcontractor enterprises into rejecting workers belonging to the USO is entirely false and lacking in any evidence whatsoever; (vi) the enterprise is in no way connected to the threats against the USO by a criminal gang known as the *"Aguilas Negras"* and it rejects the insinuations made by the USO in this regard, which would endanger the lives of the enterprise's staff, and particularly those working on the oil field; (vii) the allegation of the anti-union dismissal of 40 workers of contractor enterprises is unfounded, since the workers' contract was terminated as a result of the completion of the projects agreed between Petrominerales and its contractor enterprises. In this regard, the enterprise is not aware of any complaint or claim in relation to the aforementioned termination of employment contracts.

236. In its reply, Reficar indicates that: (i) the 35 disciplinary proceedings resulting from trade union activities on the enterprise's property concern decisions by Ecopetrol, the employer of the workers concerned; (ii) on 29 April 2010, USO representatives, accompanied by some 50 people, entered the enterprise's property without permission and by non-peaceful means; (iii) the USO–Ecopetrol collective agreement does not apply to the enterprise, which is an independent third party; (iv) the enterprise established a policy for the admission of the trade union onto its premises, which was agreed upon with the USO and which complies with national and international legislation regarding freedom of association. In this regard, it attaches proof of 20 authorizations admitting USO officials; (v) there is therefore no restriction on the circulation of trade union information and, in fact, in 2011 and 2012, the USO made little use of its visiting rights under the aforementioned admission procedure; (vi) the dismissal of 189 USO members by the contractor CBI as a result of the work stoppage on 17 May 2012 was upheld in a ruling of 10 April of the Labour Appeals Chamber of the Supreme Court of Justice, which held the USO responsible for the work stoppage.

237. In its reply, Cepcolsa indicates that: (i) the complaint is not admissible because it contains vague allegations and lacks substantiating evidence, as demonstrated for instance in its failure to indicate the names of the workers who were allegedly victims of anti-union dismissals and the date of those dismissals; (ii) nor does it provide evidence of the USO membership of certain workers of the Montajes JM enterprise; (iii) the Committee on Freedom of Association is confronted with a highly reprehensible means of exerting pressure on workers and employers through dark forces which seek to foster conflict in all its forms in labour matters, leading to violence and acts of intimidation; (iv) the work stoppage in the Montajes JM enterprise did not follow any formal request by the workers

and it was only on 21 June 2011, when the stoppage was already under way, that the enterprise received a written communication from the USO; (v) according to the manager of Montajes JM, workers who said that they wished to continue working were threatened, thus feeling obliged to stop their activities; (vi) in the following days, a number of death threats were received by enterprise staff and by project staff in general; on 1 July 2011, as a result of this escalation, the Montajes JM enterprise requested the definitive termination of its contracts with Cepcolsa; (vii) the allegation of disproportionate police repression in relation to the work stoppage is also false, given that the aforementioned intimidating and threating acts justified the presence of the police force to act as a deterrent.

238. Pursuant to the information provided by the aforementioned enterprises, the Government indicates that: (i) the allegations relating to the type of contracts used by enterprises in the oil sector are very vague and it is unclear in what way the types of contracts used in the sector constitute a violation of freedom of association; (ii) the complainants do not provide evidence to substantiate their allegations; (iii) the acts allegedly violating freedom of association are illustrated by only a few isolated demonstrations by a small number of workers who indicate that their request to leave the union was not voluntary, whereas the allegations were not notified to the labour authorities; (iv) the police intervention complied with the Constitution and with the law, ensuring the respect of public rights and liberties, and guaranteeing public order; (v) the workers who were allegedly affected by the police's intervention could have approached the competent judicial bodies in order to shed light on the events and to identify those responsible; (vi) likewise, regarding the protection of freedom of association, Colombian legislation provides sufficient instruments to enable those who consider that their rights have been violated to avail themselves of such protection mechanisms; (vii) the Ministry of Labour carried out 63 inquiries into contractor enterprises in the oil sector in the department of Meta for "the alleged violations of labour and social security rights". One of these inquiries relates to the alleged violation of the freedom of association by contractor enterprises of Pacific Rubiales Energy and has been referred to the Territorial Directorate of Cundinamarca; (viii) in addition, the complaint regarding the alleged violation of freedom of association was submitted to the Public Prosecution Service; (ix) Cepcolsa and its contractor Montajes JM received penalties for their violation of labour standards; (x) the USO filed an administrative labour complaint against Pacific Rubiales Energy and Meta Petroleum Corp., alleging the widespread termination of commercial contracts with contractor enterprises as a form of anti-union discrimination, and the denial of access to oil fields for USO members; (xi) in resolutions of 19 April and 2 and 26 July 2013, the Ministry of Labour determined the enterprises not to be criminally responsible for the alleged anti-union acts; and (xii) in a ruling of 10 April 2013, the Labour Appeals Chamber of the Supreme Court of Justice declared that the work stoppages staged by the USO in March, April and May 2012 were illegal. The proceedings for the protection of constitutional rights *(tutela)* filed by the USO were rejected by both the criminal and civil chambers of the Supreme Court of Justice.

C. The Committee's conclusions

239. *The Committee observes that this case refers to multiple alleged violations of the right to freedom of association within the Ecopetrol enterprise and various associate and contractor enterprises operating in the oil sector, and that on the basis of those acts, the complainants allege the following violations of ILO Conventions Nos 87 and 98: (i) restrictions on the USO's access to workers in the sector and limitations on its freedom of expression; (ii) restrictions on the right to freedom of association, through a series of acts of anti-union discrimination such as use of pressure or coercion of the workers in the sector, facilitated by the widespread use of outsourcing and of fixed-term contracts; (iii) lack of effective protection on the part of the public authorities against the many acts of anti-union discrimination reported in the context of the present complaint; and (iv) violation of the right to strike consisting of a prohibition of strikes in the oil sector,*

excessive police repression, dismissals and stigmatization of workers participating in 24-hour work stoppages.

240. *The Committee notes the observations of various enterprises referred to in the complaint that were transmitted by the Government, in which they: (i) emphasize the vagueness of many of the allegations and the lack of supporting evidence; (ii) deny the existence of limitations on USO officials' and members' access to the exploitation fields, stating that there are objective reasons of industrial safety which require access to the fields to be regulated; (iii) dispute the veracity of the allegations of anti-union discrimination; and (iv) consider that the police intervention during the work stoppages was essential, in view of the violent nature of the stoppages.*

241. *The Committee also notes the Government's response, in which it concurs with the observations of the aforementioned enterprises as to the vagueness of the allegations and lack of evidence and adds that: (i) the police complied with their mandate and the constitutional order throughout their intervention in the stoppages; (ii) the Supreme Court ruled that the USO was responsible for organizing illegal and violent stoppages in 2012; (iii) the USO and its members could have used the various internal mechanisms to report the violations alleged in the complaint; (iv) the various allegations submitted to the Ministry of Labour in relation to enterprises in the oil sector are resulting in appropriate inquiries; and (v) the labour administration complaint filed by the USO on 2 February 2012 against Pacific Rubiales Energy and Meta Petroleum Corp. resulted in Ministry of Labour resolutions determining that these enterprises were not criminally responsible for the alleged anti-union acts.*

Alleged restrictions on the USO's access to workers in the sector and limitations on its freedom of expression

242. *Regarding the allegations of restrictions on the USO's access to various exploitation fields and workplaces in the sector, the Committee observes that the enterprises referred to in the allegations state that there are indeed certain access restrictions in place for some or all of their facilities and that those limitations are not anti-union but instead are required for industrial safety reasons (as safety zones), or that they are justified as a result of the violent events arising during the work stoppages referred to in the complaint. In this respect, the Committee notes that some enterprises state that only their own workers and those of contractor or subcontractor enterprises have access to their facilities, whereas others state that they have developed procedures concerning trade union access which do allow visits from union officials who do not work for the enterprises in question, subject to certain conditions. Lastly, the Committee notes that the Government's observations do not contain any specific information on this point. In relation to this aspect of the complaint, the Committee recalls the principle 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 of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 1103]. As to the modalities, access to the workplace should not of course be exercised to the detriment of the efficient functioning of the entity concerned. Therefore, in such instances, the Committee has often stated that the workers' organizations concerned and the employer should strive to reach agreements so that access to workplaces, during and outside working hours, should be granted to workers' organizations without impairing the efficient functioning of the administration or the public institution concerned [see* ***Digest****, op. cit., para. 1109]. The Committee therefore requests the Government to take the necessary measures to ensure that, under conditions which take into account objective security concerns and do not impede their efficient functioning, all of the enterprises in the oil sector allow external trade union officials to enter staff areas, whether to meet with their*

members or to inform non-unionized workers of the potential benefits of membership. The Committee requests the Government to keep it informed in this respect.

243. *The Committee further observes that, as described in the documents provided by the corresponding enterprises, certain enterprises that have regulated the access of external trade unionists to their facilities make it a prerequisite to entry that they provide a list of workers of the contractor and subcontractor enterprises operating in the area who are members of the trade union in question. In this regard, the Committee notes that the Government's observations contain no specific information on this point, and recalls that the establishment of a register containing data on trade union members does not respect rights of the person (including privacy rights) and such a register may be used to compile blacklists of workers [see* ***Digest****, op. cit., para. 177]. The Committee therefore requests the Government to take the necessary measures to ensure that regulating the access of trade union officials to the exploitation and production sites of enterprises in the sector does not give rise to the establishment and circulation of lists of trade union members. The Committee requests the Government to keep it informed in this respect.*

244. *With regard to the alleged prohibition on circulating the USO newsletter in the Ecopetrol refinery in Barrancabermeja and in the Reficar facilities, the alleged hiding of the USO flag by that enterprise in November 2011, and the alleged imposition of disciplinary measures on eight union officials in this context by Ecopetrol, the Committee notes the enterprise's observations stating that it respects the right of trade union organizations to broadcast information, but that certain trade union activities at the workplace during working hours without authorization from the enterprise may cause work stoppages and affect the rights of others. In this respect, the Committee recalls the principle that the display of union flags at meetings in the workplace, the putting up of union bulletin boards, the distribution of union news and leaflets, the signing of petitions and participation in union rallies constitute legitimate trade union activities [see* ***Digest****, op. cit., para. 162]. In the light of the foregoing, the Committee requests the Government to invite the enterprises in the sector and the USO to engage in dialogue to determine arrangements for the distribution of union information that will not interfere with the efficient functioning of the relevant enterprises. The Committee requests the Government to keep it informed in this respect.*

Allegations of acts of discrimination and use of pressure and coercion to restrict or undermine the right to freedom of association in enterprises in the sector

245. *With regard to the many generic allegations of dismissals, disciplinary measures, non-renewal of employment contracts, and use of pressure and coercion against USO officials and members, the Committee observes, firstly, that a series of cases referenced in the complaint contain insufficient information on the dates of the alleged acts and on the persons affected by them, and consequently invites the complainants to send further details on the said acts, to state whether legal proceedings have been initiated or labour administration complaints have been filed concerning those matters and, if so, to keep the Committee informed of their outcome. If this information is not received, the Committee will not proceed with the examination of these allegations.*

246. *Similarly, the Committee notes that it has limited information on the following allegations: (i) the disciplinary action taken on 23 May 2012 against Wilmer Hernández Cedrón, the USO Education Secretary, and Joaquín Padilla Castro, the Press and Propaganda Secretary of the USO's Cartagena subcommittee; (ii) the selective dismissal of Fredy Rogers and Edison Escobar by a contractor enterprise of Reficar in August 2011; and (iii) the dismissal on 31 August 2011 of Miguel Pacheco, who drafted the Propilco list of demands, and the dismissal on 4 May 2012 of Edilberto Ulloque, the last worker of the*

enterprise who was a USO member. The Committee therefore requests the complainants to provide further details on the aforementioned acts, to state whether legal proceedings have been initiated or labour administration complaints have been filed concerning those matters and, if so, to keep the Committee informed of their outcome. If this information is not received, the Committee will not proceed with the examination of these allegations.

247. *Regarding the allegation of restrictions on access for USO member, Norlay Acevedo Gaviria, to the Campo Rubiales oilfield, the Committee observes that the labour administration complaint filed by the USO on 2 February 2012 was applicable to his situation. For this matter, the Committee takes note of the Ministry of Labour resolutions determining that the freedom of association was not violated in this instance.*

248. *Regarding the allegations of restrictions on access to the Campo Rubiales exploration fields for USO member, Diego Iván Ríos Rivera, and of the non-renewal of the employment contracts of José Dionel Higuera Gualdrón, who is purportedly blacklisted, and of Alexander Barreto Ballesteros in retaliation for union activities they carried out, the Committee takes note of Meta Petroleum Corp.'s denial of the allegations and of the Government's statement that the aforementioned workers did not use the internal means of recourse available to them. In this respect, the Committee observes that the Government states that the Territorial Directorate of Cundinamarca is carrying out an inquiry into an alleged violation of freedom of association by Pacific Rubiales Energy contractor enterprises, but that the Government does not, however, specify whether that inquiry concerns the aforementioned allegations. In the light of the foregoing, the Committee requests the Government, in the event that the labour administration complaint currently being examined does not include the said allegations, to immediately conduct an inquiry into them and to keep it informed of the outcome.*

249. *Furthermore, the Committee observes that the allegations of anti-union discrimination contained in the complaint also refer to practices of termination of contracts between the main contractors and their contractor enterprises, where many staff of the latter are USO members, as is said to have happened when Pacific Rubiales-Meta Petroleum Corp. and Cepcolsa terminated their respective contracts with the Montajes JM enterprise, in June and November 2011 respectively, and in a similar operation by Propilco in May 2011 with various private employment agencies. In this respect, the Committee notes the first enterprise's denial of the allegations and the second enterprise's observations stating that, in view of the acts of violence and increasing threats to its staff's personal safety that occurred during the various work stoppages, on 1 July 2011 Montajes JM requested the termination of the contract linking the two enterprises. The Committee also notes that the Government reports that Cepcolsa and its contractor enterprise, Montajes JM, were sanctioned by the Ministry of Labour for violating labour standards, but does not specify what those violations were. In addition, the Committee notes that the labour administration complaint submitted by the USO in February 2012 included in its allegations the widespread termination of commercial contracts with contractor enterprises as a form of anti-union discrimination used by the main contractors. In this respect, the Committee notes, on the one hand, that the Ministry of Labour considered in its resolutions that the lack of a direct legal labour relationship between the main contractors subject to the complaint and the dismissed workers meant that the former could not be held criminally responsible for the alleged anti-union acts, and on the other hand, that the latter did not meet the request by the USO to provide the main contractors with further information and evidence on the reasons for the termination of the commercial contracts with the contractor enterprises. In the light of the foregoing, the Committee requests the Government to immediately conduct or complete inquiries into the alleged anti-union termination of contracts between enterprises and to keep it informed of the outcome.*

250. *With respect to the alleged negative impact of widespread use of fixed-term contracts on the exercise of trade union rights, the Committee first wishes to underline that fixed-term contracts should not be used deliberately for anti-union purposes. Further, the Committee points out that, in certain circumstances, the employment of workers through repeated renewals of fixed-term contracts for several years can be an obstacle to the exercise of trade union rights. The Committee therefore requests the Government to take this principle into account in the inquiries it conducts into the acts referred to in this complaint and that, on the basis of the concrete results of those inquiries, undertake consultations with the relevant social partners on possible measures to ensure that the use of fixed-term contracts in the petroleum sector do not adversely affect the free exercise of freedom of association.*

Allegations that the public authorities failed to provide effective protection against the acts of anti-union discrimination

251. *As to the allegation that the public authorities failed to provide effective protection against the many acts of anti-union discrimination reported in the present complaint, the Committee observes in particular that the complainants criticize the length of time taken by the labour inspectorate to resolve the disputes submitted to it. In this regard, the Committee notes the information from the Government stating that the labour administration complaint submitted by the USO on 2 February 2012 alleging acts of anti-union discrimination resulted in a Ministry of Labour resolution dated 19 April 2013. The Committee also notes that, to date, it has not received information on the resolution of another allegation of anti-union acts against contractor enterprises in the oil sector in the department of Meta, which, according to a communication of August 2012 by the Ministry of Labour, was being examined by the labour inspectorate in Cundinamarca. Recalling that, where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see* ***Digest****, op. cit., para. 835], the Committee requests the Government to take the necessary measures to ensure that the inquiries into the aforementioned allegation of anti-union acts, which are still pending, are completed without delay. The Committee requests the Government to keep it informed in this respect.*

Allegations of violations of the right to strike

252. *Regarding the allegations of violations of the right to strike through the police's violent repression of the work stoppages on 25 October and 9 November 2011 and through the dismissal of the workers who participated in those and in the May 2012 stoppage, the Committee observes that the Ministry of Labour states that the work stoppages gave rise to a large number of violent acts that necessitated police intervention, that those interventions complied with the constitutional and legal safeguards, and that the persons who may have been affected could have used the various internal mechanisms to report the possible excessive use of force by the police, but did not. The Committee further observes that the work stoppages of May 2012 led to legal action and the Supreme Court found that the movement had given rise to a large number of violent acts. In this respect, the Committee recalls the principle that the principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike [see* ***Digest****, op. cit., para. 667].*

253. *Furthermore, the Committee observes that the allegations in the complaint concerning strike also refer to the persistent prohibition under the legislation in force of taking strike action in the oil exploitation, production, refining and distribution sector, as it is considered an essential public service. The Committee recalls that during previous*

examinations of this question by the Committee, the Government indicated that the disruption of the sector could lead to circumstances in which the safety and even the health of the population are put at risk, as it could result in the deprivation of the country of fuel [see particularly Case No. 2355, 343rd Report, para. 451]. The Committee had asked the Government to take steps to make the necessary amendments to legislation so as to allow strikes in the petroleum sector with the possibility of providing for the establishment of a negotiated minimum service with the participation of the trade unions, the employers and the public authorities concerned so as to ensure the basic needs of the users of these services are satisfied [see Case No. 2355, 348th Report, para. 308].

254. *In this respect, the Committee notes judgment C-796/14 of 30 October 2014 from the Constitutional Court of Colombia concerning the constitutionality of article 430(h) of the Substantive Labour Code that prohibits strike in the sector involving the exploitation, production, refining and distribution of oil and its derivatives. The Committee observes that, in this judgment, the Constitutional Court indicates that: (i) the prohibition on strike in article 430(h) does not exceed the concept of essential public service contained in article 56 of the Constitution of Colombia which was understood by the Court, on the basis of the ILO Conventions, to mean that the suspension of the normal functioning of petroleum-derived fuel could put at risk fundamental rights to life and health; (ii) it is necessary to analyse in which contexts the interruption of work in the "exploitation, production, refining and distribution of oil and its derivatives, when these are intended for the normal supply of fuel to the country, according to the Government", endangers the life, security and health of all or part of the population and in which contexts it does not, with the aim of defining the minimum conditions in which it is possible to exercise the right to strike in this specific hydrocarbon sector; and (iii) although these activities are in many cases necessary to guarantee basic services, as is the case with oil and its derivatives intended for the transport of people in emergency situations – for example, medical emergencies, or the transport of food or the supply of energy to institutions that provide services such as health and education – it is also the case that fuel generated by oil and its derivatives also is used for many other services, with respect to which the interruption of supply does not inevitably result in a risk to life, security or health of whole or part of the population, because in many cases there is no direct relation with the fulfilment of any fundamental right.*

255. *The Committee finally observes that, in light of the above, the Constitutional Court calls upon the Legislature of Colombia to take steps, within two years, to define the scope of the contexts within which it would not be possible to exercise the right to strike in this specific hydrocarbon sector, in conformity with what is set out in article 56 of the Constitution.*

256. *Noting with interest the abovementioned judgment, the Committee invites the Government to undertake consultations with the relevant social partners in relation to the legislative reforms requested by the Constitutional Court and recalls that the Government may seek the technical assistance of the Office in this respect. The Committee requests the Government to keep it informed of all developments in relation to judgment C-796/2014.*

The Committee's recommendations

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

(a) The Committee requests the Government to take the necessary measures to ensure that all of the enterprises in the oil sector allow external trade union officials to enter staff areas, under conditions which take into account objective security concerns and do not impede the efficient functioning of

those enterprises, whether to meet with their members or to inform non-unionized workers of the potential benefits of membership. The Committee requests the Government to keep it informed in this respect.

(b) The Committee requests the Government to take the necessary measures to ensure that regulating the access of trade union officials to the exploitation and production sites of enterprises in the sector does not give rise to the establishment and circulation of lists of trade union members. The Committee requests the Government to keep it informed in this respect.

(c) The Committee requests the Government to invite the enterprises and the USO to engage in dialogue to determine arrangements for the distribution of union information that will not interfere with the efficient functioning of the relevant enterprises. The Committee requests the Government to keep it informed in this respect.

(d) With reference to the large number of allegations of anti-union acts against USO officials and members on which the Committee has limited information, the Committee requests the complainants to provide further details on the aforementioned acts, to state whether legal proceedings have been initiated or labour administration complaints have been filed concerning those matters and, if so, to keep the Committee informed of their outcome. If the information requested is not received, the Committee will not proceed with the examination of these allegations.

(e) The Committee requests the Government, in the event that the labour administration complaint currently being examined does not include the said allegations, to immediately conduct inquiries into the alleged restriction on access to the Campo Rubiales oil field for USO member, Diego Iván Ríos Rivera, and of the non-renewal of the employment contracts of José Dionel Higuera Gualdrón, who according to the allegations of the complainant organization, is blacklisted and of Alexander Barreto Ballesteros in retaliation for union activities they carried out. The Committee requests the Government to keep it informed of the outcome of the inquiries.

(f) The Committee requests the Government to immediately conduct or complete inquiries into the alleged anti-union termination of contracts between enterprises and to keep it informed of the outcome of the inquiries.

(g) With respect to the alleged negative impact and widespread use of fixed-term contracts on the exercise of trade union rights, the Committee requests the Government, in the inquiries it conducts into the acts referred to in this complaint, to take into account the principles that fixed-term contracts should not be used deliberately for anti-union purposes and that, in certain circumstances, the employment of workers through repeated renewals of fixed-term contracts for several years can be an obstacle to the exercise of trade union rights. The Committee requests the Government, on the basis of the concrete results of the pending inquiries, to undertake consultations with the relevant social partners on possible measures to ensure that the use of fixed-term contracts in the petroleum sector do not adversely affect the free exercise of freedom of association.

(h) The Committee requests the Government to take the necessary measures to ensure that the inquiries into the said allegation of anti-union acts, which is still pending, are completed without delay. The Committee requests the Government to keep it informed in this respect.

(i) Noting with interest that the Constitutional Court calls upon the Legislature of Colombia to take steps within two years to address the question of the right to strike in this specific hydrocarbon sector, the Committee invites the Government to undertake consultations with the relevant social partners in relation to the legislative reforms requested by the Constitutional Court and recalls that the Government may seek the technical assistance of the Office in this respect. The Committee requests the Government to keep it informed of all developments in relation to judgment C-796/2014.

CASE NO. 2960

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

Complaint against the Government of Colombia presented by
– the General Confederation of Labour (CGT) and
– the National Association of Workers of the Saludcoop Group (UNITRACOOP)

Allegations: The complainant organizations allege acts of anti-union harassment and the refusal of Saludcoop EPS to negotiate a list of demands

258. The complaint is contained in a communication dated 5 June 2012 from the General Confederation of Labour (CGT) and the National Association of Workers of the Saludcoop Group (UNITRACOOP).

259. The Government sent its observations in communications of 20 September 2012 and 7 and 31 October 2014.

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

A. The complainants' allegations

261. The complainant organizations allege that the Saludcoop EPS business group (hereinafter "the business group"), which consists of three major Colombian health promotion agencies (Saludcoop, Cafesalud and Cruz Blanca) as well as several private enterprises and solidarity sector agencies, carries out acts of anti-union harassment against members of UNITRACOOP and refuses to negotiate the lists of demands presented by that organization. In this regard, the complainant organizations indicate that: (i) as a result of the financial difficulties experienced by the country's health promotion agencies as of

2007, the business group became the object of an audit, as of 2010, by the Office of the National Superintendent of Health; (ii) the UNITRACOOP trade union organization was established in May 2011 to address the deterioration of working conditions that had followed the audit procedure and currently represents 70 per cent of the business group's workers; (iii) the auditor of the business group carried out a series of acts of workplace harassment against numerous UNITRACOOP members; (iv) the auditor of the business group is trying to limit the negotiation of the list of demands exclusively to workers of the Saludcoop EPS agency in an attempt to exclude from the bargaining process the workers of the 70 agencies and enterprises that make up the business group, the management of which is fully under the administrator's control; and (v) the events mentioned above have led to complaints being filed with the Ministry of Labour and the National Office of the Attorney-General without any significant outcome having been achieved.

B. The Government's reply

262. In its communications, the Government sends the July 2012 observations of Saludcoop EPS OC, in which the enterprise indicates that: (i) the Saludcoop Group does not exist and legally only Saludcoop EPS OC exists; (ii) all the employment-related decisions of the enterprise, including those relating to appointments and dismissals of employees, have been taken in accordance with the plan of action for the improvement and recovery of the enterprise and with the endorsement of the Office of the Superintendent, and are therefore not acts of anti-union discrimination; (ii) some complaints concerning acts of anti-union harassment have been referred to the Ministry of Labour, without any final decision against the enterprise having been taken to date; and (iii) the enterprise is not refusing to negotiate with UNITRACOOP, as is evidenced by the meetings held in December 2011 at the invitation of the enterprise; rather, its representatives made it clear that they could speak only on behalf of the enterprise and negotiate the terms of employment of its 402 employees.

263. In a communication of 20 September 2012, the Government states that the management of the enterprise and UNITRACOOP officials agreed to bring the dispute before the Special Committee on the Handling of Disputes (CETCOIT) and that, as a result of that dialogue, on 19 September 2012, they signed an agreement that: (i) contained an acknowledgement by the parties that freedom of association can be exercised only in a climate in which fundamental rights, particularly those relating to freedom of association and collective bargaining as established in the Constitution and in the law, are fully respected and guaranteed; and (ii) provided for the creation of an ad hoc committee composed of three representatives of each party in order to reach an understanding between both parties as to the form, terms and methods of negotiating the list of demands presented by the union, taking into account the circumstances and the context of the State's intervention in the enterprise.

264. In its communications of October 2014, the Government indicates lastly that: (i) as a follow-up to the agreement reached by the parties in the CETCOIT in 2012, the authorities, and in particular the Bogotá Territorial Directorate of the Ministry of Labour, continued in 2014 their efforts to facilitate negotiations between the parties; (ii) the aforementioned efforts resulted in the deposit, on 30 September 2014, of 15 collective agreements signed by UNITRACOOP on the one hand, and Saludcoop EPS OC and related agencies on the other; and (iii) the complaints concerning the possible acts of workplace harassment are before the Ministry of Labour and the National Office of the Attorney-General. In the light of the foregoing and, in particular, the signing of the 15 collective agreements between the enterprise and UNITRACOOP, the Government requests that the Committee does not pursue its examination of this case.

C. The Committee's conclusions

265. *The Committee notes that the present case concerns allegations of acts of anti-union harassment against members of the UNITRACOOP trade union organization by the enterprise Saludcoop EPS OC as well as the enterprise's refusal to negotiate the lists of demands presented by the trade union organization.*

266. *With regard to the alleged refusal by the enterprise to negotiate the lists of demands with UNITRACOOP, the Committee notes with satisfaction that, after an initial agreement signed in the CETCOIT in 2012, in which the parties agreed to set up a bipartite committee to agree on the form, terms and methods of negotiating the list of demands, UNITRACOOP on the one hand, and Saludcoop EPS OC and a number of related agencies, on the other, signed 15 collective agreements which were officially deposited on 30 September 2014. In these circumstances, the Committee will not pursue its examination of these allegations.*

267. *With regard to the allegations of anti-union harassment, the Committee observes that the complaint does not contain any specific details on the nature and content of the allegations and requests the complainant organizations to provide details in this respect. If such information is not forthcoming, the Committee will not continue with the examination of these allegations. The Committee also takes note of the indications by the complainant organization as well as by the enterprise and the Government that several complaints are before the Ministry of Labour and the National Office of the Attorney-General without any final decision against the enterprise having been taken to date. Noting that more than two years have passed since this complaint was filed, and recalling 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 within 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 (revised) edition, 2006, para. 817], the Committee urges the Government to take the necessary measures to expedite the resolution of the complaints and to keep it informed of the outcome.*

The Committee's recommendations

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

(a) The Committee requests the complainant organizations to provide details in relation to the allegations of anti-union harassment. If such information is not forthcoming, the Committee will not continue with the examination of these allegations.

(b) The Committee urges the Government to take the necessary measures to expedite the resolution of complaints of anti-union discrimination and workplace harassment presented to the Ministry of Labour and the National Office of the Attorney-General and to keep it informed of the outcome.

CASE NO. 3034

DEFINITIVE REPORT

Complaint against the Government of Colombia presented by the National Union of Workers of the Processing Industry of Rubber, Plastic, Polyethylene, Polyurethane, Parts and derivatives of these processes (SINTRAINCAPLA)

Allegations: The complainant organization reports a violation of its right to elect its representatives in full freedom and the anti-union dismissal of one of its leaders

269. The complaint is contained in a communication dated 2 May 2013 of the National Union of Workers of the Processing Industry of Rubber, Plastic, Polyethylene, Polyurethane, Synthetics, Parts and derivatives of these processes (SINTRAINCAPLA).

270. The Government sent its observations in a communication dated 24 February 2014.

271. 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

272. The complainant organization alleges that Mr Omar Arquímedes Londoño, worker at Compañía de Empaques SA (hereinafter the company) and union leader of SINTRAINCAPLA, was dismissed on 3 January 2011 without the company or the Colombian courts respecting his trade union immunity, thereby violating the trade union's right to elect its representatives in full freedom. In addition, the dismissal took place against a backdrop in which the union leader was opposed to the union contract concluded between the company and the trade union of Compañia de Empaques SA (SINTRAEMPAQUES) and SINTRAINDUPASCOL. Under Colombian legislation, a union contract is understood to mean a contract that is concluded between one or more trade unions and one or more employers or employers' unions for the provision of services or the performance of a task by its members. With regard to the mentioned allegations, the complainants report that: (i) Mr Londoño was a member of the executive committee of SINTRAINCAPLA of the Medellín branch; his status was duly notified (on 27 September 2010) to SINTRAEMPAQUES, with which the worker had an open-ended work contract; (ii) on 3 January 2011, the worker was dismissed without judicial authorization being sought to lift trade union immunity, which is the reason he instituted legal proceedings; (iii) at first instance, the Labour Court of the Medellín Circuit ordered the reinstatement of the worker, ruling that there was no evidence showing that the claimant's registration on the executive committee of SINTRAINCAPLA was unlawful and that, contrary to the arguments put forward by the company, the Substantive Labour Code did not require the branch of the union's executive committee to be created in the municipality where the worker's company was based; (iv) the Labour Chamber of the High Court of Medellín overturned the judgment of the court of first instance, holding that Mr Londoño's appointment on the executive committee of SINTRAINCAPLA's Medellín branch was unlawful because, in the Court's opinion, only workers working in the municipality of

Medellín could be members of the said executive committee. The worker concerned, however, was employed in Itagüí, a municipality where, moreover, SINTRAINCAPLA did not have an executive committee branch; and (v) the High Court, in addition, ruled that Mr Londoño had, by means of his appointment as union leader of SINTRAINCAPLA, solely pursued his personal interests, ignoring the collective purpose of union immunity.

273. Lastly, the complainant organization states that: (i) the real reason for dismissal was because of the trade union leader's opposition to the (labour) exploitation of the company's workers by means of the union contract concluded between the company and the trade unions, SINTRAEMPAQUES and SINTRAINDUPASCOL; and (ii) the ruling of the High Court of Medellín – which held that Mr Londoño had, in his attempt to obtain union immunity from SINTRAINCAPLA, abused that right – was the result of the Court's subjectivity and anti-union prejudice. On the basis of the above, the organization is of the opinion that Article 3 of Convention No. 87, which stipulates that public authorities should refrain from any interference which would restrict the right of workers' organizations to elect their representatives in full freedom, was violated and requests that the worker be reinstated.

B. The Government's reply

274. In a communication of 24 February 2014, the Government transmitted the reply of Compañía de Empaques SA, which states that: (i) the company, for many years, had two trade unions, SINTRAEMPAQUES and SINTRAINDUPLASCOL, with which it regularly signed collective labour agreements; (ii) in contrast, SINTRAINCAPLA had never had any members from the company or had any type of relationship with it; (iii) the company has signed, both with SINTRAEMPAQUES and SINTRAINDUPLASCOL, a union contract, which is a collective labour contract recognized under Colombian legislation, which grants unionized workers greater benefits than those provided for in legislation; (iv) Mr Londoño was not dismissed because of his objection to the conclusion of the union contract but because of his inadequate performance and productivity, and his poor relationship with his colleagues, which had been signalled as problems for quite some time; (v) Mr Londoño stopped being SINTRAEMPAQUES' union leader on 27 June 2010 as a result of not being re-elected and claimed to have obtained new trade union immunity through a trade union which did not have representative status in the company; and (vi) the last-minute appointment of Mr Londoño as an alternate in the Medellín branch of the executive committee of SINTRAINCAPLA failed to meet the requirements set out in the union's articles of association, namely the article requiring that members must work in a company that has its seat or is located in the same municipality as that where the executive committee branch is operating.

275. The company's observations include a communication from the Medellín branch of SINTRAINDUPLASCOL, which highlights the good relations between the company and the two trade unions in the company and states that Mr Londoño's dismissal was a unilateral decision of the company which was not, at any time, influenced by the said trade unions.

276. Further to the company's observations, the Government states that: (i) with regard to the dismissal, the mandate of the Committee on Freedom of Association does not extend beyond the protection against acts of anti-union discrimination, and in this case the trade union has not provided evidence of any anti-union persecution; (ii) in this case, there has been no violation of the legislation concerning trade union immunity because Mr Londoño's membership did not meet the requirements set out by the union's articles of association – stipulating that a member must belong to an executive committee branch in the place where the company is based – since it was established that the company does not

have a seat in the municipality of Medellín; and (iii) the Colombian courts have issued a definitive ruling on the petitioners' claims and found against them.

C. The Committee's conclusions

277. *The Committee notes that this case concerns allegations of anti-union dismissal of Mr Londoño by SINTRAEMPAQUES without it or the courts recognizing the worker's status as union leader and without judicial authorization being sought to lift trade union immunity.*

278. *The Committee observes that the complainant organization alleges that: (i) the real reason for Mr Londoño's dismissal was because of his opposition as union leader to the labour exploitation of the company's workers by means of the union contract concluded between the company and the trade unions, SINTRAEMPAQUES and SINTRAINDUPASCOL, and (ii) Mr Londoño's appointment as a SINTRAINCALPA union leader being declared invalid had no legal foundation and, to the contrary, demonstrated anti-union discrimination, which constitutes a violation of Article 3 of Convention No. 87 which provides for the right of trade unions to elect its representatives in full freedom.*

279. *The Committee notes the company's observations forwarded by the Government, which state that: (i) after not being re-elected as union leader of one of the trade unions in the company, SINTRAEMPAQUES, Mr Londoño claimed to have obtained new trade union immunity through a trade union which had never had a member from the company and had never undertaken any trade union activity in the company; (ii) the worker was not protected by trade union immunity because his appointment as alternate in the Medellín branch of SINTRAINCAPLA was invalid on the grounds that he could not legally belong to an executive committee branch which had its seat in a different city to that in which the company for which he worked had its seat; and (iii) he was dismissed not for anti-union reasons but for objective reasons concerning poor performance and productivity, and his poor relationship with his colleagues, which had been signalled as problems for quite some time.*

280. *The Committee further notes that the Government states that: (i) the complainant organization has not provided evidence of any anti-union persecution and therefore the Committee does not have the remit to examine Mr Londoño's dismissal; and (ii) the High Court of Medellín and the Supreme Court of Justice have issued definitive rulings on the petitioners' claims.*

281. *The Committee observes that the allegations of the complainant organization and the replies of the company and the Government show that: (i) Mr Londoño was hired by the company in 2003; (ii) from 2008 to 2010, the worker was a member on the executive committee of SINTRAEMPAQUES, one of the two trade unions established in the company; (iii) in the union elections of June 2010, Mr Londoño was not re-elected as a member of the executive committee of SINTRAEMPAQUES because of ideological differences; (iv) in September 2010, the industry union SINTRAINCAPLA informed the company of Mr Londoño's membership and his appointment as alternate of the executive committee of the Medellín branch (the municipality of Medellín is next to the municipality of Itagüí, where the company is based); (v) on 3 January 2011, once the six additional months of trade union immunity, owing to his status as union leader of SINTRAEMPAQUES, had lapsed, the worker was dismissed by the company and was paid compensation; (vi) in the first instance, the Labour Court ordered Mr Londoño's reinstatement because there were no valid grounds to deny him the status of union leader of SINTRAINCAPLA and his dismissal should have been preceded by judicial authorization to lift trade union immunity; (vii) in the second instance, the High Court of Medellín overturned the judgment of the court of first instance, holding that a worker*

working in Itagüí could not validly be appointed leader of a trade union branch established in Medellín and that the worker had solely pursued his personal interests, ignoring the collective purpose of union immunity; and (viii) the trade union's tutela proceedings were rejected by the Supreme Court of Justice as it held that the judgment of the High Court of Medellín could not be deemed to be openly arbitrary and that instituting tutela proceedings was not the appropriate procedural way to review the interpretation of the labour legislation developed by the High Court.

282. *Based on this, the Committee observes that this case sets out, on the one hand, the alleged anti-union discrimination of which Mr Londoño has been the victim and, on the other, the decision of the courts concerning the invalidity of his appointment as union leader of SINTRAINCALPA, which, according to the complainant organization, violates its right to elect its representatives in full freedom as provided for in Article 3 of Convention No. 87.*

283. *The Committee notes that it does not have sufficient information to reach a decision on whether there has been anti-union discrimination against Mr Londoño. In this respect, the Committee notes that the legal proceedings initiated by the complainant organization focused on the validity of Mr Londoño's appointment as the union leader of SINTRAINCAPLA and, therefore, whether there was trade union immunity. The Committee will, therefore, not examine the matter further.*

284. *Regarding the alleged violation of the right of the trade union to elect its representatives in full freedom, the Committee notes that the declaration of invalidity of Mr Londoño's appointment as a member of the executive committee of SINTRAINCAPLA's Medellín branch was based on the fact that he was not working in the city where the branch had its seat but in the neighbouring municipality (Itagüí) and that, similarly, the trade union was not based in the city where the company that employed Mr Londoño was based. Given that both Colombian legislation and SINTRAINCALPA's articles of association do not contain provisions stipulating that leaders of a trade union branch must work in the municipality where it is based and that, moreover, SINTRAINCALPA is an industry union whose scope is not limited to a particular company, the Committee recalls that freedom of association implies the right of workers and employers to elect their representatives in full freedom and that the determination of conditions of eligibility for union membership or union office is a matter that should be left to the discretion of union by-laws and the public authorities should refrain from any intervention which might impair the exercise of this right by trade union organizations [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 388 and 405]. The Committee has consistently stated that the requirement of membership of an occupation or establishment as a condition of eligibility for union office are not consistent with the right of workers to freely elect their representatives [see* ***Digest****, op. cit., para. 407]; similarly, it considers that the requirement that union leaders of a trade union branch must work in the municipality where the branch has its seat to be contrary to the abovementioned right, especially where the union concerned is an industry union. The Committee, therefore, requests the Government to take the necessary measures to ensure full compliance with this principle.*

The Committee's recommendation

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

> ***Recalling the right of workers to freely elect their representatives, the Committee requests the Government to ensure that, especially in relation to industry unions, it is not required that union leaders of a trade union branch work in the municipality where the branch has its seat.***

CASE NO. 2620

INTERIM REPORT

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

Allegations: The complainants allege that the Government refused to register the Migrants' Trade Union (MTU) and carried out a targeted crackdown on this union by successively arresting its Presidents Anwar Hossain, Kajiman Khapung and Toran Limbu, Vice-Presidents Raj Kumar Gurung (Raju) and Abdus Sabur, and General Secretary Abul Basher Moniruzzaman (Masum), and subsequently deporting many of them. The complainants allege that this has taken place against a background of generalized discrimination against migrant workers geared to create a low-wage labour force that is easy to exploit

286. The Committee last examined this case at its March 2014 meeting, when it presented an interim report to the Governing Body [see 371st Report, paras 239–255, approved by the Governing Body at its 320th Session (March 2014)].

287. The Government forwarded its response in a communication dated 12 September 2014.

288. The Republic of Korea 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

289. In its previous examination of the case in March 2014, the Committee made the following recommendations [see 371st Report, para. 255]:

(a) The Committee requests the Government to provide the decisions of the Supreme Court and of the National Human Rights Commission of Korea concerning the complaint filed by Mr Catuira. It also invites the complainants to provide any additional information they consider may assist the Committee's understanding in this regard. The Committee generally once again urges the Government to refrain from any measures which might involve a risk of serious interference with trade union activities and might lead to the arrest and deportation of trade union leaders for reasons related to their election to trade union office.

(b) The Committee once again firmly expects that the Government will proceed with the registration of the MTU without further delay, and supply full particulars in relation to this matter.

(c) Deploring that the appeal filed by the Government against the Seoul High Court's decision in favour of the MTU, is still pending before the Supreme Court, more than seven years after the appeal, the Committee once again firmly expects that the judgment concerning the MTU's status will be rendered without further delay and urges the Government to ensure that the Committee's conclusions, particularly those concerning the freedom of association rights of migrant workers, are submitted for the Supreme Court's consideration and to provide a copy of the Supreme Court's decision once it is handed down.

(d) The Committee also urges the Government to undertake an in-depth review of the situation concerning the status of migrant workers in full consultation with the social partners concerned, so as to fully ensure and safeguard the fundamental rights to freedom of association and collective bargaining of all migrant workers, whether in a regular or irregular situation and in conformity with freedom of association principles, and to prioritize dialogue with the social partners concerned as a means to find negotiated solutions to the issues faced by these workers. The Committee once again requests to be kept informed of the progress made in this regard.

B. The Government's reply

290. In relation to the establishment of the Migrants' Trade Union (MTU), the Government outlines the chronology of events and confirms that its appeal to the Supreme Court concerning the establishment of the MTU, which has been pending before the Court since 23 February 2007, has yet to be decided by the Court. Requesting the Committee to suspend its consideration of this matter until the Supreme Court's final decision is reached, the Government states that it has spared no efforts in supporting the Court in reaching its decision based on sufficient documentation, indicating that it has submitted complementary reports on the reasons for the appeal to the Supreme Court four times and, additionally, the Seoul High Prosecutor's Office has submitted reference materials.

291. The Government reiterates that the MTU's registration was refused as it failed to meet the requirements set out by the Trade Union and Labour Relations Adjustment Act (TULRAA). The MTU failed to provide the complementary information requested relating to the names of workplaces to which union members belonged, as well as a list of members, and was not deemed to be a legitimate trade union as defined under the TULRAA, as its members were mainly foreigners without a right to stay in Korea under the Immigration Control Act (ICA). The Government thus appealed against the Seoul High Court ruling which had found in favour of the plaintiffs for the following reasons: (i) since foreigners without valid sojourn permits are strictly banned from employment under the ICA, they are not considered to have the legal rights to seek to improve and maintain their working conditions and to improve their status, since such rights are given on the assumption that legitimate employment relations will continue. Therefore, it is hard to see foreign workers without valid work permits as workers eligible to establish a trade union; and (ii) the organization was mainly constituted of foreigners without valid sojourn permit. In order to determine whether it meets the requirements to become an official trade union, it is legitimate to ask for a list of union members to check the members' eligibility to establish a union.

292. In relation to the decision to deny Mr Michael Catuira's application to extend his stay in Korea and the subsequent decision to deport him, the Government attaches the decision of the Supreme Court issued on 27 September 2012, which dismissed Mr Catuira's appeal against the decision of the Seoul High Court. The Supreme Court considered that the High Court had not exceeded its authority, had not violated principles of logic and experience, and had not misunderstood or failed to consider legal principles in the ICA. The Government further attaches the written notification of the result of the National Human Rights Commission of Korea's (NHRCK) deliberation dated 24 July 2012, in which the NHRCK indicated that it was unable to proceed with the complaint resolution process in

relation to Mr Catuira's complaint as the Immigration Office's denial of entry was a matter of discretion within immigration rules and that alleged violations of the right of defence were not within its reach.

293. As regards the deportation of MTU leaders, the Government reiterates its position that arresting workers who overstayed their visas and deporting them to their home countries in accordance with the ICA falls within the rights of a sovereign country, and has nothing to do with their involvement in union activities. Their status as union officials does not mean that they are granted a legal status of sojourn, and their violation of the ICA was so obvious that "they should be subject to normal judicial proceedings in order to determine their responsibility". Therefore, the arrest and deportation was a legitimate action.

294. In summary, the Government reiterated that the denial of entry of Mr Catuira, and the arrest and deportation of former leaders of the MTU resulted from the revocation of permits of sojourn which had been obtained by false or otherwise unlawful means, or as a result of a regular crackdown on foreigners without valid permits, meaning that such acts were nothing to do with interrupting union activities but were taken as part of border control efforts. The Government stated that foreign workers with legitimate status in Korea are guaranteed the same basic labour rights as those of domestic workers.

C. The Committee's conclusions

295. *The Committee recalls that this case concerns allegations that the Government refused to register the MTU and carried out a targeted crackdown on the MTU by successively arresting its officers and subsequently deporting many of them, against a background of allegedly generalized discrimination against migrant workers.*

296. *The Committee notes that the Government states that it is factually incorrect that its decisions to refuse registration of the MTU and to deny entry to, or to deport, former leaders of the MTU were intended to intervene with the MTU's trade union activities. The Committee notes that the Government indicates that the MTU's registration was refused because it was judged not to be a legitimate trade union under the TULRAA.*

297. *The Committee further notes the Government's request that the Committee suspend its consideration of the case until after the Supreme Court renders its final decision. In this regard, the Committee recalls that in its first examination of this case [353rd Report, para. 784], the Committee noted that "although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration, it has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, Annex I, para. 30]. Moreover, the Committee notes that the issue has been pending before the Supreme Court for more than two years and that during that time, several leaders of the MTU have been arrested and deported. In addition, the Supreme Court decision proceedings concern only the issue of the registration of the MTU, and not the other allegations raised in the complaint. The Committee will therefore proceed with its examination of the case with the aim of providing additional elements for the consideration of the relevant authorities in relation to the international principles of freedom of association." The Committee expresses its deep concern that eight years since the appeal was lodged there has still been no decision rendered by the Supreme Court in relation to the registration of the MTU. The Committee recalls that the free choice of workers to establish and join organizations is so fundamental to freedom of association as a whole that it cannot be compromised by delays [see* ***Digest****, op. cit., para. 312]. The Committee considers that there has been no significant change in the circumstances surrounding the allegations pending in this case*

that would merit a reconsideration of its earlier decision and will therefore proceed with its consideration accordingly.

298. *The Committee further notes the Government's indication that the denial of entry to, and deportation of, Mr Catuira, and the arrest and deportation of other former leaders of the MTU, resulted from the revocation of permits to stay that were obtained by false or otherwise unlawful means, or as a part of a regular crackdown on foreigners without valid permits. The Committee notes that the Government states that such border control efforts were not connected with union activities but fall within the rights of a sovereign country, and that foreign workers with legitimate status in Korea are guaranteed the same basic labour rights as those of domestic workers.*

299. *The Committee recalls from its previous examination of this case the complainant organizations' allegations that the Government's refusal to register the MTU went hand in hand with the arrest of previous MTU presidents and other trade union officials, and the subsequent deportation of many of them [see 358th Report, para. 455]; that the Government's antagonistic position continued to impede the MTU's daily activities due to a widespread fear among its actual and potential membership that active participation in the union would lead to arrest and deportation; and that this sense of intimidation was true not only among undocumented migrant workers, but also among documented migrant workers who believed that their legal status did not render them immune to government targeting and harassment [see 355th Report, paras 685 and 704].*

300. *As regards the complaint filed by Mr Catuira against the decision to refuse to renew his residence permit, the Committee recalls from its previous conclusions that it has been obliged to express its deep concern over the coincidental timing of the arrest and deportation of MTU leaders with the trade union activities of those long-standing workers [see 353rd Report, paras 790–793 and 353rd Report, para. 792]. In these circumstances, the Committee regrets to observe that the 2012 Supreme Court and the NHRCK decisions are limited to administrative reviews finding that Mr Catuira's deportation fell within the Government's discretion in implementing immigration law, rather than detailed examinations of the factual question of whether Mr Catuira's deportation was related to his trade union function and activities.*

301. *The Committee generally recalls, as it has in its previous examinations of the case [see 367th Report, para. 553 and 362nd Report, para. 595], that Article 2 of Convention No. 87 is designed to give expression to the principle of non-discrimination in trade union matters, and the words "without distinction whatsoever" used in this Article mean that freedom of association should be guaranteed without discrimination of any kind based on occupation, sex, colour, race, beliefs, nationality, political opinion, etc. [see* ***Digest****, op. cit., para. 209]. The Committee has interpreted this right to include the right to organize of migrant workers in an irregular situation.*

302. *In this regard, deploring that the Government's appeal against the Seoul High Court's decision in favour of the MTU's registration is still pending more than eight years after it was lodged, the Committee once again firmly expects that the Supreme Court judgment concerning the MTU's status will be rendered without further delay and will duly take into account the allegations that the failure to register the MTU has been accompanied by a targeted crackdown against its leaders and members. In the meantime, the Committee once again urges the Government to ensure that the Committee's conclusions, particularly those concerning the freedom of association rights of migrant workers, are submitted for the Court's consideration, and to provide a copy of the Supreme Court's decision once it is handed down. The Committee once again expresses its firm expectation that, in light of these conclusions, the Government will make every effort to proceed with the registration of the MTU without further delay and requests it to provide full particulars in this regard.*

303. *Given the seriousness of a situation in which migrant workers are effectively denied the right to organize in practice, the Committee once again urges the Government to undertake an in-depth review of the situation concerning the status of migrant workers in full consultation with the social partners concerned, so as to fully ensure and safeguard the fundamental rights to freedom of association and collective bargaining of all migrant workers, whether in a regular or irregular situation and in conformity with freedom of association principles, and to prioritize dialogue with the social partners concerned as a means to finding negotiated solutions to the issues faced by these workers. The Committee once again requests to be kept informed of the progress made in this regard.*

304. *The Committee invites the complainants to provide any additional information they consider may assist the Committee's understanding of the current functioning of the MTU.*

The Committee's recommendations

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

(a) Deploring that the Government's appeal against the Seoul High Court's decision in favour of the MTU's registration is still pending more than eight years after it was lodged, the Committee once again firmly expects that the Supreme Court judgment concerning the MTU's status will be rendered without further delay and will duly take into account the allegations that the failure to register the MTU has been accompanied by a targeted crackdown against its leaders and members. In the meantime, the Committee once again urges the Government to ensure that the Committee's conclusions, particularly those concerning the freedom of association rights of migrant workers, are submitted for the Court's consideration, and to provide a copy of the Supreme Court's decision once it is handed down.

(b) The Committee once again expresses its firm expectation that the Government will make every effort to proceed with the registration of the MTU without further delay and requests it to provide full particulars in this regard.

(c) The Committee once again urges the Government to undertake an in-depth review of the situation concerning the status of migrant workers in full consultation with the social partners concerned, so as to fully ensure and safeguard the fundamental rights to freedom of association and collective bargaining of all migrant workers, whether in a regular or irregular situation and in conformity with freedom of association principles, and to prioritize dialogue with the social partners concerned as a means to find negotiated solutions to the issues faced by these workers. The Committee once again requests to be kept informed of the progress made in this regard.

(d) The Committee invites the complainants to provide any additional information they consider may assist the Committee's understanding of the current functioning of the MTU.

(e) The Committee reminds the Government that, if it so wishes, it may avail itself of technical assistance from the Office in relation to the matters raised by this case.

CASE NO. 3044

DEFINITIVE REPORT

Complaint against the Government of Croatia presented by the Association of Croatian Trade Unions (MATICA)

Allegations: The complainant organization alleges the adoption of the Act on Denial of Payment which allows the Government to unilaterally derogate from the public service collective agreements in force

306. The complaint is contained in a communication from the Association of Croatian Trade Unions (MATICA) dated 17 September 2013.

307. The Government sent its observations in a communication dated 22 September 2014.

308. Croatia 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

309. In its communication dated 17 September 2013, the complainant organization, one of the representative trade unions in Croatia, which includes a total of ten unions in public and government service, alleges that the Act on Denial of Payment of Certain Substantive Rights of Public Service Employees (OG No. 143/12, hereinafter referred to as "the Act") violates the right to freedom of association guaranteed by Conventions Nos 87 and 98.

310. The complainant indicates that the employment status of public service employees in Croatia, is, with the exception of the Croatian Constitution, international sources of labour law which include ratified ILO Conventions, the Labour Act and the Act on Salaries in the Public Service, essentially determined by the Basic Collective Agreement for officers and employees in the public service and sectoral collective agreements as an autonomous source of law in this area. Collective bargaining in Croatia is widespread in the field of public service since the number of employees enables the effective use of this instrument in order to ensure the balance of interests in the work process. In Croatia, the Basic Collective Agreement for officers and employees in the public service (hereinafter: 2010 BCA) entered into force on 4 October 2010; it was concluded by eight representative unions of public services and the Croatian Government with a date of validity to 4 October 2013. Collective agreements for specific areas of public services (hereinafter: sectoral collective agreements) have been concluded subsequently, e.g. the collective agreement for science and higher education of 22 October 2010 (OG No. 142/2010) valid until 23 October 2014, the collective agreement for employees in the secondary schools of 21 December 2010 (OG No. 7/2011) with a date of validity to 31 December 2014, the collective agreement for employees in the elementary schools of 29 April 2011 (OG No. 66/2011) with an expiry date of 30 April 2015, the collective agreement for the health care and health insurance of 27 October 2011 (OG No. 126/2011) valid until 28 October 2015, etc.

311. The complainant organization states that, on 19 December 2012, the Parliament as the legislative body of Croatia adopted the Act, which denies the payment of certain substantive rights to public service employees in Croatia that had been obtained on the basis of concluded collective agreements or other agreements entered into by the Government. In its view, the Act is a direct attack on the right to collective bargaining in Croatia, which is guaranteed by fundamental ILO Conventions Nos 87 and 98, ratified by Croatia, that are, according to article 140 of the Constitution of the Republic of Croatia, part of the national legal system, having precedence over the law. As evidenced in a December 2012 draft of the Act (enclosed with the complaint), the Ministry of Labour and Pension System, as the proponent of the controversial Act, states the following, as reasons: (a) reverse of the macroeconomic trends; and (b) necessity of further fiscal austerity measures to reduce public debt by reducing labour costs in the public sector.

312. According to the complainant, the Government's reasons for denying the rights contracted in collective agreements are essentially irrelevant and unfair. As regards (a), the stated "reversed macroeconomic trend" in the Croatian economy has been present for a total of two years before contracting of the public service employees' rights that are denied by the respective Act. These rights have been contracted in October 2010 and the "reversed trend" (or, in economic terms, recession) has been going on since the end of the year 2008, taking into account that after two years of decreased gross domestic product (GDP) the situation stabilized in 2011. The complainant considers that, during the term of sectoral collective agreements validity, there have been no significant changes in relation to the time of their signing, and the Government has concluded the agreements and subsequently derogated them by the Act in almost the same or rather similar economic circumstances. The Act was adopted in December 2012, at a time when the Government possessed statistical data which in no way indicated any major changes. Moreover, the Government's official documents relied on its own estimates for 2012 which predicted the growth of the GDP.

313. With respect to (b), the complainant believes that the Ministry's statement of causality between the "reversed trend of macroeconomic indicators" and the need to reduce labour costs precisely in the public sector is not grounded or justified. According to a growing number of economic standpoints, the stated causality exists only in a sense of negative indicator, meaning that the fiscal austerity measures worsen the crisis rather than resolving it, which has been clearly demonstrated by the failure of strict austerity measures across Europe over the past five years. The complainant considers that austerity measures reduce aggregate demand, and, consequently, the production which causes job losses and decline of all "macroeconomic indicators", which is confirmed in the scientific papers of prominent economic theorists today, pursuant to which the institutions, which so far have blindly insisted on these measures, begin to alter or soften their views (IMF, European Commission) during this year.

314. The complainant organization indicates that, following the parliamentary elections in 2012, the newly elected Government of liberal orientation started to implement an economic concept based primarily on savings. In February 2012, the Croatian Parliament adopted the state budget, which provided insufficient funds to meet government obligations undertaken by applicable basic and sectoral collective agreements. The state budget was passed without any prior consultation with the unions, and the Government indicated that it had no intention to respect the contractual rights of public service employees. Until June 2012, in the implementation of its concept of economic policy, the Government has repeatedly stated official positions on the need to reduce the rights and salaries of public service employees, while completely ignoring the obligation of social dialogue.

315. The complainant adds that the negotiations with the public service unions were initiated by the Government in June 2012, i.e. at the end of the academic year, thus indirectly preventing the unions to effectively make use of their most efficient tool in the fight for the

rights of their own members – a workers' strike. Unions were brought to an ultimatum in the sense that they were offered the choice between pay cuts to their members or withholding some benefits on wages. Due to the economic situation and with the intention to help the Government to implement its economic concept, all unions were willing to sacrifice, provided that their rights would be returned when possible. Four unions (Croatian Teachers Union, Independent Union of High School Employees in Croatia, Independent Union of Research and Higher Education Employees of Croatia, Croatian Union of Nurses and Medical Technicians) who gather over two-thirds of all members in the public service were not willing to unconditionally waive their rights without that being put to a vote for their members by a referendum. They demanded for the public services, after emerging from the crisis and once the economic indicators are favourable, a return of the funds for compensation and of the rights obtained upon them. The complainant organization states that, not agreeing to the union proposal, the Government insisted on an unconditional waiver and announced the cancellation of the basic collective agreement for public service in early August.

316. According to the complainant, during the entire period prior to termination, negotiations between Government and the unions as a process of reasoned dialogue and exchange of views or a process in which parties were trying to reach a compromise virtually did not exist, the Government being only interested in execution of its ultimatum, with no interest in reasonable dialogue. Finally, in late July, four unions refused to sign an unconditional reduction of the rights of its members, a mediation process with the unions in the dispute was conducted and the referendum among union members as to whether they agree to irrevocable reduction of their rights was held. This resulted in voting of 59,256 employees, which represent 84 per cent of union members, out of which 91.1 per cent voted against the Government's proposals and provided full support to the unions. The complainant denounces that, five days after the union referendum, in October 2012, the Government illegally cancelled the basic collective agreement for officers and employees in public service of 4 October 2010.

317. Moreover, the complainant organization indicates that, on 12 December 2012, the Government signed a new Basic Collective Agreement for officers and employees in public service with minority public services employees' unions (OG No. 141/2012). The 2012 BCA included a new Appendix I, by which the parties mutually and temporarily, for the duration of the year 2013, agreed to limit substantive rights of public service employees formerly enshrined in the 2010 BCA. At this point the complainant denounces the illogic of Croatian legislation according to which the Government can conclude a collective agreement that applies to all employees of the public service with a minority union that does not even gather one third of the public service union members. However, although the Government had managed to unlawfully cancel the 2010 BCA and enter into a new one with a minority public service employees' union, branch collective agreements for certain public services still remained in force and defined the rights and benefits of the employees to which they applied in a substantially similar or nearly identical manner as the cancelled 2010 BCA. In the complainant's view, by applying the principle of "in favorem laboratoris" (in favour of the workers), the employees in the public service regardless of the cancellation of the 2010 BCA continued to be entitled to payment of contractual rights according to suspended Appendix I to the 2010 BCA (annual Christmas and vacation bonuses in years 2012 and 2013). According to the complainant, the Government deprived public service employees of their rights on 20 December 2012 by adopting the Act without any negotiations or announcements and contrary to the obligations set forth in those agreements, the nature and purpose of collective bargaining and international sources of labour law to which it abides.

318. With reference to Article 8(2) of Convention No. 87 and Article 4 of Convention No. 98, the complainant considers that the Act is in complete contradiction to Conventions Nos 87 and 98, the universal values of international law enshrined therein as well as the principles and values that are part of the Croatian legal order. In its view, the Act takes away any sense of the right to organise and collective bargaining, because it sends the message that if the Government is the participant in negotiations for the conclusion of collective agreements, these negotiations and the signing of collective agreements are not considered legally binding for the Government, hence the results of the negotiations can be arbitrarily voided and employees can be denied their rights without prescribed conditions and procedures. In such circumstances, any union action is rendered meaningless, and the right to organise and collective bargaining becomes a cliché without any content. The complainant believes that the above is confirmed by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) in its 2010 individual observation on the application by Croatia of Convention No. 98, which basically states that the law in general cannot derogate the collective agreement and that unilateral interference by the State in matters regulated by the collective agreement amounts to a violation of the Convention.

319. The complainant therefore considers that collective agreements could be derogated by law only if the following conditions were fulfilled: (i) the Government, as a party to the collective agreement, previously negotiated on the possible amendment to the collective agreement; and (ii) the rights have been suspended to a minimum extent, for a fixed term and equally to all, with a reasonable cause for such actions due to a significant disruption of the economic system. In its view, the Government failed to fulfil several of these important conditions prior to the enactment of the Act which suspended the rights of public service employees previously agreed upon by the collective agreement.

320. As regards the condition of negotiation before suspension of the rights guaranteed by collective agreements, the complainant states that, whereas the Government did negotiate and conclude a new Basic Collective Agreement for officers and employees in public service in 2012, which included Appendix I in which it was agreed to temporarily suspend Christmas and vacation bonuses to public services in 2013, Christmas and vacation bonuses had also been agreed in sectoral collective agreements for certain public services, and for their amendment or abrogation the Government did not even try to open negotiations. The complainant stresses that the fact that some of the unions did not want to sign the new Basic Collective Agreement for officers and employees in public service does not relieve the Government of its obligation to negotiate with each of these unions on the rights guaranteed by branch collective agreements, since the Government cannot and must not be exempted from previous negotiations of sectoral collective agreements on the account that some of the unions did not want to enter into the new Basic Collective Agreement. Moreover, the complainant denounces that, as regards the unions who had agreed to a temporary non-payment of Christmas and vacation bonuses by signing the 2012 BCA: (i) the Government did not attempt to negotiate on the terminated rights stipulated by the branch collective agreements concluded with those unions; and (ii) that the provisions of the Act even derogate from the branch collective agreements concluded with those unions, despite the fact that in their case there was no reason for such action.

321. The complainant reiterates that the Government should have tried to negotiate sectoral collective agreements with those unions that have not agreed to the new basic collective agreement, as it could not and should not have assumed that the refusal to accept the Basic Collective Agreement also means refusal of amendments to sectoral collective agreements. Sectoral collective agreements have a substantially different content than the basic agreement and there is always a possibility that a matter that could not be resolved at the Basic Collective Agreement level is resolved at branch collective agreement level, because these negotiations do not have to be only about Christmas and vacation bonuses but also

about other rights granted by these sectoral collective agreements. The complainant therefore believes that, despite the rejection to enter into the new Basic Collective Agreement, it is certainly not valid to state that the sectoral collective agreements negotiations (one element of which could have been the possibility of cancellation of sectoral collective agreements) were unnecessary. The complainant also emphasizes that the Government did not even attempt to unilaterally terminate the sectoral collective agreements although cancellation is a solution in line with the rules of the collective agreements and could have been carried out according to the procedure stipulated in these collective agreements.

322. Finally, the complainant denounces that the Government failed to abide by this condition. In its view, through the adoption of this Act, the Government denied substantive rights to public service employees, but the denial was not applied in the same sense to the rest of the public sector owned by the State (namely companies and other entities that are majority-owned by the State). Those legal persons are either beneficiaries of the budget for their costs and losses and represent the budgetary cost in the same way as the public service, or are the entities filling the budget, meaning that denying their Christmas and vacation bonuses would lead to an increase in budgetary revenues. According to the complainant, the Government thus selectively reduced the rights only of public service employees.

323. The complainant therefore considers as utterly inappropriate that the Government, as the employer in the public sector, strengthens its bargaining position through legislation proposed by the Government itself, the adoption of which has been secured by the parliamentary majority, thus de facto imposing its will in collective bargaining. In its view, such government conduct is contrary to Conventions Nos 87 and 98, which protect the right to organize and collective bargaining from unauthorized interference by the authorities and prohibit the legal derogation of the rights guaranteed by collective agreements.

B. The Government's reply

324. By its communication dated 22 September 2014, the Government forwards its comments on the observation made by the Committee of Experts on the Application of Conventions and Recommendations in 2013 on the application of Convention No. 98, as well as the information it had supplied to the Committee on the Application of Standards of the International Labour Conference at its 103rd Session in May–June 2014, which contains information on the cancellation in 2012 of the BCA in the public sector and on the Act on the suspension of payment of certain rights to public service employees (referred to by the complainant as the Act on Denial of Payment of Certain Substantive Rights of Public Service Employees).

325. According to the Government, the global financial and economic crisis has had a belated effect on the Croatian economy, which was reflected in a considerable decrease in economic activity, a steady decline in the GDP and a constant increase in the rate of unemployment, with a subsequent decrease in the citizens' standard of living. At the end of 2011, the share of the public debt in GDP amounted to 46.7 per cent with a further growth tendency, so that in 2012 it accounted for 55.5 per cent. Given that the deterioration of macroeconomic trends continued during the first half of 2012, it was necessary to further reduce government spending to maintain fiscal consolidation and respect the fiscal rule (whose share increased in the GDP and continued to grow).

326. Consequently, the Government, under economic circumstances that were continuing to deteriorate, proposed amendments to the BCA during public services negotiations with the trade unions. Eight meetings were held from 4 June to 16 July 2012. Proposed

amendments were aimed at reducing or temporarily suspending the following rights: the right to a Christmas bonus in 2012; the right to a holiday bonus in 2013; and the right to jubilee awards in 2013, except for employees who had been employed for more than 35 years and were retiring in the year to which they were entitled to the bonus; travelling allowances would be reduced from 170 Croatian kuna (HRK) to HRK150; and the method of reimbursement of transport costs to and from work would be regulated differently for the purpose of rationalization. During the negotiations on those amendments to the BCA, which were aimed at avoiding wage adjustments, four of the eight trade unions who had signed the BCA confirmed that they would accept the proposed amendments; the other four had refused to accept them, requesting that the Government commit itself to paying the funds to the public servants in the future. Considering that the BCA envisages the possibility of bringing the dispute before arbitration (article 9), the Government, at the proposal of the four trade unions who had signed the proposed BCA amendments, had, on 17 July 2012, suggested arbitration to the trade unions who had refused to sign the amendments. On 19 July 2012 it appointed its representatives to the arbitration council, while constantly inviting the trade unions to reach an agreement. Those trade unions that had refused to sign the amendments sent a written rejection of the arbitration settlement of the dispute, stating that arbitration was not mandatory. The conciliation procedure was unsuccessful. Article 23 of the BCA provided that the Agreement can be cancelled in writing by both parties in the event of economic circumstances that have significantly changed, after the party cancelling the Agreement had proposed amendments to the other party beforehand, with a notice period of three months. Having exhausted all possibilities of coming to an agreement, based on article 23 of the BCA, on 17 September 2012, the Government took the decision to revoke the BCA for public service employees with a notice period of three months. The procedures for cancellation were therefore conducted legally.

327. The Government further indicates that, at the same time that it was expressing its intention to repeal the existing BCA, it was initiating negotiations on the conclusion of a new BCA, whose text would not change with respect to the text of the revoked BCA. Negotiations would only refer to the issue of the reimbursement of transport costs, whereas the issues of the Christmas bonus, holiday bonus and jubilee award would be settled in an annex to the BCA. The new BCA, with an Annex I, was signed on 12 December 2012, before the cancellation of the previous agreement had entered into force. Collective bargaining was conducted with the bargaining committee of the trade unions established in accordance with the Act on the criteria for participation in tripartite bodies and the representativeness for collective bargaining, which entered into force in the meantime (28 July 2012). It was signed by a total of six out of 11 representative trade unions.

328. Concerning the Act of 20 December 2012, the Government indicates that, despite the conclusion of the new BCA and Annex I (agreement to reduce or temporarily suspend some material benefits), pursuant to the principle in the Labour Code to apply the more favourable law, those rights continued to be applied according to the branch collective agreements, because they had been agreed in branch/sectoral collective agreements for each public service (health care, social welfare, primary and secondary education, science, higher education and culture). Civil servants had negotiated their collective agreement with the Government on 2 August 2012. In Annex I of the collective agreement, inter alia, they agreed that for civil servants, the Christmas bonus would not apply in 2012 and 2013; the holiday bonus and jubilee award would not apply in 2013; and travelling allowances would be reduced from HRK170 to HRK150 (the same was offered to the public service employees). Civil servants in this case were, in practice, discriminated against, since the material rights for both categories were ensured in the state budget. For that reason, the Government decided to regulate the rights contained in Annex I of the BCA equally for all, both civil servants and public service employees, under the Act of 20 December 2012. On the basis of that Act, the right to a Christmas bonus in 2012 and 2013, and a holiday bonus

in 2013, no longer applied. This decision was taken in order to urgently maintain the fiscal stability of the public service system under the deteriorating economic conditions and to achieve a balance in the rights of both categories of officials. In order to bring the branch collective agreements in line with the BCA, the Government entered into negotiations in 2013 with representative trade unions of each public service. In 2013, the collective agreement was concluded for the health-care sector. Collective agreements for the social welfare, culture and primary and secondary education sectors were all concluded in 2014. As yet, no branch collective agreement for science and higher education had been concluded.

C. The Committee's conclusions

329. *The Committee notes that, in the present case, the complainant alleges the adoption of the Act on Denial of Payment which allows the Government to unilaterally derogate from the public service collective agreements in force. The Committee notes in particular the following allegations of the complainant organization, which is one of the representative Croatian trade unions that includes a total of ten unions in public and government service: (i) the employment status of public service employees in Croatia was essentially determined by the Basic Collective Agreement for officers and employees in the public service (BCA), which entered into force on 4 October 2010 and was concluded by the Government and eight representative unions of public services with a validity of three years, as well as by subsequently concluded sectoral collective agreements in the public service; (ii) in February 2012, the state budget was passed without any prior consultation with the unions, providing insufficient funds to meet government obligations undertaken by the applicable basic and sectoral collective agreements, and the newly elected Government indicated that it had no intention to respect the contractual rights of public service employees; (iii) in June 2012, the Government initiated negotiations on the amendment of the 2010 BCA with the public service unions without showing an interest in reasonable dialogue with a view to reaching a compromise; (iv) following a referendum held by four unions gathering over two-thirds of all members in the public service, where 91.1 per cent voted against the irrevocable reduction of their rights, the Government announced in early August 2012 the illegal cancellation of the 2010 BCA; (v) as regards sectoral collective agreements, which also provided for Christmas and vacation bonuses, the Government did not even try to open negotiations for their amendment or abrogation and they remained in force after the cancellation of the 2010 BCA; (vi) on 12 December 2012, the Government signed a new BCA with minority public services employees' unions that did not even gather one third of the public service union members, including a new Appendix I, by which the parties agreed to limit for the period 2012–13 substantive rights of public service employees formerly enshrined in the 2010 BCA; (vii) on 19 December 2012, the Act, which denies to public service employees in Croatia the payment of certain substantive rights that had been obtained on the basis of formerly concluded collective agreements, was adopted on the grounds of the claimed reverse of the macroeconomic trends and ensuing necessity of further fiscal austerity measures to reduce public debt by reducing labour costs in the public sector, reasons considered irrelevant and unfair by the complainant; (viii) the Government only denied substantive rights to public service employees but not to the rest of the public sector owned by the State, which the complainant deems contrary to the equality principle; and (ix) the Act is a direct attack on the right to collective bargaining in Croatia and thus violates the right to freedom of association guaranteed by Conventions Nos 87 and 98.*

330. *The Committee notes the Government's reply and in particular, the information it had supplied to the Committee on the Application of Standards of the International Labour Conference at its 103rd Session in May–June 2014.*

331. *As regards the alleged unilateral cancellation of the 2010 BCA by the Government following the failure of amendment negotiations with the public service unions allegedly without the Government's interest in reasonable dialogue with a view to reaching an agreement, the Committee notes that the Government considers that the procedure for cancellation of the BCA was conducted legally. It refers, in particular, to article 23 of the BCA and explains that having exhausted all possibilities of coming to an agreement, based on article 23 of the BCA, on 17 September 2012, the Government took the decision to revoke the BCA for public service employees with a notice period of three months.*

332. *The Committee notes article 23 of the 2010 BCA, a copy of which was forwarded by the complainant, pursuant to which:*

> CANCELLATION OF THE AGREEMENT
>
> *Article 23*
>
> 1. This Agreement may be cancelled in writing with a notice period of 3 months.
>
> 2. This Agreement may be cancelled by either party in the case of significantly changed economic circumstances.
>
> 3. Before cancelling the Agreement, the party which cancels the Agreement is required to propose the amendments to the Agreement to the other party.

333. *While recalling the general principle that agreements should be binding on the parties, and that collective bargaining implies both a give and take process and a reasonable certainty that negotiated commitments will be honoured, at the very least for the duration of the agreement, such agreement being the result of compromises made by both parties on certain issues, and of certain bargaining demands dropped in order to secure other rights which were given more priority by trade unions and their members; if these rights, for which concessions on other points have been made, can be cancelled unilaterally, there could be neither reasonable expectation of industrial relations stability, nor sufficient reliance on negotiated agreements [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 939 and 941], the Committee understands that in the present case, the unilateral cancellation of the Agreement followed the procedure provided in the Agreement itself.*

334. *With respect to the allegation that the 2012 BCA revoking the relevant bonuses was concluded by minority public services employees' unions that did not even gather one third of the public service union members, the Committee notes that the Government refutes this allegation and indicates that collective bargaining was conducted with the bargaining committee of the trade unions established in accordance with the Act on the criteria for participation in tripartite bodies and the representativeness for collective bargaining (2012) and was signed by six out of 11 representative trade unions.*

335. *The Committee understands that the 2012 Representativeness Act is no longer in force, and that a new legislation dealing with that matter was adopted and entered into force on 7 August 2014. The Committee requests the Government to provide a copy of the new legislation to the Committee of Experts on the Application of Conventions and Recommendations to the attention of which it draws the legislative aspects of this case.*

The Committee's recommendation

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

> ***The Committee requests the Government to provide a copy of a new legislation dealing with the issue of representativeness to the Committee of Experts on the Application of Conventions and Recommendations to the attention of which it draws the legislative aspects of this case.***

CASE NO. 3058

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

Complaint against the Government of Djibouti presented by
– Education International (EI)
– the Secondary Teachers' Union (SYNESED) and
– the Primary Teachers' Union (SEP)

Allegations: The complainant organizations denounce the harassment and repression of their members since October 2013, including arbitrary penalties against at least 83 teachers, one of whom is the Secretary-General of SYNESED, as well as the expulsion of an EI official from the territory in November 2012

337. The complaint is contained in communications dated 13 February and 14 April 2014, presented by Education International (EI), the Secondary Teachers' Union (SYNESED) and the Primary Teachers' Union (SEP).

338. The Government sent its observations in communications dated 18 March and 8 May 2014.

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

A. The complainant organizations' allegations

340. In a communication dated 13 February 2014, Education International (EI), the Secondary Teachers' Union (SYNESED) and the Primary Teachers' Union (SEP) allege that the harassment and repression of teachers and union members trying to exercise their legitimate rights to freedom of expression and association are common in Djibouti. The two ILO direct contact missions there in 1998 and 2008 did not manage to improve the climate of industrial relations.

341. The complainant organizations claim that, since the legislative elections held on 22 February 2013, the teachers, who are considered, whether rightly or wrongly, to support the political opposition, have been subject to persecution by the authorities. They have also been subject to arbitrary sanctions (reassignments, wage freezes, dismissal) which have flouted all administrative rules and procedures. The authorities have taken arbitrary measures against at least 83 teachers and other education sector employees (student counsellors, inspectors and staff of the Ministry of Education), whose salaries have been suspended since October 2013 (list attached to the complaint). These include the Secretary-General of SYNESED, Mr Farah Abdillahi Miguil, and several of the founding members of the group "Save National Education".

342. In a communication dated 15 April 2014, the complainant organizations denounce, in addition to the suspension of payment of salaries affecting 83 teachers, the Ministry of Education's proposal to deregister 63 of them. The teachers about to be deregistered include the Secretary-General of SYNESED, Mr Farah Abdillahi Miguil, as well as several founding members of the group "Save National Education": Mr Abdillahi Adaweh Mireh, Mr Youssouf Moussa Abdi, otherwise known as Youssouf Macho, and Mr Omar Ismael Omar.

343. Furthermore, in their complaint, the complainant organizations report the death of Mr Mahamoud Elmi Rayaleh, a French teacher at Balbala Public Secondary School and a socially engaged citizen, on the night of 28 to 29 August 2013 during his detention at Gabode Central Prison. The complainant organizations question the reasons for his rapid burial by the authorities, without any of his family members or associates present. They claim that he had been arrested on 2 August 2013, a detention warrant had been issued the following day and on 20 August he had been sentenced to two months in prison for "involvement in an illegal protest". He had been in good health during his incarceration at Gabode Central Prison.

344. Lastly, the complainant organizations denounce the fact that in November 2012, the authorities supposedly denied Mr Samuel Ngoua Ngou, the EI regional coordinator for the African region, the right to enter Djibouti territory where he was going to organize a national seminar on early childhood education, arranged in collaboration with SYNESED and the SEP. The complainant organizations maintain that Mr Ngoua Ngou was barred entry at Djibouti Airport on arrival, despite the official letter authorizing him to obtain his visa at the airport. On arrival from Nairobi on 10 November 2012 at around 1 a.m., Mr Ngoua Ngou had been held by the border police for 25 hours outside any legal framework and had eventually been refused entry on 11 November, without a valid reason, at about 2 a.m. The complainant organizations also refer to other measures to interfere in the activities of trade unions or human rights defenders. One EI delegation invited by SYNESED in May 2007, for example, has never been able obtain the necessary visas to go to Djibouti.

B. The Government's reply

345. The Government sent its observations in communications dated 3 March and 8 May 2014, in which it rejects all of the allegations made in relation to this case.

346. With regard to the allegations on arbitrary measures against teachers, and especially the trade union leaders mentioned by the complainant organizations, the Government indicates that an inquiry has been carried out on the basis of the list, supplied by the complainant organizations, of 83 education sector employees whose salaries have allegedly been suspended since October 2013. It emerges from the inquiry that the list contains 41 employees, 15 of whom have indeed had their salaries suspended on account of their absence from their work posts, having not returned to their assigned positions. According

to the information, these employees include Mr Farah Abdillahi Miguil and Mr Abdillahi Adaweh Mireh. The Government specifies that their salaries are suspended in accordance with article 27 of the general public service regulations. The Government also indicates that, contrary to the complainant organizations' claims, 25 employees on the list are receiving their pay (evidence supplied). According to the Government, under article 35 of the general public service regulations, six weeks after a formal notification, if the offenders persist, the administration is entitled to announce their dismissal for dereliction of duty. In this regard, the Government provides a communication from the national Ministry of Education and Vocational Training of March 2014, calling for the launch of the deregistration procedure for the proven failure of duty of 14 public servants, including Mr Youssouf Mousa Abdi and Mr Abdillahi Adaweh Mireh.

347. As regards the allegations of the refusal to allow entry to an EI representative in November 2012, the Government provides a report from the border and immigration police of Djibouti Airport, in which it is indicated that Mr Samuel Ngoua Ngou arrived from Nairobi on 9 November 2012 and left again on 11 November 2012 at 2.45 p.m. after a stay of two days on Djibouti soil. Mr Ngoua Ngou was not removed, as this would have been done immediately, on the return flight of the airplane in question. In addition, a notification sheet summarizing the grounds for the refusal of entry must be submitted to the carrier by the station manager. No such sheet has been produced regarding Mr Samuel Ngoua Ngou.

348. Lastly, with regard to the death in detention of Mr Mahamoud Elmi Rayaleh, a French teacher at Balbala Public Secondary School, on 29 August 2013 during his detention at Gabode Central Prison, the Government states that an independent commission carried out an inquiry into the circumstances of the death. The commission heard, in particular, the accounts of co-detainees, prison guards and the prison doctor and examined the forensic report. The commission concluded that there was no evidence to corroborate the suspicious or criminal nature of the detainee's death and indicated that the death of Mr Rayaleh, which occurred during his sleep, did not have any traumatic or pathological cause.

C. The Committee's conclusions

349. *The Committee notes that the present case relates to allegations of harassment and discriminatory measures against trade unions leaders and members in the education sector, as well as to the removal measures reportedly faced by the regional head of an international trade union organization.*

350. *The Committee notes that, according to Education International (EI), the Secondary Teachers' Union (SYNESED) and the Primary Teachers' Union (SEP), the harassment and repression of teachers and union members trying to exercise their legitimate rights to freedom of expression and association are common in Djibouti and the situation has deteriorated since the legislative elections in February 2013. The teachers, who are considered, whether rightly or wrongly, to support the political opposition, have allegedly been subject to persecution by the authorities, including arbitrary sanctions (reassignments, wage freezes, dismissal), which have flouted all administrative rules and procedures. The Committee notes that the complainant organizations have provided a list of 83 teachers and other education sector employees (student counsellors, inspectors and staff of the Ministry of Education) whose salaries have been suspended since October 2013. Among these are the Secretary-General of SYNESED, Mr Farah Abdillahi Miguil, and several of the founding members of the group "Save National Education": Mr Abdillahi Adaweh Mireh, Mr Youssouf Moussa Abdi, otherwise known as Youssouf Macho, and Mr Omar Ismael Omar. The Committee notes that, in their communication of April 2014, the complainant organizations denounce the threat of the Ministry of Education to deregister 63 teachers, including the Secretary-General of the SYNESED and the founding members of the group "Save National Education" mentioned above.*

351. *The Committee takes note of the Government's response, in which it specifies that an inquiry has been carried out on the basis of the list, supplied by the complainant organizations, of 83 education sector employees whose salaries have allegedly been suspended since October 2013, and that it emerges that only 41 of them are public servants. The Government explains that 15 of these employees, including some of those mentioned by the complainant organizations, have had their salaries suspended in accordance with article 27 of the general public service regulations on account of their absence from their work posts, having not returned to their assigned positions. The Committee notes the Government's indication that, under article 35 of the general public service regulations, six weeks after a formal notification, if the offenders persist, the administration is entitled to announce their dismissal for dereliction of duty. In this regard, the Government provides a communication of the national Ministry of Education and Vocational Training dated March 2014, calling for the launch of the dismissal procedure for the proven failure of duty of 14 public servants, including Mr Youssouf Mousa Abdi and Mr Abdillahi Adaweh Mireh. The Committee also notes the Government's indication that 25 members of staff on the complainant organizations' list are reportedly receiving their pay.*

352. *The Committee notes that of the list, supplied by the complainant organizations, of 83 education sector employees allegedly subject to arbitrary penalties, the Government provided clarifications for 38 of them: 19 are in fact apparently receiving their pay; four have had their salaries suspended for dereliction of duty; 14 were due for dismissal on the grounds that they had still not complied with a formal notification after six months; and one was not identified as working in the public service. The Committee therefore requests the Government to provide information on the current employment status of the other education sector employees, whom the complainant organizations allege have been subject to arbitrary measures, including a suspension of salaries, since October 2013, as included in the list transmitted to it in the complaint.*

353. *The Committee notes with concern the allegations by the complainant organizations pertaining to the death of Mr Mahamoud Elmi Rayaleh, a French teacher at Balbala Public Secondary School and a socially engaged citizen, on 29 August 2013 during his detention at Gabode Central Prison. The Committee notes that he had been arrested on 2 August 2013, a detention warrant had been issued the following day and on 20 August he had been sentenced to two months in prison for "involvement in an illegal protest". The Committee notes that, according to the complainant organizations, he had been in good health during his incarceration at Gabode Central Prison and that, following his death, it was claimed that the authorities had buried him quickly, without any of his family members or associates present.*

354. *The Committee notes that, according to the Government, an independent commission carried out an inquiry into the circumstances of the death. During the inquiry, the commission apparently heard, in particular, the accounts of co-detainees, prison guards and the prison doctor, examined the forensic report, concluded that there was no evidence to corroborate the suspicious or criminal nature of the detainee's death and indicated that the death of Mr Rayaleh, which occurred during his sleep, did not have any traumatic or pathological cause. The Committee requests the Government to send a copy of the ruling of 20 August 2013 sentencing Mr Mahamoud Elmi Rayaleh to two months of imprisonment for "involvement in an illegal protest", as well as a copy of the independent commission's report into the circumstances of his death.*

355. *The Committee notes that the complainant organizations allege that in November 2012, the authorities refused Mr Samuel Ngoua Ngou, EI regional coordinator for the African region, the right to enter Djibouti territory where he was going to organize a national seminar on early childhood education, arranged in collaboration with SYNESED and the*

SEP. The complainant organizations maintain that Mr Ngoua Ngou was barred entry at Djibouti Airport on arrival, despite the official letter authorizing him to obtain his visa at the airport. When arriving from Nairobi on 10 November 2012 at around 1 a.m., Mr Ngoua Ngou had been held by the border police for 25 hours outside of any legal framework and had eventually been refused entry on 11 November, without a valid reason, at about 2 a.m.

356. *The Committee notes that in reply, the Government has provided a report drawn up on 14 March 2014 by the border and immigration police at Djibouti Airport in which it is indicated that Mr Samuel Ngoua Ngou arrived from Nairobi on 9 November 2012 and left again on 11 November 2012 at 2.45 p.m. after a stay of two days on Djibouti soil. According to the report, Mr Ngoua Ngou had not been expelled, as this would have been done immediately, on the return flight of the airplane in question. Finally, according to the report, in cases where entry is barred, a notification sheet summarizing the grounds must be submitted to the carrier by the station manager. No such sheet had apparently been produced regarding Mr Samuel Ngoua Ngou.*

357. *The Committee notes with concern the conflicting versions of the complainant organizations and the Government regarding these serious allegations and observes that the Government does not provide any reply in relation to those concerning the detention of Mr Ngoua Ngou by the border police for 25 hours prior to his removal. In these circumstances, the Committee is not able to examine this question further. However, it would recall generally that visits to affiliated national trade union organizations and participation in their congresses are normal activities for international workers' organizations, subject to the provisions of national legislation with regard to the admission of foreigners, but that, while recognizing that the refusal to grant visas to foreigners is a matter which falls within the sovereignty of the State, the Committee has already had to request a government to ensure that the formalities required of international trade unionists to enter the country are based on objective criteria free of anti-trade unionism. [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 750 and 753]. Recalling that it is not the first time that the authorities have been subject to allegations of refusing entry to an international trade union solidarity mission [see 342nd report, para. 433], the Committee firmly expects that the Government will fully respect these principles.*

The Committee's recommendations

358. ***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 provide information on the current employment status of the education sector employees whom the complainant organizations allege have been subject to arbitrary measures, including a suspension of salaries, since October 2013.

(b) The Committee requests the Government to send a copy of the ruling of 20 August 2013 sentencing Mr Mahamoud Elmi Rayaleh to two months of imprisonment for "involvement in an illegal protest", as well as a copy of the independent commission's report into the circumstances of his death.

CASE NO. 2811

INTERIM REPORT

Complaint against the Government of Guatemala presented by the Trade Union of Workers of Guatemala (UNSITRAGUA)

Allegations: The complainant organization denounces the anti-union transfer of a trade union official in the National Institute of Forensic Science, anti-union dismissals in the municipality of Chimaltenango, impediments to the negotiation of a new collective agreement in the Higher Electoral Court, and the violation of the provisions of a collective agreement in the agricultural sector

359. The Committee last examined this case at its March 2012 meeting, when it presented an interim report to the Governing Body [see 363rd Report, paras 645 to 663, approved by the Governing Body at its 313th Session (March 2012)].

360. The Government sent partial replies to the requested information in a communication dated 12 November 2014.

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

A. Previous examination of the case

362. At its March 2012 meeting, the Committee made the following interim recommendations regarding the allegations presented by the complainant organizations [see 363rd Report, para. 663]:

(a) Regarding the alleged anti-union transfer of the trade union official Ms Nilda Ivette González Ruiz, the Committee regrets that the Government has provided no information on this allegation and urges it to do so without delay and to take the necessary steps to ensure that the abovementioned principle is respected. The Committee requests the Government to keep it informed in this regard.

(b) Regarding the alleged anti-union dismissals in the municipality of Chimaltenango, the Committee regrets that the Government has provided no information on this allegation and urges it to do so without delay and to keep it informed of the current status of the dismissal cases brought before the Labour, Social Welfare and Family Court of First Instance of Chimaltenango department.

(c) Regarding the impediments to negotiating a new collective agreement between the Higher Electoral Court and the SITTSE, the Committee requests the Government to keep it informed with regard to the appeal submitted by the Court to the Third Chamber of Labour and Social Welfare, and developments in the negotiation of the new collective agreement between the Court and the SITTSE.

(d) Regarding the violation of the provisions of a collective agreement in the agricultural sector, and regretting that the Government has provided no information on the allegation in question, the Committee urges the Government to do so without delay and interested parties, including the concerned enterprise through the relevant employers' organization, to indicate whether all outstanding issues have been resolved.

B. The Government's reply

363. In its communication of 12 November 2014, the Government sent its observations in relation to the alleged anti-union transfer of the trade union official Dr Nilda Ivette González Ruiz. In this regard, the Government provides the following information sent by the National Institute of Forensic Sciences (INACIF): (i) Dr González Ruiz had a fixed-term contract that was set to expire automatically on 31 December 2010; (ii) the contract contained a geographic mobility clause stating that the worker could be required to work in another morgue in Guatemala, thereby making Dr González Ruiz's transfer entirely legal; and (iii) because the national labour law was simple, transfers did not require any prior authorization. The Government also sent information provided by the labour inspectorate and the Auxiliary Services Centre of the Labour Law Administration stating that: (i) Dr González Ruiz initially submitted a complaint before the labour inspectorate; (ii) after exhausting all available administrative channels, the worker initiated legal proceedings for reinstatement before the 11th Labour and Social Welfare Court, alleging that she had been dismissed by the INACIF in retaliation for her trade union activities; (iii) following a decision on 16 January 2014, the Court ordered that she be reinstated; (iv) the INACIF appealed the decision before the judicial chamber; and (v) on 7 July 2014, Dr González Ruiz expressly, voluntarily and completely withdrew from the legal proceedings, in favour of the INACIF.

364. Based on these facts, the Government states that at no point did the INACIF violate the ILO Conventions on freedom of association; its decisions were solely based on the need to ensure that it functioned properly. Due to Dr González Ruiz no longer pursuing legal action following her withdrawal, the Government requests that the Committee does not pursue its examination of this allegation.

C. The Committee's conclusions

365. *The Committee recalls that this case concerns various allegations of anti-union acts including dismissals and acts contrary to the right to collective bargaining in both the public and private sectors.*

366. *The Committee takes note of the Government's observations related to the alleged anti-union transfer of the trade union official, Dr Nilda González Ruiz, by the INACIF. In this respect, the Committee observes that the Government states that: (i) the transfer of Dr González Ruiz was as a result of the geographic mobility clause contained in her contract being implemented, and therefore it did not constitute an anti-trade union act of discrimination; and (ii) while Dr González Ruiz initiated legal proceedings in order to be reinstated, she voluntarily terminated such action in July 2014.*

367. *The Committee takes note of this information, especially that Dr González Ruiz terminated her legal proceedings. In this regard, the Committee requests the complainant organization to provide information on the reasons for terminating her legal proceedings. In the absence of this information, the Committee will not pursue its examination of this allegation. Additionally, the Committee recalls generally that protection against acts of anti-union discrimination should cover not only hiring and dismissal, but also any discriminatory measures during employment, in particular, transfers, downgrading and other acts that are prejudicial to the worker [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 781] and that this principle should also be taken into consideration in those cases in which a geographic mobility clause is included in the contract.*

368. *Regarding the impediments to negotiating a new collective agreement between the Higher Electoral Court and the Trade Union of Workers of the Higher Electoral Court (SITTSE),*

the Committee observes that this issue was also examined under Case No. 2203 [see 371st Report, March 2014, paras 527 and 533] where the Committee took note that, under the ruling of 12 April 2013 of the First Chamber of Labour and implemented by the Social Welfare of the Fourth Labour and Social Welfare Court, the collective agreement on conditions of work of the Higher Electoral Court entered into force on 8 May 2013. Under these circumstances, the Committee will not pursue its examination of this allegation.

369. *Regarding the allegations of anti-trade union dismissals in the municipality of Chimaltenango, the Committee regrets once again that, despite the time that has elapsed since the presentation of the complaint, no information has been provided by the Government in this regard and, particularly, no information has been provided on the current status of the dismissal cases brought before the Labour, Social Welfare and Family Court of First Instance of Chimaltenango department. In view of the fact that the Government has not sent observations on this aspect of the complaint, the Committee would first recall 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****, op. cit., para. 817]. The Committee further recalls that, under the terms of the Memorandum of Understanding signed with the Workers' group of the ILO Governing Body on 26 March 2013, further to the complaint concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made under article 26 of the ILO Constitution, the Government made a commitment to adopt "policies and practices to ensure the application of labour legislation, including … effective and timely judicial procedures". On this basis, the Committee urges the Government to send, as soon as possible, its observations on the aforementioned allegations and to inform it on the legal procedures undertaken in relation to these allegations.*

370. *Regarding the violation of the provisions of a collective agreement in the agricultural sector, and regretting once again that the Government has not provided any information on this allegation despite the time that has elapsed since the presentation of the complaint, the Committee once again urges the Government to do so without delay and invites the interested parties, including the concerned enterprise through the relevant employers' organization, to indicate whether all outstanding issues have been resolved.*

The Committee's recommendations

371. ***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 to provide information on Dr González Ruiz's reasons for terminating her legal proceedings. In the absence of this information, the Committee will not pursue its examination of this allegation.

(b) Regretting once again that the Government has not provided, despite the time that has elapsed since the presentation of the complaint, any information regarding the allegations of anti-trade union dismissals in the municipality of Chimaltenango, the Committee urges the Government to inform it, as soon as possible, of the current status of the dismissal cases before the Labour, Social Welfare and Family Court of First Instance of Chimaltenango department.

(c) Regretting once again that the Government has not provided any information on the violation of the provisions of a collective agreement in the agricultural sector, despite the time that has elapsed since the presentation of the complaint, the Committee once again urges the Government to do so without delay, and invites the interested parties, including the concerned enterprise through the relevant employers' organization, to indicate whether all outstanding issues have been resolved.

CASE NO. 3032

INTERIM REPORT

Complaints against the Government of Honduras
presented by
– the Latin American Federation of Education and Culture Workers (FLATEC)
– Education International (EI)
– the Federation of Teachers' Organizations of Honduras (FOMH)
– the General Confederation of Workers (CGT)
– the Single Confederation of Workers of Honduras (CUTH) and other national organizations
supported by
– Education International for Latin America (IEAL)

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

372. The complaints relating to the present case are contained in communications by the Latin American Federation of Education and Culture Workers (FLATEC), dated 15 May 2013; Education International (EI) and the Federation of Teachers' Organizations of Honduras (FOMH), dated 24 June 2013. In a communication dated 23 January 2015, the General Confederation of Workers (CGT), the Single Confederation of Workers of Honduras (CUTH) and other national organizations have submitted new allegations. Education International for Latin America (IEAL) has supported this communication in a letter dated 29 January 2015.

373. The Government sent its observations in communications dated 24 September 2013 and 21 May 2014.

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

A. The complainants' allegations

375. The complaints form part of a long dispute between teachers' union organizations and the Government, originating with the suspension of the economic regime set forth in the Honduran Teachers' Statute and the delay in the payment of salaries in arrears, and giving rise to protest movements and strikes, during the period from 2010 to 2013.

376. In a communication dated 15 May 2013, FLATEC alleges that the economic regime contained in the Honduran Teachers' Statute has been suspended, that the salary increases from 2010 to 2013 for teachers are in arrears, that the police forces have suppressed protests by teachers, and that the protest movements have been declared illegal; similarly, according to the allegations, more than 600 teachers have been sanctioned for participating in a protest movement, deductions of union dues for teachers' organizations have been suspended, and requests for renewal of paid trade union leave for members of the Trade Union of Honduran Teachers (SINPRODOH) have been refused. In a communication dated 24 June 2013, EI and the FOMH denounce the death of a union activist, the legal proceedings instituted against 24 teachers for the crimes of sedition and unlawful association, the exclusion of teachers' organizations from the higher authority of the administration of the National Social Welfare Institute for Teachers (INPREMA), sanctions for the exercise of the right to strike, and the refusal of requests for renewal of paid union leave for members of the First Honduran Union Association of Teachers (PRICPHMA), the Honduran Union Association of Teachers' Outreach (COLPROSUMAH) and the Professional Association of School Teachers of Honduras (COPRUMH).

377. EI and the FOMH denounce the death of Ms Ilse Ivania Velásquez Rodríguez, a teacher affiliated to the COLPROSUMAH, which occurred on 18 March 2011, when she was participating in a peaceful demonstration called by teachers' organizations of Honduras against the new INPREMA Act. To date, no one has been convicted as a result of Ms Velásquez Rodríguez's death.

378. EI and the FOMH denounce the legal proceedings instituted against 24 teachers for the crimes of sedition and unlawful association, after the teachers were arrested during a peaceful demonstration called by organizations affiliated to union federations. Various teachers were detained in the COLPROSUMAH vehicle, just as they were planning to move to the Supreme Court of Justice, as part of the demonstration, to submit an action for constitutional protection *(amparo)* against the INPREMA Act. Those detained and then charged include Mr José Martin Suazo Sandoval, a member of the COLPROSUMAH executive board; Mr José Francisco Zelaya, Mr Walter Urbina Mencia, Mr Dennis Núñez Bojórquez, Mr Andrés Adalid Romero, Mr Donaldo Molina, Mr José Erasmo Chinchilla, Mr José Rolando Servellón, Mr Marco Antonio Melgar, Mr Edgar Cobos Gutiérrez, Mr Leavin Amaya, Mr José Alex Martínez, Mr Elvis Rolando Guillén, Ms Wendy Yamileth Méndez Ocampo, Ms María Auxiliadora Mendoza, Ms Linda Melina Guillén, Ms Ingrid Lizeth Sierra Méndez and Ms Nuria Evelyn Verduzco Avendaño, all of whom are members of the COLPROSUMAH.

379. EI and the FOMH explain that Decree No. 247-2011 of 14 December 2011, which contains the INPREMA Act, excluded teachers' organizations from the INPREMA board of specialists (higher authority of the administration).

380. The complainant organizations explain that the Act on Fiscal and Financial Emergencies, contained in Decree-Law No. 18-2010, of 28 March 2010, declared the country to be in a state of fiscal emergency. Furthermore, the economic regime of the Honduran Teachers' Statute was suspended by means of Decree-Law No. 224-2010, dated 28 October 2010. EI and the FOMH emphasize that the latter Decree-Law orders the de-indexation of the

minimum salary, as a result of which the minimum salary cannot henceforth be used as a reference for an automatic increase in salaries. On 5 May 2012, the SINPRODOH lodged an administrative appeal with the State Secretariat of the Education Department, representing 54,000 teachers, prior to legal action for violation of the Honduran Teachers' Statute, demanding payment of the salary increases for the years in arrears.

381. The complainant organizations allege that the State Secretariat of the Labour and Social Security Departments decided to declare the protest movements illegal and threaten to sanction the teachers by means of dismissal. More than 300 teachers were sanctioned in the form of suspension without pay for a period of six months. Through the State Secretariat of the Education Department, the Government issued Executive Decision No. 15575-SE-2012, of 18 October 2012, which sanctioned hundreds of teachers who participated in the protest movement by means of a deduction in their wages and dismissal from their posts. EI and the FOMH allege that the sanction was published before the sanctioned teachers had the opportunity to be heard in court. On 18 October 2012, the SINPRODOH brought an action for constitutional protection *(amparo)* in the Constitutional Chamber of the Supreme Court of Justice against Executive Decision No. 15575-SE-2012. The Chamber declared the appeal to be receivable and ordered that it should be heard by an ordinary court; the action was brought before the Civil Court of Administrative Disputes for annulment of the administrative act. The action was received and the legal proceedings are under way.

382. The complainant organizations denounce the fact that the Government ordered the suspension of deductions in union dues for teachers' organizations, in Executive Decision No. 15907-SE-2012, of 19 December 2012. EI and the FOMH state that the first suspension period began in March 2011 and ended in March 2012; the second suspension period began in January 2013 and continues to date. On 29 December 2012, the SINPRODOH brought an action for constitutional protection *(amparo)* in the Constitutional Chamber of the Supreme Court of Justice against the executive decision in question. The Chamber declared the appeal to be receivable and ordered that it should be heard by an ordinary court; the action was brought before the Civil Court of Administrative Disputes for annulment of the administrative act. The action is in the process of being received.

383. In addition, EI and the FOMH denounce the adoption of Executive Decision No. 15096-SE-2012, of 30 July 2012, which provides for the extension of the school year in the case of stoppages or class suspensions. The State Secretariat of the Education Department sends inspectors to each assembly lawfully convened by the organizations, so that they may produce a record of proceedings. The records are used to impose salary deductions or to suspend teachers.

384. The complainant organizations denounce the refusal of the requests for renewal of paid leave:

(a) FLATEC states that the State Secretariat of the Education Department ordered, in circular letter No. 0019-SE-2013, of 7 February 2013, that the paid leave of Mr Bertín Alfaro Bonilla, Mr Santos Blas Oviedo Rivas and Mr Gaeri Jonathan Duarte, SINPRODOH officials, not be renewed, following the submission of the request on 22 January 2013 to the Trujillo district education department and regional education departments of El Paraíso and Yoro. Moreover, the State Secretariat of the Education Department ordered that these persons report to work and cease their union administrative duties. On 11 February 2013, the SINPRODOH challenged the letter before the State Secretariat of the Education Department; to date no decision has been taken on the matter. Subsequently, the State Secretariat of the Education Department ordered the recording of acts of abandonment of their posts by Mr Bertín Alfaro

Bonilla, Mr Santos Blas Oviedo Rivas and Mr Gaeri Jonathan Duarte, for failing to give classes on 18, 19 and 20 February 2013. Those acts were challenged by the SINPRODOH, under a previous decision of the State Secretariat of the Labour and Social Security Departments, as those officials, having been elected for the period 2011–14, did not have to report for duty until February 2015. Mr Gaeri Jonathan Duarte was summoned to a dismissal hearing on 2 April 2013, and FLATEC states that the State Secretariat of the Education Department had ordered that he be dismissed. Mr Bertín Alfaro Bonilla was summoned to a dismissal hearing on 25 April 2013, and FLATEC states that the State Secretariat of the Education Department had already announced his dismissal. The acts of abandonment recorded against Mr Bertín Alfaro Bonilla were challenged in the district education department of El Negrito, Yoro.

(b) EI and the FOMH add that paid union leave was also denied to Mr Armando Gómez Torres, President of PRICPHMA; Mr Orlando Mejía Velásquez, Secretary-General of PRICPHMA; Mr Cesar Augusto Ramos, Secretary for Legal Affairs of PRICPHMA; Mr Jury Hernández Troches, Secretary for the Environment of PRICPHMA; Mr Rufino Murillo, Secretary for Internal Affairs of PRICPHMA; Mr Walter Edgardo Rivera, Secretary for Advertising of PRICPHMA; Mr Elder Zavala, Secretary for Pedagogical Affairs of PRICPHMA; Mr Grebil Escobar del Cid, Secretary for Finance of PRICPHMA; Mr Edwin Emilio Oliva, President of COLPROSUMAH; Mr Martin Suazo Sandoval, Secretary for Advertising of COLPROSUMAH; Mr Edgardo Antonio Casaña, President of COPRUMH; Mr Otto Omar Cayetano, Vice-President of COPRUMH; Mr Oscar Geovanny Alemán, Secretary for Finance of COPRUMH; Mr Carlos Hernán Izaguirre, Legal Adviser of COPRUMH; and Ms Denia Esmeralda Galindo, Secretary for Disputes of COPRUMH. On 10 April 2013, Mr Armando Gómez Torres, President of PRICPHMA; Mr Orlando Mejía Velásquez, Secretary-General of PRICPHMA; Mr Cesar Augusto Ramos, Secretary for Legal Affairs of PRICPHMA; Mr Jury Hernández Troches, Secretary for the Environment of PRICPHMA; Mr Rufino Murillo, Secretary for Internal Affairs of PRICPHMA; Mr Walter Edgardo Rivera, Secretary for Advertising of PRICPHMA; Mr Elder Zavala, Secretary for Pedagogical Affairs of PRICPHMA; and Mr Grebil Escobar del Cid, Secretary for Finance of PRICPHMA were dismissed. On 18 April 2013, Mr Edwin Emilio Oliva, President of COLPROSUMAH; Mr Bertín Alfaro Bonilla, President of SINPRODOH; and Mr Gaeri Jonathan Duarte of SINPRODOH were dismissed.

385. FLATEC denounces the fact that the Government is in arrears for the payment to teachers of salary increases for 2010, 2011, 2012 and 2013. As a result, teachers' representatives instigated union action by means of protests and other movements; those protest actions were suppressed by the police forces.

386. EI and the FOMH denounce the unilateral suspension, by the Secretary of State of the Education Department, of the Teacher Selection and Competitive Recruitment Boards, which hinders the mobility of workers.

387. FLATEC states that, in circular-letter No. 0029-SE-2013, the State Secretariat of the Education Department gave the SINPRODOH five working days to submit a report on the amounts, use and handling of the funds received as a result of the deductions transferred. On 8 March 2013, the SINPRODOH challenged the letter in question before the State Secretariat of the Education Department; to date, the matter has not been resolved.

388. Furthermore, FLATEC denounces the fact that the Higher Court of Auditors notified Mr Bertín Alfaro Bonilla, Mr Lorenzo Sánchez Rivas, Mr José Armando Villela Paisano and Mr Leonel Eraldo Amara Sorto, SINPRODOH officials, of civil liability claims

for 49,070,777.79 Honduran lempiras (HNL). That compensation is the result of the alleged signing of a negotiation agreement, resetting the levels of pensions for retired teachers affiliated to the SINPRODOH, with the Government. The SINPRODOH challenged the civil liability claims against Mr Bertín Alfaro Bonilla and Mr Lorenzo Sánchez Rivas; to date, the matter has not been resolved. Mr José Armando Villela Paisano and Mr Leonel Eraldo Amara Sorto are awaiting notification.

389. In addition, EI and the FOMH denounce the workplace harassment faced by Mr Franklin Padilla of the Association of Secondary Teachers of Honduras (COPEMH), and Mr Oscar Recarte, Secretary for Pedagogical Affairs and President of COPEMH, respectively.

B. The Government's reply

390. In its communication of 24 September 2013, the Government states that its actions are not directed against the SINPRODOH. Furthermore, in its communication of 21 May 2014, the Government emphasizes that the State ensures that teachers' labour rights are observed and demands that teachers discharge their duties, particularly those relating to the right to education for children and young people.

391. As regards the death of Ms Ilse Ivania Velásquez Rodríguez, the Government states that her death was caused by a young, reckless driver, who hit her while driving against the flow of traffic. A forensic report of the Public Prosecutor's Office concluded that Ms Velásquez Rodríguez died from a blow caused by the impact of her falling onto the roadway. It excludes the possibility that, prior to Ms Velásquez Rodríguez's fall, she had been hit by an object designed for use by the military or police.

392. As for the detention of 24 teachers for the crimes of sedition and unlawful association, the Government explains that they were arrested for assaulting several police officers with mortar rockets. The teachers attempted to flee, but they were stopped by a police patrol. In the car that the teachers were driving, mortar, gasoline and tyres were found, among other things. The Government adds that according to a legal source the mortars that were found were highly explosive, able to cause blindness, deafness, bodily harm and even death. The Government considers that the teachers were treated in the same way as any citizen who would have committed such crimes would have been treated and that due process was respected at all times. To date, no teacher has been convicted of the aforementioned crimes.

393. Regarding the exclusion of teachers' organizations from the INPREMA board of specialists, following the reforms contained in Decree No. 247-2011 of 14 December 2011, which contains the INPREMA Act, the Government explains that the reforms were based on actuarial studies carried out by the National Commission of Banks and Securities (CNBS), and that they were disseminated among the teachers' unions in 2010. The Government explains that the measures taken guarantee the effective development of INPREMA as an autonomous entity.

394. As for the suspension of the economic regime set forth in the Honduran Teachers' Statute, the Government explains that the Act on Fiscal and Financial Emergencies, contained in Decree-Law No. 18-2010, of 28 March 2010, declared that the country was in a state of fiscal emergency, so as to tackle in a comprehensive and responsible manner the fiscal and financial crisis which the public finances were undergoing, and in order to re-establish a balance and reactivate sustainable economic growth, through the adoption of extraordinary fiscal and financial measures. The provisions of the Act on Fiscal and Financial Emergencies are to be strictly applied by the legislative, executive and judicial authorities, with their respective dependent institutions and bodies, at the national level. Furthermore, Decree-Law No. 224-2010, of 28 October 2010, suspends, as long as it is in force, the

economic regimes established in the different professional statutes. Those economic regimes are fiscal measures that were taken on the basis of the minimum salary increases agreed between employers and workers, or fixed by the President of the Republic, as appropriate; they have served as a reference for the automatic and direct increase in salaries envisaged for public servants protected by special laws or rules, to the detriment of the budgets of centralized and decentralized state institutions, since the activities undertaken are not based on the spirit and rationale which inspire the meaning and scope of the Act on Minimum Salaries, and because they have a strong impact on the public finances of the State of Honduras, which relies on an annual income and expenditure budget. During the process of setting the minimum wage for 2010, the National Minimum Wage Commission considered that the economic impact of the automatic increase in wages under those economic regimes was financially unsustainable for the State, which was why it suggested adopting measures to separate the economic regimes from agreements related to the setting of the minimum wage.

395. As regards the administrative appeal lodged by the SINPRODOH, representing around 54,000 teachers, which requested the back payment of salaries with their respective collateral benefits, and a bonus for the commercial interest generated by the sums of money in arrears, the Government states that the administrative appeal in question was declared receivable by the State Secretariat of the Education Department, in a ruling dated 17 August 2012. The case was transferred thereby to the subdepartment of human resources in charge of the teaching profession and the administrative office of the State Secretariat so that they could report as to whether the teachers in question were owed the payment they demanded, pursuant to article 72 of the Administrative Procedure Act. In a ruling of 12 March 2013, the reports of the offices in question were received and, for the sake of clarity, the case was submitted to the State Secretariat of the Finance Department so that it could issue a decision determining whether the payment in the form of salary increases corresponded to the respective collateral, backdated to 2010–12, bearing in mind that salary increases are the prerogative of the executive authority, according to the State's economic capacity. The Under-Secretariat for Finance and Budget reported, in letter No. 166-DGP-AE, dated 13 June 2013, that the appeal lodged by the SINPRODOH members could not, and should not, be accepted, as the country's financial situation did not allow for further and greater commitments beyond those contained in the National General Income and Expenditure Budget. A decision to that effect was taken on 18 June 2013, by the Under-Secretariat for Finance and Budget, and the case was passed on to the Legal Services Unit of the State Secretariat of the Education Department for legal advice prior to the final decision. Once the trial period requested on 18 July 2013 by the legal representative of the SINPRODOH had elapsed, without the period having been used by the party concerned, an order was issued as per the provisions of the ruling of 18 June 2013 (legal advice and decision).

396. Concerning the declaration of the protest movements as illegal and the sanctions imposed under Executive Decision No. 15575-SE-2012, of 18 October 2012, the Government explains that the State Secretariat of the Labour and Social Security Departments declared the strikes and protests launched by the teachers' representatives in the past two years to be illegal. The administrative procedure, provided for in national legislation for the application of the corresponding sanctions, was then launched. A state of emergency in the national public education system was declared at all levels, excluding the higher level, by Executive Decree No. PCM-016-2011, of 18 March 2011. On the basis of section 571 of the Labour Code, paragraph one of which states: "where a work suspension has been declared illegal, the employer shall be free to dismiss on such grounds those persons who have intervened or participated in the suspension …", the State Secretariat of the Education Department issued Executive Decision No. 15575-SE-2012, of 18 October 2012, by which it was agreed to deduct from their monthly salary the days not worked by those teachers if, according to the acts recorded, it is established that they did

not report for duty on 22, 30 and 31 August, and that the number of days of absence does not exceed two. In addition, in those cases where the teacher has failed to report for work, without good cause, for two whole and consecutive days or three working days in a month, that is the dates indicated above, the employment contract with the State Secretariat of the Education Department shall be deemed terminated, with no liability on the part of the above institution, pursuant to all the above sanctions, failures and dismissals.

397. As regards the allegations concerning suspension of union dues, the Government explains that, owing to the extra deductions imposed on teaching staff by teachers' unions and other banking and financial deductions, delays in the payment of teaching staff occurred, as a result of the tardiness of these organizations to report. The State Secretariat of the Education Department therefore issued Decision No. 15907-SE-2012, of 19 December 2012. A decision was taken to suspend temporarily the voluntary deductions granted to Honduran teachers' unions, excluding the mandatory dues such as those of INPREMA, the Honduran Social Security Institute (IHSS), union contributions, and other legal and judicial fees. The Government clarifies that, having received the reports requested by the State Secretariat of the Education Department for this purpose, voluntary deductions were resumed for the COPRUMH and the Teachers' College of Honduras (COLPEDAGOGOSH).

398. Concerning the adoption of Decision No. 15096-SE-2012, of 30 June 2012, which provides for the extension of the school year in the case of stoppages or suspensions of classes, the Government states that the actions of the State Secretariat of the Education Department have been motivated by the desire to the right to education. The fact that, in the country, millions of young boys and girls and adults continue to be deprived of education opportunities, in many cases owing to poverty, together with the constant stoppages, strikes and occupation of education centres by teachers' representatives, has generated chaos in the education system in the past three years. The State Secretariat of the Education Department is endeavouring to achieve fulfilment of the right to education and the minimum time in terms of class days, which section 12 of the Regulations under the Honduran Teachers' Statute establishes as actual working time during the school year (that is ten months, with a minimum of 200 working days), for which reason it has taken action to guarantee the country's education, as envisaged in the Honduran Teachers' Statute and the Regulations thereunder.

399. As for the refusal of the requests for renewal of paid union leave, the Government indicates that department directors, department secretariats and subdepartments of human resources in charge of teachers were informed, by circular letter No. 0019-SE-2013, of 7 February 2013, that in order to grant paid union leave to teachers who occupy posts in the national executive boards of union organizations, consideration should be given to section 13(6)(d) of the Honduran Teachers' Statute, which refers to paid leave for those occupying managerial positions for the duration of the post. Consequently, this should be applied within the framework of the basic law of each teaching organization determining post duration. In this regard, section 59 of the Regulations under the Honduran Teachers' Statute states: "All the legal provisions contained in article 13 of the Law shall be applied in each case by the immediate higher authority which, in turn, shall inform the corresponding authority accordingly." The above circular letter was challenged before the State Secretariat of the Education Department and the appeal was declared not to be receivable as it did not meet the requirements of the Administrative Procedure Act.

400. The Government refutes the allegation that circular letter No. 0019-SE-2013, of 7 February 2013, ordered the non-renewal of union leave for certain teachers in particular, such as the SINPRODOH officials, Mr Bertín Alfaro Bonilla, Mr Gaeri Jonathan Duarte and Mr Santos Blas Oviedo Rivas. The Government explains that action was taken to investigate whether the teachers had abandoned their jobs in the education centres,

following failures or abandonment on the part of many teachers, and the constant complaints made by children's parents, in observance of the provisions of the Convention on the Rights of the Child. However, the Government clarifies that the leave requested by Mr Grebil Escobar del Cid, Secretary for Finance of PRICPHMA, was granted.

401. The Government states that, while Mr Armando Gómez Torres, President of PRICPHMA, Mr Orlando Mejía Velásquez, Secretary-General of PRICPHMA, and Mr Cesar Augusto Ramos, Secretary for Legal Affairs of PRICPHMA, held posts as teachers' representatives and were on paid union leave, they illegally obtained new teaching positions in schools where they never reported for work. Furthermore, specific records show that on 19, 20 and 21 February 2014, none of the three teachers reported for work. Mr Jury Hernández Troches, Secretary for the Environment of PRICPHMA, committed serious misconduct consisting of dereliction of duty from 8 February 2013 onwards. Mr Edwin Emilio Oliva, President of COLPROSUMAH, Mr Martin Suazo Sandoval, Secretary for Advertising of COLPROSUMAH, and Mr Gaeri Jonathan Duarte of the SINPRODOH also committed serious misconduct consisting of dereliction of duty, which is why they were dismissed.

402. The Government emphasizes that the leave requested by Mr Rufino Murillo, Secretary for Internal Affairs of PRICPHMA, was refused because it was requested in order to take up a position that was not part of the PRICPHMA executive board. In the case of Mr Walter Edgardo Rivera, Secretary for Advertising of PRICPHMA, the Court of Appeal for Administrative Disputes ordered a stay of proceedings prior to the request being resolved. Mr Murillo and Mr Rivera were not sanctioned and still have an employment relationship with the State Secretariat of the Education Department.

403. The Government states that some representatives returned to their workplaces when the regional departments decided not to extend their paid leave, including Mr Edgardo Antonio Casaña, President of COPRUMH; Mr Otto Omar Cayetano, Vice-President of COPRUMH; Mr Oscar Geovanny Alemán, Secretary for Finance of COPRUMH, Mr Carlos Hernán Izaguirre, Legal Adviser of COPRUMH, and Ms Denia Esmeralda Galindo, Secretary for Disputes of COPRUMH.

404. Concerning the actions for constitutional protection *(amparo)*, filed against the State Secretariat of the Education Department by the teachers' representatives whose union leave was not renewed, in connection with the administrative disciplinary proceedings instituted against various teachers, including those of the SINPRODOH, it has emerged that the Supreme Court of Justice has declared them to be not receivable, since the administrative channels have not been exhausted prior to the judicial remedies. Concerning the request submitted by Mr Bertín Alfaro Bonilla for 2013, the Government states that the Director of the education department of Yoro requested a report from the department secretariat indicating how many years Mr Alfaro Bonilla had obtained leave for. The response was that the period was from 2005 to 2012 (that is eight consecutive years). Nevertheless, section 95(5) of the Labour Code states: "Where a worker holds union management positions, the leave shall last for as long as the worker stays in his post. The employer shall be forbidden to pay a salary for this purpose. The leave in question shall be requested by the individual union organization ... ." For that reason, Decision No. 05-2013, of 3 February 2013, declared the request for paid leave to be non-receivable, under section 59 of the Regulations of the Honduran Teachers' Statute which states: "All the legal provisions contained in article 13 of the law (the Honduran Teachers' Statute) shall be applied in each case by the immediate higher authority." Decision No. 119/DOS/2008 issued by the State Secretariat of the Labour and Social Security Departments refers to the SINPRODOH statutes, section 17 of which grants a period of three years, with re-election for a further period to any post, with a total or partial break of three years before applying for a new post on the central executive board. Mr Alfaro Bonilla completed his two periods on 30 November 2010 and cannot therefore continue to obtain paid union leave. The leave

refused is that which corresponds to the post of director of the José Trinidad Reyes school, located in the village of Las Delicias, El Negrito municipality, department of Yoro, for which reason he is expected to report to the education centre. The Government is unaware whether Mr Alfaro Bonilla occupies other posts within national or international union organizations. Having finalized the process, the regional department of Yoro issued Decision No. 049-D.D.E.Y.-2013, whereby Mr Alfaro Bonilla was dismissed for abandoning his post and an order to issue an annulment agreement was given owing to the dismissal of the director of the José Trinidad Reyes education centre. On 30 May 2013, an appeal was lodged against that decision and the case was submitted to the State Secretariat of the Education Department on 17 June 2013.

405. As regards the money owed by the Government to teachers, the Government recognizes that the delay in teachers' monthly payments has been one of the main problems faced by the State Secretariat of the Education Department. The Government explains that the delay (that is the failure to pay on the 20th day of each month) affected teachers at the national level and that their unrest was understandable. Faced with this situation, the State Secretariat of the Education Office issued Decision No. 15907-SE-2012, of 19 December 2012, which temporarily suspended the voluntary deductions for teachers to Honduran teachers' unions, excluding mandatory dues such as those of INPREMA, the IHSS, union contributions and other legal and court fees.

406. Regarding the teacher selection boards, the Government clarifies that the State Secretariat of the Education Department began a "teacher reorganization" process, which aimed to return teachers assigned to other education establishments to the schools where they had been originally appointed. As a result of this process, needs and vacancies were identified, which led to the redistribution of posts based on the information gathered. In June 2013, guidelines were issued on how to set up regional selection boards in regions where the reorganization process had been completed and where there were vacancies. The teacher reorganization process was concluded in 2014, the boards were set up and representatives from teachers' unions have now been included. The Government adds that the competitive examinations have regained their public status, with many of their stages being conducted in open interviews.

407. As regards the allegations relating to the report requested on the amounts, use and handling of the funds received as a result of the transferred deductions, under circular letter No. 0029-SE-2013, of 4 March 2013, the Government states that this was sent to the six presidents of the teachers' unions belonging to the FOMH, requesting them to report on the amounts, use and handling of funds received as a result of the deductions transferred to teachers' organizations. For many years, the Secretariat acted as a management body channelling those deductions, following requests made by teachers. Therefore, as a result of the failure to submit the report in question, the State Secretariat of the Education Department reserves the right to decide whether to continue to authorize the transfer of those deductions. The circular letter referred to was challenged before the State Secretariat of the Education Department. The appeal was declared non-receivable, since circular letter No. 0029-SE-2013 does not constitute an administrative act deriving from an administrative procedure, in accordance with section 116 of the General Act of Public Administration; it is not a general act which may be challenged, in accordance with the provisions of section 129 of the Administrative Procedure Act, nor is it an administrative decision issued by the administration hearing cases in the first or second instance, pursuant to section 137 of the Administrative Procedure Act.

C. The Committee's conclusions

408. *The Committee notes that in this case, the complaints form part of a long dispute between teachers' organizations and the Government, which gave rise to protest movements and strikes, during the period from 2010 to 2013, caused by the suspension of the economic regime set forth in the Honduran Teachers' Statute and the delays in the payment of salaries in arrears, among other things.*

409. *Similarly, the Committee observes that the allegations refer to: (1) the death of a trade union activist on 18 March 2011, while she was participating in a peaceful demonstration; (2) the legal proceedings instituted against 24 teachers, for the crimes of sedition and unlawful association, and their arrest while participating in a peaceful demonstration; (3) the exclusion of teachers' organizations from the higher authority of the administration of INPREMA; (4) the suspension of the economic regime set forth in the Honduran Teachers' Statute, and its de-indexation from the minimum salary (preventing the continuing use of the minimum salary as a reference for the automatic and direct increase of salaries); (5) the failure to pay salary increases from 2010 to 2013 and the suppression of the protests to which this gave rise; (6) the declaration of the protest movements as illegal by the administrative authority and the resulting sanctions imposed on more than 600 teachers; (7) the suspension of the deductions in union fees for teachers' organizations; (8) the adoption of Decision No. 15096-SE-2012, of 30 July 2012, which provides for the extension of the school year in the case of stoppages or suspensions of classes; (9) the refusal of requests for renewal of union leave; (10) the unilateral suspension of Teacher Selection and Competitive Recruitment Boards; (11) the request for a report on the amounts, use and handling of the funds obtained as a result of the deductions transferred to teachers' organizations; (12) the civil liability claims brought against four SINPRODOH officials, for an amount of HNL49,070,777.49; and (13) the professional persecution of two members of the COPEMH.*

410. *The Committee notes that the Government states that its actions are not directed against the SINPRODOH. It also notes the following statements by the Government: (1) the death of Ms Ilse Ivania Velásquez Rodríguez was caused by a young, reckless driver, who hit her while driving against the flow of traffic. The forensic report of the Public Prosecutor's office excludes the possibility that, prior to her fall, she had been hit by an object designed for use by the military or police; (2) the teachers were arrested for the crimes of sedition and unlawful association for assaulting several police officers with mortar rockets. Due process was respected at all times and, to date, no teacher has been convicted for the aforementioned facts; (3) the reforms outlined in Decree No. 247-2011, of 14 December 2011, containing the National Social Welfare Institute for Teachers Act were based on actuarial studies carried out by the CNBS, and were disseminated among the teachers' unions in 2010; (4) Decree-Law No. 224-2010, of 28 October 2010, suspended the economic regimes established in the different professional statutes, as they are fiscal measures which served as a reference for the automatic and direct increase of salaries, to the detriment of the budgets of centralized and decentralized state institutions; in this respect, the administrative appeal lodged by the SINPRODOH was not successful, since the country's financial situation did not allow for further and greater commitments beyond those contained in the National General Income and Expenditure Budget; (5) the delay in teachers' monthly payments has been one of the main problems faced by the State Secretariat of the Education Department, and this delay (that is the failure to pay on the 20th day of each month) affected teachers at the national level and their unrest was understandable, which was why the Secretariat issued Decision No. 15907-SE-2012, of 19 December 2012, temporarily suspending the voluntary deductions for teachers to Honduran teachers' unions, excluding mandatory dues such as union contributions and other legal and court fees. The State Secretariat of the Education Department has acted for many years as a management body to channel the deductions for teachers' unions, in line*

with requests made by teachers. It sent the circular letter to the six presidents of teachers' organizations belonging to the FOMH, requesting them to report on the amounts, use and handling of funds received. Voluntary deductions were resumed for the teachers' unions that had submitted the reports requested, namely the COPRUMH and the COLPEDAGOGOSH; (6) the adoption of Decision No. 15096-SE-2012, of 30 June 2012, which provides for the extension of the school year in the case of stoppages or suspension of classes, was motivated by the desire to fulfil the right to education and the minimum number of class days; (7) the State Secretariat of the Labour and Social Security Departments has declared illegal the strikes and protests launched by teachers' representatives in the past two years; consequently, pursuant to national legislation on the disciplinary regime, Executive Decision No. 15575-SE-2012, of 18 October 2012, was issued, imposing sanctions involving salary deductions, temporary suspension or dismissal, as the case may be; (8) the refusal of the requests for renewal of paid union leave made by certain teachers is based on national legislation, which should be applied within the framework of the basic law of each teaching organization determining post duration. In this respect, there was a case in which the request for leave was indeed granted (Mr Grebil Escobar del Cid, Secretary for Finance of PRICPHMA), and another case in which the request for leave was refused because it was requested in order to take up a position that was not part of the executive board (Mr Rufino Murillo, Secretary for Internal Affairs of PRICPHMA). In most cases, the requests for renewal of paid union leave were refused because the time limit set under the regulations of the teacher's organization concerned had been exceeded; (9) the State Secretariat of the Education Department began a "teacher reorganization" process, which aimed to return teachers assigned to other education establishments to the schools where they had been originally appointed. As a result, needs and vacancies were identified, which led to the redistribution of posts based on the information gathered. The reorganization process was concluded in 2014, the teacher selection boards have now been set up, and representatives from teachers' unions have been included.

411. *The Committee notes with profound concern the seriousness of the allegations which include the death of a union activist, criminal proceedings and mass sanctions relating to union activities, and also significant restrictions on the union rights of officials.*

412. *Regarding the death of Ms Ilse Ivania Velásquez Rodríguez, the Committee observes that, while this highly regrettable event occurred during a demonstration organized by the teachers' organizations of Honduras, it does not seem, according to government statements, to be the result of a violation of the principles of freedom of association. The Committee requests the complainant organizations to provide information in their possession on this allegation and in particular whether her death was, as the Government states, due to a car accident and to indicate whether anyone has been charged or detained in this regard.*

413. *As regards the legal proceedings instituted against 24 teachers for the crimes of sedition and unlawful association, and their subsequent arrest, while participating in a peaceful demonstration, the Committee takes note of the statements made by the Government that they assaulted several police officers by throwing mortar rockets at them. The Committee emphasizes that the principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 667]. The Committee regrets the acts of violence that occurred during the demonstration and urges the Government to provide information without delay on the specific acts for which they are being prosecuted, on the status of the legal proceedings instituted and, where applicable, the outcome.*

414. *Concerning the dispute which is the subject of this complaint, the Committee notes the allegations relating to the suspension of the economic regime set forth in the Honduran Teachers' Statute, under section 3 of Decree-Law No. 224-2010, of 28 October 2010, and also notes the economic arguments put forward by the Government. The Committee also notes that section 4 of the above Decree-Law states that: "within a period of 90 days and subject to negotiation with union organizations, the executive authority shall fix the adjustment to the base salary of public servants governed by special laws or professional statutes, in accordance with the state salary policy, without this increasing the collateral benefits". As regards the alleged failure to pay the salary increases, the Committee observes that the Government acknowledges that the delay in teachers' monthly payments has been one of the main problems faced by the State Secretariat of the Education Department and that, in view of the situation, the Secretariat issued Decision No. 15907-SE-2012, of 19 December 2012, temporarily suspending the voluntary deductions from teachers for Honduran teachers' unions, excluding mandatory dues such as those of INPREMA, the IHSS, union contributions and other legal and court fees. The Committee recalls that as part of its previous examination of Case No. 2330, in November 2004, the complainant organizations in that case had alleged that the Honduran Teachers' Statute was a legal instrument equivalent to a collective labour agreement and the product of many years of struggle, as reflected in Decree-Law No. 136-97, of 11 November 1997, and that that argument was not rejected by the Government [see 335th Report, para. 859]. The Committee recalls that a fair and reasonable compromise should be sought between the need to preserve as far as possible the autonomy of the bargaining parties, on the one hand, and measures which must be taken by governments to overcome their budgetary difficulties, on the other [see* ***Digest*** *op cit., para. 1035]. The Committee requests the Government and the complainant organizations to seek a negotiated solution acceptable to all the parties concerned, in accordance with the principles of freedom of association laid down in the ratified Conventions on freedom of association and collective bargaining. The Committee expects that the parties will take full account of these principles in the future and requests the Government to inform it of the outcome of the salary negotiations provided for in Decree-Law No. 224-2010, of 28 October 2010.*

415. *As for the allegation regarding the suspension of the deduction of union dues for teachers' organizations, the Committee notes that paragraph 2 of Agreement No. 15907-SE-2012, of 19 December 2012, excludes union dues. The Committee notes, however, that the Government has not denied the alleged suspension of the deduction of union dues, and has indicated that voluntary deductions had resumed for teachers' organizations that had submitted the reports requested. The Committee recalls that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided [see* ***Digest****, op. cit., para. 475]. Given that the suspension of the deduction of union dues infringes trade union rights, the Committee requests the Government to take the necessary steps to ensure that the remaining teachers' organizations once again benefit from the check-off facility for the union dues of their members.*

416. *As for the declaration of illegality made by the State Secretariat of the Labour and Social Security Departments, which led to the adoption of Executive Decision No. 15575-SE-2012, of 18 October 2012, and the subsequent imposition of sanctions involving salary deductions, temporary suspension or dismissal, as the case may be, affecting hundreds of teachers, the Committee recalls that responsibility for declaring the strike as 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]. The Committee also recalls that arrests and dismissals of strikers on a large scale involve serious risk of abuse and place freedom of association in grave jeopardy. The competent authorities should be given appropriate instructions so as to obviate the dangers to freedom of association that such arrests and dismissals involve [see* ***Digest****, op. cit., para. 674]. The*

Committee requests the Government and the complainant organizations to seek a negotiated solution acceptable to all the parties concerned, in accordance with the principles of freedom of association laid down in the ratified Conventions on freedom of association and collective bargaining; it also requests the Government to take steps to amend the legislation so that the legality or illegality of the strike is declared by an independent body.

417. *As for the allegations relating to the extension of the school year in the case of stoppages or suspension of classes, under Decision No. 15096-SE-2012, of 30 July 2012, the Committee takes note of the clarifications provided by the Government indicating that the State Secretariat of the Education Department has been endeavouring to achieve fulfilment of the right to education and the minimum number of class days, which section 12 of the Regulations under the Honduran Teachers' Statute establishes as actual working time during the school year (that is ten months, with a minimum of 200 working days). The Committee considers that in these circumstances the extension of the school year is not a cause for objection.*

418. *The Committee notes that the Government has not responded to the allegations referring to the sending of inspectors to each lawfully convened assembly, by the State Secretariat of the Education Department, in order to record the proceedings for sanctions-related purposes. The Committee emphasizes that the presence of representatives of the authorities or the employer at union assemblies constitutes interference in violation of the principles of freedom of association laid down in ratified Conventions on freedom of association and collective bargaining. It requests the Government to ensure that such practices do not recur in the future. The Committee further emphasizes that the right of occupational organizations to hold meetings in their premises to discuss occupational questions, without prior authorization and interference by the authorities, is an essential element of freedom of association and the public authorities should refrain from any interference which would restrict this right or impede its exercise, unless public order is disturbed thereby or its maintenance seriously and imminently endangered [see* ***Digest****, op. cit., para. 130].*

419. *As for the allegations concerning refusal of union leave requested by numerous officials, whose names are mentioned in the allegations, under circular letter No. 0019-SE-2013, of 7 February 2013, which the Government claims limits union leave to the duration of the union positions held, the Committee notes that on 11 February 2013 the above letter was challenged by the SINPRODOH before the State Secretariat of the Education Department. The Committee takes note of the information provided by the Government, according to which action was taken to investigate whether the teachers had abandoned their duties in the education centres, following the failures or abandonment on the part of various teachers and the constant complaints made by parents, in observance of the provisions of the Convention on the Rights of the Child. Furthermore, the Committee notes the information supplied by the Government relating to the actions for constitutional protection* (amparo) *brought by the teachers' representatives against the State Secretariat of the Education Department, in connection with the administrative disciplinary proceedings instituted against a number of teachers, including those from the SINPRODOH, and which the Supreme Court of Justice has declared not to be receivable, as the administrative channels had not been exhausted prior to the judicial remedies. The Committee also takes note of the information provided on the requests for renewal of trade union leave that were granted, and those that were refused, along with the reasons for their refusal. The Committee requests the Government to resume dialogue with the complainant organizations in order to find a prompt solution to this situation, and to inform it of the outcome of any legal proceedings instituted.*

420. *The Committee notes with regret that the Government's reply is not sufficiently clear as regards the allegations pertaining to: (1) the exclusion of teachers' organizations from the*

higher authority of the administration of INPREMA; and (2) the suppression of the protests resulting from the failure to pay salary increases from 2010 to 2013. The Committee urges the Government to send its observations in this regard without delay, in particular information concerning the complaints submitted to the competent authorities by the people who have been victims of police repression during the protests.

421. *Moreover, the Committee requests the complainant organizations to provide more detailed information on the allegations concerning: (1) the unilateral suspension of the teacher selection and competitive recruitment boards; (2) the request for a report on the amounts, use and handling of the funds obtained as a result of the deductions transferred to teachers' organizations; (3) the institution of civil liability proceedings against four SINPRODOH officials, for an amount of HNL49,070,777.49; and (4) the alleged professional persecution with no further details against two members of the COPEMH. The Committee requests the complainant organizations to furnish all information available to them in relation to these allegations, so that the Government may provide a precise response.*

422. *The Committee requests the Government to send its observations on the communication dated 23 January 2015 from the General Confederation of Workers (CGT), the Single Confederation of Workers of Honduras (CUTH) and other national organizations concerning allegations of sanctions against education trade unionists and other restrictions on trade union rights in relation to the dispute at hand.*

The Committee's recommendations

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

(a) The Committee requests the complainant organizations to provide information in their possession on the death of Ms Ilse Ivania Velásquez Rodríguez and in particular whether it was due, as the Government states, to a car accident and whether anyone has been charged or detained in this regard.

(b) As regards the legal proceedings instituted against 24 teachers for the crimes of sedition and unlawful association, and their subsequent detention, when they were participating in a peaceful demonstration, the Committee urges the Government to inform it without delay on the specific acts for which they are being prosecuted, on the status of the legal proceedings instituted and, where applicable, the outcome.

(c) Concerning the dispute which is the subject of this complaint, the Committee notes the allegations relating to the suspension of the economic regime set forth in the Honduran Teachers' Statute, under section 3 of Decree-Law No. 224-2010, of 28 October 2010, and to the failure to pay salary increases, the Committee requests the Government and the complainant organizations to seek a negotiated solution acceptable to all the parties concerned, in accordance with the principles of freedom of association laid down in the ratified Conventions on freedom of association and collective bargaining. The Committee expects that the parties will take full account of the principles referred to in its conclusions in the future and requests the Government to inform it of the outcome of the salary negotiations provided for in Decree-Law No. 224-2010, of 28 October 2010.

(d) As for the allegation regarding the suspension of the deduction of union dues for teachers' organizations, the Committee emphasizes that the suspension of the deduction of union dues infringes union rights; it therefore requests the Government to take the necessary steps, if it has not done so already, to ensure that all teachers' organizations once again benefit from the check-off facility for the union dues of their members.

(e) As for the declaration of illegality made by the State Secretariat of the Labour and Social Security Departments, which led to the adoption of Executive Decision No. 15575-SE-2012, of 18 October 2012, and the subsequent imposition of sanctions involving salary deductions, temporary suspension or dismissal, as the case may be, affecting hundreds of teachers, the Committee requests the Government and the complainant organizations to seek a negotiated solution acceptable to all the parties concerned, in accordance with the principles of freedom of association laid down in the ratified Conventions on freedom of association and collective bargaining; it also requests the Government to take steps to amend the legislation so that the legality or illegality of the strike is declared by an independent body.

(f) Concerning the allegations referring to the sending of inspectors to each lawfully convened assembly, by the State Secretariat of the Education Department, the Committee emphasizes that the presence of representatives of the authorities or the employer at union assemblies constitutes interference in violation of the principles of freedom of association laid down in ratified Conventions on freedom of association and collective bargaining. It requests the Government to ensure that such practices do not recur in the future.

(g) As for the refusal of union leave requested by numerous officials, under circular letter No. 0019-SE-2013, of 7 February 2013, the Committee requests the Government to resume dialogue with the complainant organizations in order to find a prompt solution to this situation, and to inform it of the outcome of any legal proceedings instituted.

(h) The Committee notes with regret that the Government's reply is not sufficiently clear as regards the allegations pertaining to: (1) the exclusion of teachers' organizations from the higher authority of the administration of INPREMA; and (2) the suppression of the protests resulting from the failure to pay salary increases from 2010 to 2013. The Committee firmly urges the Government to send its observations in this regard without delay, in particular information concerning the complaints submitted to the competent authorities by the persons who have been victims of police repression during the protests.

(i) Moreover, the Committee requests the complainant organizations to provide more detailed information on the allegations concerning: (1) the unilateral suspension of the teacher selection and competitive recruitment boards; (2) the request for a report on the amounts, use and handling of the funds obtained as a result of the deductions transferred to teachers' organizations; (3) the institution of civil liability proceedings against four Trade Union of Honduran Teachers (SINPRODOH) officials, for an amount of

HNL49,070,777.49; and (4) the alleged professional persecution with no further details against two members of the Association of Secondary Teachers of Honduras (COPEMH). The Committee requests the complainant organizations to furnish all information available to them in relation to these allegations, so that the Government may provide a precise response.

(j) The Committee requests the Government to send its observations on the communication dated 23 January 2015 from the General Confederation of Workers (CGT), the Single Confederation of Workers of Honduras (CUTH) and other national organizations concerning allegations of sanctions against education trade unionists and other restrictions on trade union rights in relation to the dispute at hand.

CASE NO. 3077

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

Complaint against the Government of Honduras presented by the Independent Workers' Federation of Honduras (FITH)

Allegations: The complainant organization alleges anti-union suspensions at the Ministry of Public Works, Transport and Housing (SOPTRAVI) and the seizure of union documentation

424. The complaint is contained in a communication from the Independent Workers' Federation of Honduras (FITH) dated 22 April 2014.

425. The Government sent its observations in a communication dated 30 September 2014.

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

A. The complainant's allegations

427. In a communication dated 22 April 2014, FITH alleges that the employment contracts of some 2,000 workers at the Ministry of Infrastructure and Public Services (INSEP) (formerly the Ministry of Public Works, Transport and Housing (SOPTRAVI)) were suspended for 120 days (from 1 April to 29 July 2014). This included the contracts of 55 officials and delegates of the Union of Public Workers and Employees at the Ministry of Public Works, Transport and Housing (SITRAEPSOPTRAVI). The complainant organization indicates that the Ministry of Labour and Social Security (STSS) was informed of the situation, but at the date of the communication, two months had elapsed without any action being taken by the Ministry.

428. Moreover, the complainant organization alleges that, in the context of an audit of the STSS involving the High Court of Auditors, police and military personnel attempted to break into the FITH head office to seize all the documentation belonging to the union.

B. The Government's reply

429. In its communication dated 30 September 2014, the Government explains that by means of Decree No. 266-2013 of 22 January 2014 issuing the Act for the optimization of the public administration, improvement of citizen services and strengthening of government transparency, a re-engineering of the state apparatus was launched with a view to tackling the financial crisis. As part of the re-engineering, a number of institutions were abolished, while others were merged or regrouped. The Government indicates that in the ministries where temporary staff were employed, the competent body was requested, further to an individual audit of each worker's situation, to suspend individual employment contracts in accordance with the law and the international treaties in force.

430. In the particular case of the INSEP, a consultancy study conducted in early 2014 established that, as at January 2014, the ministry had a total of 4,679 employees. Most INSEP employees were hired on daily contracts. Furthermore, in the context of the study to evaluate the potential budgetary impact of certain human resources management measures, it was established that 78.3 per cent of INSEP employees were concentrated in three departments: the Directorate-General for Highways (a total of 1,514 employees, including 1,291 on daily contracts); the Central Activities Unit (a total of 1,227 employees, including 940 on daily contracts); and the Directorate-General for Transport (a total of 923 employees, including 873 on daily contracts). Taking account of the recommendations made in the context of the abovementioned study, INSEP submitted a request to the STSS on 7 April 2014 for the suspension of the individual employment contracts of 1,972 workers. The suspension of the individual contracts was made effective from 1 April to 29 July 2014. The Government states that, as from 30 July 2014, most of the workers whose contracts had been suspended resumed their work in full.

C. The Committee's conclusions

431. *The Committee observes that the present case refers to the following allegations: (1) the suspension for 120 days (from 1 April to 29 July 2014) of the employment contracts of some 2,000 workers at the INSEP (formerly SOPTRAVI), including the contracts of 55 officials and delegates of the SITRAEPSOPTRAVI; and (2) an attempt, in the context of an audit to evaluate the financial situation of the STSS involving the High Court of Auditors, by police and military personnel to break into the head office of FITH in order to seize all the documentation belonging to the union.*

432. *The Committee notes all the Government's statements, in particular those explaining that the financial crisis was the reason for the request to suspend the employment contracts of 1,972 workers and that, as from 30 July 2014, most of the workers whose contracts had been suspended resumed their work in full.*

433. *As regards the allegations concerning the suspension of employment contracts at INSEP (formerly SOPTRAVI), the Committee concludes that these are general measures affecting thousands of workers, whether or not they are union members, and that, in this regard, the situation does not imply anti-union discrimination, even if there have been problems in the employment sphere (which lie outside the competence of the Committee). However, the Committee emphasizes the importance it attaches to the promotion of dialogue and consultations on matters of mutual interest between the public authorities and the most representative occupational organizations of the sector involved [see* ***Digest of decisions***

***and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 1067]. The Committee also 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 insofar as they might have given rise to acts of discrimination or interference against trade unions. In any case, the Committee can only regret that in the rationalization and staff reduction process, the Government did not consult or try to reach an agreement with the trade union organizations [see **Digest**, op. cit., para. 1079]. In view of the fact that there is nothing in the information sent by the Government to suggest that the complainant organization or the trade union was consulted, the Committee requests the Government to respect, in the future, the principle of consultation of trade union organizations on matters that affect the interests of their members and to consult them in particular with regard to the consequences of programmes for the restructuring of employment or the rationalization of conditions of work of salaried employees.*

434. *As regards the allegations concerning an "attempt" by police and military personnel to break into the head office of FITH, the Committee regrets the vagueness and lack of precision in the allegations and therefore invites the complainant organization to send more detailed information, in particular concerning the "attempt" by police and military personnel to break into the FITH head office in order to seize all the documentation belonging to the union, in the context of an audit to evaluate the financial situation of the STSS involving the High Court of Auditors.*

The Committee's recommendations

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

(a) As regards the allegations concerning the suspension of the employment contracts of some 2,000 workers at INSEP (formerly SOPTRAVI), the Committee requests the Government to respect, in the future, the principle of consultation of trade union organizations on matters that affect the interests of their members and to consult them, in particular with regard to the consequences of programmes for the restructuring of employment or the rationalization of conditions of work of salaried employees.

(b) As regards the allegations of an attempt by police and military personnel to break into the head office of FITH, the Committee highlights the vagueness and lack of precision of the allegations and therefore invites the complainant organization to send more detailed information, in particular concerning the attempt by police and military personnel to break into the FITH head office in order to seize all the documentation belonging to the union.

CASE NO. 3050

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

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

Allegations: The complainant organization denounces an organized attack by paramilitary organizations against workers participating in a peaceful national strike in October 2013 and the possible negative impact of the Mass Organizations Law enacted in July 2013 on the exercise of the rights to freedom of association and expression

436. The complaint is contained in communications from the International Trade Union Confederation (ITUC) dated 17 December 2013 and 4 December 2014.

437. The Government forwarded its response to the allegations in communications dated 28 February and 9 May 2014.

438. Indonesia 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 complainant's allegations

439. In its communication dated 17 December 2013, the complainant organization alleges that, on 31 October 2013, an organized attack by paramilitary organizations was carried out against workers participating in a peaceful national strike to demand an increase of the minimum wage, the implementation of health insurance by January 2014, the passing of the domestic workers bill and to protest against outsourcing particularly in state-owned enterprises, and the adoption of the Mass Organizations (Ormas) Act No. 17 of 2013 (Mass Organizations Act) in front of PT. Abacus in EJIP Industrial Estate, Cikarang Bekasi.

440. The complainant alleges that, according to available information, police officers in Bekasi District who were deployed to the site during the national strike did not take any measures to stop the attacks or to protect the workers, allowing the acts of violence to continue.

441. The complainant organization indicates that 28 workers from Abacus, Chaolong, Duta Laserindo, Tsuang Hine, Tristar, Gunze Furindo, Enkei, Fatasarana, Cheil Abrasive, Kyungsin, Titian Indah, Nusahadi and Tatalogistic companies were injured by the thugs who were armed with knives, iron rods and machetes, with 17 severely injured and admitted to hospital. Three were in critical condition as a result of the physical attack.

442. According to the complainant, the authorities have arrested nine people in connection with the attacks; however, those arrested, pursuant to its information, do not include those responsible for planning the attacks nor do they represent the totality of those who participated in the attacks. In the complainant's view, the Government should take all measures necessary to arrest and prosecute those responsible for planning and carrying out

these attacks and to discipline those police officers who allowed these attacks to continue. The Government must also ensure that the police respond appropriately in the future to safeguard the right of workers to strike over such matters.

443. Additionally, the complainant organization states that the controversial Mass Organizations Act was enacted on 2 July 2013, in spite of overwhelming and well-grounded concern over the law's impact on fundamental human rights. In its view, several of its provisions infringe unquestionably the rights to freedom of association and expression enshrined under various international human rights instruments and should be denounced on that basis. However, the law is ambiguous as to whether it applies to trade unions. The complainant expresses its deep concern that such ambiguity could be exploited by the Government to apply the law to trade unions at its discretion.

444. Should the Government confirm that the Mass Organizations Act does in fact apply to trade unions, the complainant considers the following provisions as in breach of Convention No. 87 (analysis limited to publicly available excerpts in English), and wishes to request the Committee to undertake a full study of the law (enclosed with the complaint in Bahasa) for other potential violations of the Convention:

- Section 2: Imposes the requirement that the basic principles of any registered organization should not be at odds with Pancasila, the official State philosophy which requires the belief "in the One and Only God", a "just and civilized humanity", "unity of Indonesia", "democracy" and "social justice".

- Section 5: Restricts the activities of organizations to eight limited purposes including maintaining the value of religion and belief in God; preserving and maintaining the norms, values, morals, ethics and culture; or establishing, maintaining, and strengthening the unity of the nation.

- Section 21(b): Requires organizations to "protect the unity and integrity of the Unitary Republic of Indonesia".

- Section 52: The law curtails the activities of foreign organizations, which must obtain a permit from the Ministry of Foreign Affairs to operate. The activities of foreign organizations must not disrupt the "stability and oneness" of Indonesia, and they may not carry out "practical political activities" or fundraising or activities "which disrupt diplomatic ties".

- Section 59(2): Provides that the objective of an organization is to "preserve religious values and belief in God" and the law prohibits "abuse, blasphemy or defamation against any religion acknowledged in Indonesia".

- Section 59(4): Bans the spreading of teachings and beliefs that are at odds with the Pancasila, such as "Communism/Marxism-Leninism" and "atheism".

445. The complainant alleges that these provisions could easily be invoked to interfere, for example, with the right of trade unions to free expression, to freely organize their own activities and to formulate their programmes, to strike or engage in other concerted activity (as potentially contrary to Pancasila). Further, section 52 could be used to prohibit the activities of international trade union organizations to which Indonesian unions are affiliated to undertake legitimate union activities. If confirmed that the law does apply to unions, these and other provisions must be amended or repealed.

446. In its communication of December 2014, the complainant provides new allegations of recent attacks by the police on trade unionists engaged in peaceful protests for the increase

of the minimum wage rates in Bekasi District, East Java, Batam and Bintan on Rican Island.

B. The Government's reply

447. In its communication dated 28 February 2014, the Government first responds to the allegations of violence against strike participants during workers' action in front of the PT Abacus at East Jakarta Industrial Park (EJIP) area, Cikarang, Bekasi, West Java on 31 October 2013. The Government considers it necessary to clarify the form of the action undertaken by the trade union, whether defined as a strike or a demonstration.

448. The national demonstration conducted by the Confederation of Indonesian Trade Unions (KSPI) in the industrial area which is located in the district of Bekasi, has involved around 30,000 people. Based on the KSPI letter No. 387/DEN-KSPI/X/2013 dated 24 October 2013 concerning the Notification of Demonstration, the police has issued the Receipt of Notification Letter (STTP) No. STTP/YANMAS/312/X/2013/Baintelkam dated 30 October 2013 with the provisions to be implemented by the demonstration participants. The Government states that, accordingly, in their demonstration action, the trade union should not have recourse to sweeping, blocking the road, carrying weapons and other things that may harm others and not commit acts of anarchy. However, according to the Government, the KSPI has ignored these provisions (they swept workers other than KSPI members and blocked the road).

449. In the Government's view, clashes between community and the workers were triggered by the actions of the workers who had recourse to sweeping into the factories to force workers who did not want to demonstrate, made a convoy to the residential area, and closed access or blocked public roads. The Government believes that these actions provoked the emotion of the community because the workers had promised by way of agreement to limit their activities to strike or production stoppage and had broken their promise. According to the Government, the mass mobilization conducted by the community which led to clashes was basically caused by their fear of previous experiences and information of other actions performed by workers that interfere with the imposition of the will of peace and public service. The community was concerned that the workers' activities would disrupt the investment climate or would make investors leave the district of Bekasi, which would certainly have a direct impact on community members who depend on the existence of the companies in that area, such as small enterprises or owners of waste management services, housing rental services, catering services and ojeg (motorcycle used for public transport).

450. The Government then raises the question as to whether the workers had recourse to a strike or a demonstration. The Government indicates that Act No. 13 of 2003 concerning manpower regulates strike action. Section 1 of the Manpower Act defines strike as a collective action of workers, which is planned and carried out by a trade union to stop or slow down work; in its implementation, the workers should comply with the requirements of sections 137 and 140. Section 137 provides that strike is a fundamental right of workers and trade unions that shall be staged legally, orderly and peacefully as a result of failed negotiation. Under section 140(1) and (2), workers and trade unions intending to stage a strike are under an obligation, within a period of no less than seven days prior to the actual realization of a strike, to give a written notification of the strike intention to the entrepreneur and the local government agency responsible for manpower affairs. The notification shall at least contain: (i) the time (day, date and the hour) at which they will start and end the strike; (ii) the venue of the strike; (iii) the reasons for the strike; and (iv) the signatures of the chairpersons and secretary of the striking union and/or the signature of each of the chairpersons and secretaries of the unions participating in the strike who shall be held responsible for the strike. In the case of a strike conducted by workers who are not members of the trade union, the notice must be signed by the

representatives of the workers who are designated as the coordinator and/or responsible for the strike. In the case of a strike that does not comply with the provisions of section 140, the employer can take action to save the production tools and the company's assets as follows: (i) prohibiting the workers to strike in locations where there are production processes; or (ii) if necessary, prohibit workers to strike at the company location. The Government recapitulates the legal requirements for a strike, namely prior negotiations held between the trade union and employers without reaching an agreement (failed negotiation) and subsequent delivery of strike notice.

451. The Government further states that, according to section 1, number 3 of Act No. 9 of 1998 on Freedom of Expression in Public, demonstration is an activity undertaken by one or more than one person to express their opinion (orally, in writing, etc.) demonstratively in public, that is, a place that can be visited and or seen by any person. Section 10 stipulates that the implementation of such protests or demonstrations shall be notified in writing by the relevant person, leader, or person in charge of the group to the local police department, at least three times, 24 hours before the activity starts.

452. The Government stresses that the implementation of a strike requires notification by the workers or the union to the institution responsible for labour issues as well as to the employer, while the implementation of a demonstration requires written notification to the local police department. According to the information obtained from the Bekasi Regional Police Office and Manpower Regional Office: (i) no negotiations had failed between the worker or trade union and employers concerning industrial relations issues; and (ii) no strike notice was submitted to the Bekasi Manpower Regional Office. Based on the above, the Government concludes that the action undertaken by the KSPI does not constitute a strike but rather a demonstration.

453. The Government underlines that, pursuant to the Freedom of Expression in Public Act, if acts of violence are committed by the civil society/mass organizations against workers outside the enterprise, the police take action. Accordingly, the Metro Jaya Regional Police have investigated into 11 public complaints received against the abovementioned events at the time of the demonstration (four complaints in Bekasi police and seven in the Indonesian National Police Headquarters). The police have taken law enforcement measures through investigation based on the Indonesian Criminal Code (Act No. 8 of 1981), Act No. 2 of 2002 on the Indonesian National Police and the Indonesian National Police Chief Regulation No. 14 of 2012 on the Management of Investigation, which consist of the following: (i) drawing up the police report; (ii) investigation of the victims; (iii) investigation of the witnesses; (iv) publication of the written physician reports from the hospital where the victims were treated; (v) conduct of the seizure and examination of evidence related to a criminal offence; (vi) determination of ten suspects and arrests within 18 hours after the incident; (vii) investigation of the suspects; (viii) drawing up allegations against the suspects; and (ix) submission of five cases to the High Court (Bandung, West Java). Currently, the prosecutor is examining the case files submitted by the investigator for the purpose of trial. The remaining matters are still being investigated by the police; if the supposed case breaches Indonesian criminal law, determination and examination of the suspect will be conducted, which will be followed by the filing of the case with the attorney office; during the investigation process, the complainant is always notified of developments.

454. Furthermore, in its communications dated 28 February and 9 May 2014, the Government responds to the complainant's allegation that, if applied to trade unions, several sections of the Mass Organizations Act are contrary to Convention No. 87, as they interfere with trade union rights. The Act replaces No. 8 of 1985 concerning civil society organizations, which was not considered to be in line with the current state system, and is based on the Indonesian Constitution of 1945. According to the Government, the Mass Organizations

Act was drafted by Parliament (in close cooperation with the Government the process of drafting not only involved the House of Representatives and the Government but the discussions of the draft also involved various elements from the Indonesian community, including civil society organizations and professional organizations.

455. The Government considers that the Act provides sufficient space for civil society organizations to develop and grow properly which should be in accordance with the constitution and the principles of civil society organization governance. According to section 1 of the Mass Organizations Act, the civil society organization is defined as an organization which is established voluntarily by society, based on similar aspirations, will, needs, interests, activities and purposes for participating in the development process for the achievement of the goals of the Republican Unitary Nation of Indonesia according to Pancasila.

456. The Government indicates that, in the Indonesian legal system, it is possible to submit a Judicial Review to the Constitutional Court, if the content of a law, including the Mass Organizations Act, is considered to be contrary to the Indonesian Constitution. Several civil society organizations in Indonesia, including the KSPI, have filed Case No. 3/PUU-XI1/2014 (enclosed with the complaint) with the Constitutional Court on 9 January 2014, alleging that certain provisions of the Mass Organizations Act violate the Indonesian Constitution. The examination of the Act is still ongoing. The Government therefore concludes that the Mass Organizations Act does not restrict the constitutional rights of citizens, including trade unions, in Indonesia.

457. The Government states that the Mass Organizations Act does not intend to restrict or impede the rights of workers or employers to organize. The Act recognizes that civil society organizations are development partners of the Government to implement national development programmes. In this connection, the Government welcomes the cooperation with civil society organizations as long as it does not contradict with the main principles of the State, as stipulated in the 1945 Constitution. Its article 28E.3 stipulates that "(e) very person shall have the right to the freedom to associate, to assemble and to express opinion", and article 28 provides that "[t]he freedom to associate and to assemble, to express written and oral opinions, etc., shall be regulated by law". With regard to the concerns that the Mass Organizations Act would eliminate or restrict the freedom of association of workers, the Government highlights that it guarantees and respects the rights of workers to associate and express their opinion as stipulated in Convention No. 87, ratified by Indonesia in 1998. It adds that the right of workers to organize has been further regulated by Act No. 21 of 2000 concerning trade unions.

458. With respect to the specific provisions of the Mass Organizations Act invoked by the complainant (sections 2, 5, 21(b), 52, 59(2) and 59(4)), the Government states the following. Section 2 provides that the principles of civil society organizations must not contradict Pancasila and the 1945 Constitution of Indonesia. The Government indicates that it has consistently endeavoured to adhere to the humanitarian precepts and basic human rights and freedoms embodied in Pancasila - the official philosophical foundation of the Republican Unitary Nation of Indonesia, the 1945 Constitution and national laws and regulations. Indeed these precepts, rights and freedom, as embodied in the constitutional and legal system, derive from age-old traditions, customs and the philosophy of life of the Indonesian people. The philosophical basis of Indonesia, Pancasila, which are "Five Moral Principles" of Indonesian life, embrace humanitarian ideals that are mutually interlinked and inseparable. The Indonesian Constitution, which is based upon the national philosophy, Pancasila, also contains humanitarian precepts and basic principles of human rights. These principles have been incorporated into a number of national laws and regulations that serve to protect and promote the well-being of the Indonesian people. Moreover, the Government underlines that the 1945 Constitution enshrines many

principles that are similar to those contained in the 1948 Universal Declaration of Human Rights.

459. According to section 5 of the Act, civil society organizations aim to: (i) promote participation and empowerment of society; (ii) serve the society; (iii) uphold religious values and faith in God Almighty; (iv) conserve and preserve norms, values, morale, ethics and culture within society; (v) conserve natural resources and the environment; (vi) develop social tolerance, mutual aid and tolerance within society; (vii) uphold, preserve and strengthen the nation's unity and integrity; and (viii) realize the purposes of the country. In this regard, the Government states that Indonesia's national objectives as mandated by the 1945 Constitution are to protect the whole people of Indonesia and the entire homeland of Indonesia, and in order to advance general prosperity, to develop the nation's intellectual life, and to contribute to the implementation of a world order based on freedom, lasting peace and social justice. To achieve these objectives, the Government expects all components of the nation, including civil society organizations to support the national objectives as mandated by the Constitution.

460. Section 21(b) of the Act stipulates the obligation to uphold the unity and integrity of the nation as well as the integrity of the Republican Unitary Nation of Indonesia. The Government indicates that the preservation of the unity and integrity of the Indonesian nation and State is the obligation of all Indonesian people. In this context, civil society organizations, through their activities, are also required to contribute to the preservation of the unity and integrity of the Indonesian nation and State.

461. Section 52 of the Act provides that civil society organizations established by foreign citizens as referred to in section 43(2) are prohibited from: (i) conducting any activities which contradict prevailing laws and regulations; (ii) disrupting the stability and integrity of the Republican Unitary Nation of Indonesia; (iii) conducting intelligence activities; (iv) conducting political activities; (v) conducting any activities that may disrupt diplomatic relations; (vi) conducting any activities contrary to the purpose of the organization; (vii) raising funds from the Indonesian community; and (viii) using facilities and infrastructures of government agencies and institutions. The Government indicates that it welcomes foreign civil society organizations that wish to participate in the implementation of its national development programmes. For this purpose, foreign civil society organizations are required to acquire a Government permit and to cooperate with the Government and local civil society organizations. This provision is not intended to restrict foreign civil society organizations' activities in Indonesia, but to promote transparency, partnership and transfer of knowledge and technology to local civil society organizations. The registration of foreign civil society organizations before being able to conduct activities is a common practice in many other countries.

462. Section 59(2) of the Act prohibits civil society organizations from: (i) performing hostile activities towards any tribe, religion, race or group; (ii) abusing, defaming or desecrating the religious beliefs in Indonesia; (iii) performing separatist activities which threaten the sovereignty of the Republican Unitary Nation of Indonesia; (iv) undertaking acts of violence, disturbing peace and public order, or damaging public and social facilities; or (v) performing activities which fall under the duty and authority of law enforcement agencies in accordance with the prevailing law and regulations. The Government indicates that, with a view to achieving the objectives of national development to realize prosperity and well-being for all people of Indonesia, all stakeholders should be able to maintain harmony and public order.

463. Section 59(4) of the Act prohibits civil society organizations from embracing, developing and spreading teachings or doctrines which contradict Pancasila. The Government states that the right to freedom of expression is guaranteed. In its view, the exercise of the right to freedom of expression entails responsibility to respect the rights of others and the applicable laws and regulations.

464. In conclusion, the Government of Indonesia assures that the Mass Organizations Act does not restrict the constitutional rights of all citizens, including trade unions, to associate, to assemble and to express opinions in Indonesia.

C. The Committee's conclusions

465. *The Committee notes that, in the present case, the complainant denounces: (i) an organized attack by paramilitary organizations against workers participating in a peaceful national strike in October 2013; and (ii) the possible negative impact of the Mass Organizations Law enacted in July 2013 on the exercise of workers and their organizations rights to freedom of association and expression.*

466. *With respect to the events of 31 October 2013, the Committee notes that, according to the complainant: (i) workers participated in a peaceful national strike in front of an enterprise in the Bekasi District, in order to demand an increase of minimum wages, the implementation of health insurance and the passing of the domestic workers bill, and to protest against outsourcing particularly in state-owned enterprises and the adoption of the Mass Organizations Act; (ii) despite an organized attack by paramilitary organizations against the workers, police officers who were deployed to the site during the national strike did not take any measures to stop the attacks or to protect the workers, allowing the acts of violence to continue; (iii) 28 workers from several companies were injured by armed individuals, with 17 severely injured and admitted to hospital (of which three in critical condition); and (iv) while the authorities have arrested nine persons in connection with the attacks, those arrested do not include those responsible for planning the attacks nor do they represent the totality of those who participated in the attacks. The Committee also notes the recent allegations of further attacks by the police on trade unionists engaged in peaceful demonstrations and requests the Government to reply in detail.*

467. *The Committee notes the Government's indication that: (i) based on the KSPI letter of 24 October 2013 concerning the Notification of Demonstration, the police issued the Receipt of Notification Letter (STTP) dated 30 October 2013 with the provisions to be implemented by the demonstration participants (including prohibition of recourse to sweeping, blocking roads, carrying weapons and acts of anarchy), but the KSPI has ignored these; (ii) clashes between the community and the workers were triggered by the actions of the workers who had recourse to sweeping into the factories to force workers other than KSPI members to demonstrate, made a convoy to the residential area and closed access or blocked public roads, although they had promised to limit their activities to strike or stoppage of production, as well as concerns of the community that the workers' activities would disrupt the investment climate in the district of Bekasi; (iii) the national action undertaken by the KSPI in the industrial area in the Bekasi District involving around 30,000 people, does not constitute a strike but rather a demonstration, because the legal requirements for a strike under sections 1, 137 and 140 of the Manpower Act (prior failure of the negotiations held between the trade union and employers and delivery no less than seven days prior to the actual realization of the work stoppage or slowdown of a written strike notice to the entrepreneur and the local government agency responsible for manpower affairs) have not been fulfilled (according to the information obtained from Bekasi Regional Police Office and Manpower Regional Office, no negotiations had failed between the trade union and employers concerning industrial relation issues, and no strike notice was submitted to the Bekasi Manpower Regional Office); whereas the legal*

requirements for a demonstration under sections 1 and 10 of the Freedom of Expression in Public Act (notification in writing to the local police department at least three times, 24 hours before the activity undertaken by one or more persons to express their opinion in a public place starts) have been met; and (iv) the police have investigated into 11 public complaints against the acts of violence occurred at the time of the demonstration (police report; investigation of the victims and witnesses; examination of physician reports and other evidence; arrests within 18 hours after the incident and investigation of ten suspects), with five cases having been submitted to the High Court, the Prosecutor currently examining the case files submitted by the investigator for the purpose of trial, and the remaining matters still being investigated by the police.

468. *The Committee notes the diverging views of the complainant and the Government as to the qualification of the activity undertaken by the KSPI as a national strike or demonstration, respectively. While recalling that the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement and that workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 531], the Committee considers that it is irrelevant for the present case whether the KSPI activity is ultimately qualified as a national strike or a national demonstration. Noting that the Government, while invoking actions such as sweeping of factories and blocking of roads, does not claim that the workers committed acts of violence and, at the same time, does not deny the allegation that the deployed police officers did not take any measures to stop the attacks or protect the workers, allowing the acts of violence to continue, 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****, op. cit., para. 44]. The Committee expects that the Government will make every effort to ensure that this principle is fully respected in the future. Furthermore, the Committee notes the conflicting positions of the complainant and the Government as to whether the measures taken by the police following the events were sufficient. Emphasizing that it does not have the elements at its disposal to enable it to assess the appropriateness of the law enforcement measures adopted, the Committee wishes to generally recall that, in the event of assaults on the physical or moral integrity of individuals, the Committee has considered that an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts [see* ***Digest****, op. cit., para. 50]. The Committee trusts that this principle will be fully respected as regards all perpetrators and instigators of the alleged acts of violence, as well as in respect of the allegations of inaction by the police in response to the violence, and requests to be kept informed in this regard.*

469. *With respect to the Mass Organizations Act, the Committee notes, as regards the ambiguity of its scope of application alleged by the complainant, that the Government does not deny the applicability of the Act to trade unions, and that there is a divergence of views between the parties as to whether or not the relevant provisions of the Mass Organizations Act restrict trade union rights, in particular the right to freedom of expression.*

470. *First and foremost, the Committee notes that section 2 of the Mass Organizations Act requires that the principles of civil society organizations be in line with Pancasila, which according to the Government is the official philosophical foundation of the country enshrining as a first principle the belief in the one and only God, and that the complainant alleges that, for instance, communism/Marxism and atheism would be banned as being considered at odds with Pancasila. In this regard, the Committee also observes that, under*

section 59(4), civil society organizations are prohibited from embracing, developing and spreading teachings or doctrines which contradict Pancasila.

471. *The Committee recalls that freedom of association implies not only the right of workers and employers to form freely organizations of their own choosing, but also the right for the organizations themselves to pursue lawful activities for the defence of their occupational interests. It reiterates that the full exercise of trade union rights calls for a free flow of information, opinions and ideas, and to this end workers, employers and their organizations should enjoy freedom of opinion and expression at their meetings, in their publications and in the course of other trade union activities; nevertheless, in expressing their opinions, trade union organizations should respect the limits of propriety and refrain from the use of insulting language. The Committee emphasizes that the freedom of expression which should be enjoyed by trade unions and their leaders should also be guaranteed when they wish to criticize the Government's economic and social policy [see* ***Digest****, op. cit., paras 154, 157 and 495].*

472. *In view of the above, the Committee trusts that the broad and general wording used in the above provisions containing prohibitions will not be used in a manner that would restrict the exercise of trade union rights, including the right of trade unions to express their opinions freely and exercise their freedom of belief. The Committee requests the Government to provide detailed information on any penal and administrative sanctions (including fines, dissolution or deregistration) imposed in law and in practice for the violation of the above sections. The Committee also invites the complainant to supply any information at its disposal in relation to the manner in which these provisions may have been used to restrict trade union rights.*

473. *Furthermore, the Committee notes that section 5 enumerates an exhaustive list of eight purposes to be pursued by civil society organizations and that the Government expects all components of the nation, including civil society organizations, to support the national objectives as mandated by the Constitution. The Committee also observes that section 21(b) stipulates the obligation to uphold the unity and integrity of the nation as well as the integrity of the Republican Unitary Nation of Indonesia and that, according to the Government, civil society organizations, through their activities, are required to contribute to this goal.*

474. *The Committee recalls that it previously held that a law obliging leaders of occupational associations to make a declaration "to uphold democracy" could lead to abuses, since such a provision does not include any precise criteria on which a judicial decision could be based were a trade union leader to be accused of not having respected the terms of the declaration. With regard to legal provisions under which "the trade unions shall mobilize and educate workers and employees so that they ... respect work discipline", they "shall organize workers and employees by conducting socialist emulation campaigns at the workplace" and "the trade unions shall educate workers and employees ... in order to strengthen their ideological convictions", the Committee has considered that the functions assigned to the trade unions by this body of provisions must necessarily limit their right to organize their activities, contrary to the principles of freedom of association. It has considered that the obligations thus defined, which the unions must observe, prevent the establishment of trade union organizations that are independent of the public authorities and of the ruling party, and whose mission should be to defend and promote the interests of their constituents and not to reinforce the country's political and economic systems [see* ***Digest****, op. cit., paras 506 and 507].*

475. *The Committee considers that the above provisions confer, owing to their vagueness, wide discretionary powers upon the authorities in assessing whether or not the goals of the relevant organization are compatible with those stipulated under section 5 or whether or*

not the obligation contained in section 21(b) is respected, and might thus be invoked to refuse the request for or cancel the registration of trade unions. The Committee requests the Government to provide any information available on the manner in which these stipulations may or have been used with the respect to the registration or cancellation of registration of a trade union. The Committee also invites the complainant to supply any information at its disposal in this regard.

476. *Lastly, the Committee notes that, under section 52, civil society organizations established by foreign citizens are prohibited in particular from conducting political activities or any activities that may disrupt diplomatic relations and from raising funds from the Indonesian community, and that, according to both parties, foreign civil society organizations are required to acquire a Government permit before being able to conduct activities. The Committee recalls that provisions imposing a general prohibition on political activities by trade unions for the promotion of their specific objectives are contrary to the principles of freedom of association, and that any assistance or support that an international trade union organization might provide in setting up, defending or developing national trade union organizations is a legitimate trade union activity, even when the trade union tendency does not correspond to the tendency or tendencies within the country [see* ***Digest****, op. cit., paras 500 and 739]. The Committee considers that section 52 could be used to prohibit international trade union organizations to which Indonesian unions are affiliated from undertaking legitimate union activities and support to its affiliates, and to thus interfere in the internal functioning of such organizations. It requests the Government to provide detailed information on any application in practice of this provision with respect to the activities of the ITUC in Indonesia. The Committee also invites the complainant to supply any information at its disposal in this regard.*

477. *The Committee expects that its considerations will be taken into account in the application of the law in practice and any future review of the Mass Organizations Act. It requests the Government to keep it informed in this respect as well as concerning the outcome of the Petition for Judicial Review of certain provisions of the Mass Organizations Act filed by national civil society organizations on 9 January 2014 and currently pending before the Constitutional Court.*

The Committee's recommendations

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

(a) With regard to the allegations of violence and inaction of the police during the events of 31 October 2013, the Committee, recalling 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, expects that the Government will make every effort to ensure that the above principle is fully respected in the future. The Committee further requests the Government to reply in detail to the new allegations of recent attacks by the police of peacefully demonstrating trade unionists.

(b) As to the investigative law enforcement measures taken by the police following the events of 31 October 2013, the Committee, emphasizing that it does not have the elements at its disposal to enable it to assess the appropriateness of the measures adopted, the Committee generally recalls

that, in the event of assaults on the physical or moral integrity of individuals, the Committee has considered that an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts, and trusts that this principle will be fully respected as regards all perpetrators and instigators of the alleged acts of violence, as well as in respect of the allegations of police inaction against the violent acts and requests to be kept informed in this regard.

(c) With respect to the Mass Organizations Act, the Committee expects that the considerations set out in its conclusions will be taken into account in the application of the Act in practice and any future review of the Act. It requests the Government to keep it informed in this respect as well as concerning the outcome of the Petition for Judicial Review of certain provisions of the Mass Organizations Act, filed by national civil society organizations on 9 January 2014 and currently pending before the Constitutional Court.

(d) The Committee trusts that the broad and general wording used in the above provisions containing prohibitions will not be used in a manner that would restrict the exercise of trade union rights, including the right of trade unions to express their opinions freely and exercise their freedom of belief and requests the Government to provide detailed information on any penal and administrative sanctions (including fines, dissolution or deregistration) imposed in law and in practice for the violation of sections 2; 59(2)(b), (d) or (e); or 59(4) of the Mass Organizations Act. It also invites the complainant to supply any information at its disposal in this regard.

(e) The Committee requests the Government to provide any information available on the manner in which sections 5 and 21b of the Mass Organizations Act may or have been used with respect to the registration of a trade union. It also invites the complainant to supply any information at its disposal in this regard.

(f) The Committee requests the Government to provide detailed information on any application in practice of section 52 of the Mass Organizations Act with respect to the activities of the ITUC in Indonesia. It also invites the complainant to supply any information at its disposal in this regard.

CASE NO. 3073

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

Complaint against the Government of Lithuania presented by the Lithuanian Trade Union Federation (Sandrauga)

Allegations: The complainant organization alleges that the refusal of the employer, the police department and the State to involve the Lithuanian Trade Union Federation "Sandrauga", a duly registered trade union, in the collective agreement bargaining process constitutes an act of interference that is prescribed by Conventions Nos 87 and 98 and is contrary to the national constitution that states that all trade unions shall have equal rights

479. The complaint is contained in a communication from the Lithuanian Trade Union Federation (Sandrauga) dated 17 April 2014.

480. The Government forwarded its response to the allegations in a communication dated 8 August 2014.

481. Lithuania 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

482. In a communication dated 17 April 2014, the complainant organization alleges hostility on the part of the police department towards Sandrauga, stating that despite having operated in the Lithuanian police system since 2009, the police department has violated the constitutional principle of equality among trade unions, ignored social dialogue, withheld the required sharing of information and complicated the union's functioning, while maintaining social dialogue exclusively with two other trade unions that it considers better represented the police.

483. The complainant indicates that, as set out in the police department's letter dated 18 June 2010, the police department invited those police officer representatives with the "best knowledge on police office problems and employees' expectations" to a forum on 26 May 2010. The complainant organization alleges that distinguishing between trade unions has no legislative basis and violated its interests, as it informed the department on 21 June 2010.

484. According to the complainant organization, the department continued to withhold information and maintained dialogue only with the other trade unions. For example, it indicated that while in September–October 2010, it had presented three written proposals to the police department pursuant to Article 22(1) of the Labour Code on lack of funds, part-time work schedule, unpaid leave and so forth, it was advised on 21 October 2010 that

the department had chosen alternative options with the support of other trade unions at a meeting to which Sandrauga was not invited.

485. The complainant organization further indicates that it was not advised that a Conciliation Commission was formed and so lost the possibility of being represented. While on 23 November 2010, the complainant requested the opportunity to participate in the Commission's work, the department indicated on 30 November 2010 that the Commission had been formed in accordance with a pre-existing cooperation agreement between the police department and three other trade unions. On 20 August 2013, another Commission was established, "to evaluate the head reserve list", on which the previously mentioned trade unions were represented, but Sandrauga was not; on 22 August 2013, the complainant requested to be included along with the other union representatives. The complainant organization considers that by ignoring the equally legal Sandrauga, the police department violated the principle in article 50 of the Constitution of the Republic of Lithuania that all trade unions shall have equal rights.

486. On 2 August 2013, the complainant organization requested the Lithuanian Government and Parliament to evaluate the activities of the police department. On 22 August 2013, the Vice-Chairman of the Parliament provided a response that the complainant organization considered to be discriminatory and similar to that of the police department, in noting that Sandrauga had fewer police employee members than the other two trade unions.

487. The complainant organization further raises questions arising out of collective bargaining arrangements in 2013–14. On 30 August 2013, having received news from other sources that the police branch collective agreement was being drafted with the two other trade unions chosen by the police department, but not with Sandrauga, the complainant asked to participate. The department informed Sandrauga on 2 September 2013, however, that it had not applied in accordance with the procedure established in the Labour Code. On 17 September 2013, the complainant organization again approached the police department seeking collective bargaining rights.

488. Government Resolution No. 799 on the "Mandate to negotiate with trade union organizations about the penal enforcement system, the Republic of Lithuania customs and police branches of collective bargaining" came into force on 8 September 2013 and authorized the police department to open negotiations to draft a collective agreement in the police branch. The complainant organization considers that the police department nevertheless continued to act against Sandrauga's interests, withholding information and bargaining exclusively with the two "chosen trade unions".

489. In response to an inquiry from the complainant organization, the Lithuanian Social Security and Labour Ministry issued an opinion on 27 January 2014, affirming that only one collective agreement in the police branch may be signed and that trade unions have to establish a joint representative office, appoint their negotiators, and sign the collective agreement together. The complainant organization considers that Article 60(2) of the Labour Code means that it is a requirement that all active trade unions are included in the joint trade union representative office if they have declared an interest pursuant to Article 48 of the Code. The organization stresses that this is the sole and mandatory criteria in the legislation. Nevertheless, the complainant organization states that it is still being denied the possibility of participating in the ongoing collective bargaining in the police branch.

490. The complainant organization further contends that only the previously mentioned unions were involved in a working group established to consider the draft law on police activities. Article 87(1) of the Labour Code of the resulting draft submitted to the Parliamentary Committees sought to establish that only one trade union could act to protect the interests

of police officers, which the organization considers to evidently conflict with national law. Following enquiries of Sandrauga and further consideration of the draft, a new draft with the same Article 87(1) of the Labour Code was registered and re-submitted for consideration to the 2014 spring session of the Parliament. The complainant indicates that it repeatedly contacted the Parliament Board and the opposition because it considers the Bill to be contrary to the Constitution.

491. In summary, the complainant organization stresses that, despite having raised the question of discrimination between unions and the curbing of freedom in collective bargaining in the police branch, including appealing to the Government and public institutions, the situation has not changed and responsible state institutions have not implemented equal rights. Sandrauga has been denied the possibility of collective bargaining. The organization considers that the police department's cooperation with only two unions should be regarded as indirect support, so as to place those organizations under the control of employers contrary to Convention No. 98. The complainant organization believes that the Government has failed to properly protect Sandrauga from interference, that the employer is illegally choosing with which representatives of employees' organizations it will communicate, and that the State has not taken any measures to promote and develop voluntary negotiations between employers and workers' organizations.

B. The Government's reply

492. In a communication dated 8 August 2014, the Government indicated that the Ministry of Social Security and Labour has advised Sandrauga, and the police department under the Ministry of Interior, that only one collective agreement may be signed in the police branch and that trade unions, without prejudice to the principle of equality enshrined in article 50 of the Constitution, should set up a joint representative and appoint their negotiator for the signature of the branch collective agreement. Trade unions active in a particular institution can be admitted to an existing joint representative. According to the Government, the Ministry of Social Security and Labour has proposed that specific trade unions are not mentioned in the resolution concerning authorizations to conduct bargaining in the police branch, in order to involve all trade unions which are functioning in this branch. As at 1 August 2014, no collective agreement for the police branch has been registered.

493. Further information from the police department dated 7 July 2014 addresses five points. In relation to the complainant organization's operation within the police system, the police department notes that Sandrauga has not provided accurate data on the specific police institutions in which it operates, the numbers of members in the police it represents, nor any supporting documents. The department considers that the organization has not provided evidence that it complies with Article 19(1) of the Labour Code, proving that it operates within the Lithuanian police system and holds authorizations to represent the rights and interests of police officers. The department points out that international labour standards refer to most representative organizations of employers and workers and considers that there were no grounds for asserting that Sandrauga operates on a branch rather than national basis. Social partnership in the police system occurs at various levels and approximately 4,050 out of 12,100 employees in the police system are members of 23 professional organizations. The department believes that there are approximately 130 Sandrauga members at three police institutions, 120 of whom are employed by the Kaunas Country CPC which collaborates with all trade unions representing its employees, including Sandrauga, which it has invited to act on commissions and furnished with information.

494. Second, in relation to its collaboration with other trade unions, the police department indicates that the cooperative agreement between the police department and three other trade unions was concluded in 2006 and renewed in 2009. The forum in May 2010

attended by representatives of those trade unions was open to all employees and trade union representatives. The department indicates that after the complainant organization had expressed a wish to attend and presented contact details on 21 June 2010, it was invited to a forum on 22 September 2011, at which its chairperson was provided with an opportunity to deliver a report. The police department states that the Reconciliation Commission formed on 3 June 2010 was not a statutory body dealing with collective labour disputes pursuant to Articles 71–74 of the Labour Code, but was a form of collaboration with the social partners to examine individual labour disputes raised by the trade unions represented on it.

495. Third, the police department indicates that the draft law establishing that only one trade union can operate in the interests of police officers was not approved and that various versions have been proposed. The department points out (i) that the Government has indicated that the provision may be in contravention of article 50 of the Constitution; (ii) that all interested parties may comment on draft laws; and (iii) that Convention No. 87 allows national law to determine the extent to which guarantees apply to the armed forces and the police.

496. Fourth, in relation to the question of collective bargaining, the police department indicated that on 20 September 2013 it had informed all trade unions, including the complainant, that it had been authorized to commence collective negotiations and had been approached by a joint representative office of two trade unions. Trade unions were invited to inform the department that they had formed a joint trade union representative office or joined the existing office, and to include a list of police institutions at which relevant trade unions were represented; the department noted that Sandrauga had not yet submitted such a list. The police department considers that it has provided the complainant organization with full information for it to participate in collective bargaining. The department indicates that, as it is not able to interfere in the formation of trade union representatives, it could only propose that Sandrauga should approach other trade unions to form a joint representation office.

497. Fifth, the police department indicates that the Commission on the "evaluation of the management reserve list" was established pursuant to regulations approved in May 2013 to evaluate the suitability of candidates for certain management positions in the police. The regulations state that one Commission member may be a trade union representative. When the Commission was formed, the department understood that only two trade unions were represented in all police institutions, and these two organizations agreed to be represented on rotation. The regulations further state that, upon request, trade union representatives may be appointed to participate in the evaluation of candidates at territorial police institutions at which they represent employees. In the case that there is more than one trade union operating in an institution, consensus on a common representative should be agreed or no representative will be appointed. The department states that the complainant has not responded in this regard.

498. Finally, the police department indicates that the complainant organization has not appealed within its national system against any decision or action taken by the police department.

C. The Committee's conclusions

499. *The Committee observes that this case concerns allegations that the police department has acted against the interests of the complainant organization by undertaking social dialogue solely with two other trade unions it considers better represented, an assessment the complainant organization argues is contrary to the constitutional principle of equality of trade unions. It is alleged that this has involved the withholding of information and the lack of opportunity to be represented on a number of committees, to be involved in law*

reform initiatives and, particularly, to participate in collective bargaining. Moreover, a draft bill allegedly includes a provision that only one trade union can act to protect the interests of police officers. The complainant organization points out that this attitude by the public authorities constitutes a violation of Conventions Nos 87, 98 and 154.

500. *The Committee notes that the Government states that the complainant organization has not provided evidence that it is authorized to represent the rights and interests of police officers and appears to represent only a small number of police. Nevertheless, according to the Government and the police department, the organization has been invited to participate in social dialogue, has been provided with information concerning collective bargaining and was invited to join a joint trade union representation office for this purpose. The Government points out that the provision in the draft bill that only one trade union could act in the interests of police officers may be contrary to the Constitution. In any case, the Government states that Convention No. 87 allows national law to determine the extent to which its guarantees apply to the police.*

501. *The Committee notes that Lithuania has ratified Conventions Nos. 87, 98 and 154. With respect to the application of these instruments to the police force, Article 9(1) of Convention No. 87 and Article 5(1) of Convention No. 98 provide that: "The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations"; Convention No. 154 contains a similar provision with the same import. The Committee has previously considered that it is clear that the International Labour Conference intended to leave it to each state to decide on the extent to which it was desirable to grant members of the armed forces and of the police the rights covered by Conventions Nos 87, 98 and 154 [see 335th Report, Case No. 2325 (Portugal, para. 1257) and 368th Report, Case No. 2943 (Norway, para. 761)].*

502. *The Committee, nevertheless, notes with interest that several member States have recognized the right to organize and bargain collectively of the police and the armed forces in accordance with freedom of association principles and that this appears to be the case in Lithuania.*

503. *In these circumstances, and welcoming the efforts made to promote collective bargaining for police, the Committee invites the Government to keep the Committee informed of developments relating to the draft law on police activities insofar as it has an impact on organizations and bargaining rights.*

The Committee's recommendations

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

> ***Recognizing and welcoming the efforts made to promote collective bargaining for the police, the Committee invites the Government to keep the Committee informed of developments relating to the draft law on police activities insofar as it has an impact on organizations and bargaining rights.***

CASE NO. 3030

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

Complaint against the Government of Mali submitted by the Trade Union Confederation of Workers of Mali (CSTM)

Allegations: Mass dismissal of workers and trade unionists as a result of strike action and lawful union activities in the mining sector

505. The complaint is contained in a communication dated 15 May 2013 from the Trade Union Confederation of Workers of Mali (CSTM).

506. The Government forwarded its observations in a communication dated 27 May 2014.

507. Mali 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. Allegations by the complainant organization

508. In a communication dated 15 May 2013, the CSTM denounces the mass dismissals in the mining sector as the result of strike action.

509. By way of introduction, with reference to a previous case examined by the Committee on freedom of association which it had submitted (Case No. 2756), the complainant organization regrets that the Committee's recommendations requesting the complainant's participation in the national consultative and dialogue bodies had not been followed up. Furthermore, the complainant denounces the Government's continued interference in the process of appointing the workers' delegation to the International Labour Conference (ILC), in so far as the Government continues to appoint, to the national delegation, two representatives of the National Union of Workers of Mali (UNTM), including the workers' titular delegate, and a representative of the CSTM. These appointments, without consultation of the organizations concerned, continue to discriminate against the CSTM. Yet, as regards the representativeness of trade unions, the Government had recognized that the Labour Code was unsuitable and imprecise, and had decided to adopt a draft amendment to the Code.

510. Furthermore, the complainant organization denounces mass dismissals as a result of strike action in the mining sector. According to the CSTM, a total of 531 workers were dismissed. The workers dismissed include 11 trade unionists from the Sadiola Gold Mine Operating Company (SEMOS SA), 27 trade unionists and 31 activists from the company LTA–MALI SA, and 26 trade unionists and 436 workers from the company BCM SA in Loulo. The complainant organization specifies that the trade unionists from the company SEMOS SA were dismissed without the agreement of the labour administration, in violation of sections L.231 and L.277 of the Labour Code of Mali. As regards the other dismissals affecting 84 other trade unionists and 436 workers, the labour administration gave, by contrast, its consent.

511. In accordance with current legislation, an arbitration council presided over by a judge was set up to deal with the two cases. According to the complainant organization, the council supported the workers' position. The Government stated, however, that it was unable to apply the decision taken by the arbitration council. The complainant requests that the workers be reinstated, as per the provisions of the Labour Code and the decision taken by the arbitration council.

512. Finally, the complainant organization denounces the dismissal of two trade unionists by the Analytical Chemistry and Testing Service–Mali (ALS-MALI) laboratories as a result of having demanded medical appointments for all the workers. This claim was made since 11 workers from the company show levels of lead in their blood two to three times higher than the norm. The complainant organization regrets that the labour administration has never reacted, whereas the case has been referred to it.

513. The CSTM requests that Malian law relating to social protection, the Organisation for Co-operation and Development (OECD) Guidelines for Multinational Enterprises and the collective agreement of mining, geological and hydrogeological enterprises of Mali be observed.

B. The Government's response

514. The Government submitted its observations in a communication dated 27 May 2014. By way of introduction, as regards the CSTM's representation on the administrative councils of public authorities and social dialogue bodies, the Government considers that the forthcoming organization of professional elections, which will establish the representativeness of the two national trade union organizations, will resolve the situation. All the parties are in agreement to organize such elections and preparations have begun with technical support from the ILO as of March 2014.

515. As to the alleged interference in the appointment of the workers' delegation to the ILC, the Government states that, as a rule, the social partners come to an understanding among themselves to appoint the titular and substitute delegates. However, since the social partners were unable to reach agreement on the appointment, the Government decided to maintain the status quo in the representation of workers, i.e. the appointment of the UNTM representative as the titular delegate and the CSTM representative as substitute. The Government specifies that a meeting organized by the Ministry of Labour on the eve of the 2014 Conference did not allow either a compromise to be reached on the matter. It was therefore decided, in agreement with the two trade union organizations, to keep the same configuration, in the expectation that an agreement would be reached on a rotation system, in relation to which the parties have expressed their agreement as of 2015.

516. In general terms, the Government specifies that the issue of the dismissal of workers in the mining sector has been the subject of discussion within the Forum for Democracy, which is a popular platform where officials are called upon by citizens to speak on how to manage public affairs.

517. As regards the company LTA–MALI SA, the Government states that trade union delegates, affiliated to the National Federation of Mining and Energy (FENAME–CSTM), deposited a list of claims relating to the year 2012. On 28 and 29 June 2012, with no prior negotiation, the trade union committee organized a staff strike action on the pretext that it had not been informed sufficiently in advance of the arrival on the site of the labour inspector, dispatched there on 18 June 2012 by the regional labour director in order to undertake conciliation, in which the staff delegates refused to take part. Thereafter, the company requested the Regional Labour Department to authorize the dismissal of 27 trade union representatives for abusing the exercise of the right to strike and the clear intention

to harm the company. The workers concerned were summoned by the regional labour director to the regulatory investigation, but they refused to respond to the summons. As a result, the labour inspector granted the requested authorization for dismissal on the merits of the employer's request.

518. As to the company SEMOS SA, the Government states that the trade union committee, which is also affiliated to FENAME–CSTM, submitted to the company its list of claims for 2012. Following the failed attempt at conciliation undertaken on 28, 29 and 30 May 2012 by the Regional Labour Department, the trade union representatives launched a two-day strike on 31 May and 1 June 2012. The company then referred a request to the labour inspectorate for authorization to dismiss 14 trade unionists as a result of incitement to undertake an illegal strike. The labour inspector refused to authorize the dismissals. However, the company decided to override the labour inspector's refusal and dismissed the workers concerned in October 2012.

519. Following the dismissals of the trade union representatives of the companies LTAMALI SA and SEMOS SA, the Ministry of Labour was requested by the CSTM on three occasions to: (1) demand referral to an arbitration council, pursuant to section L.225 of the Labour Code; (2) request a hierarchical appeal to annul the dismissals and also to implement the ruling of the arbitration council; and (3) request referral to the Council of Ministers, under section L.229 of the Labour Code (1 August 2013).

520. The Government states that, as regards referral to the arbitration council, section L.224 of the Labour Code provides that, in the absence of agreement, the conciliator drafts a report on the state of the dispute, which it sends to the minister responsible for labour. Under section L.225, the minister summons the arbitration council as soon as the non-conciliation report is received. Pursuant to these legal provisions, the Ministry of Labour set up the arbitration council by decision of 28 September 2012. The council ruled on the demands made by the trade unionists and handed down its ruling on 7 January 2013, as follows: (1) on the lifting of the dismissal measures taken by LTA–MALI SA: "The arbitration council considered that this dismissal decision in no way violated legality. It remains obvious, however, that the dismissal authorization issued by the labour inspector violates sections L.231 and L.277 of the Labour Code. Consequently, the arbitration council notes that the Kayes labour inspector is at fault and not the employer"; and (2) on the dismissals made by SEMOS SA, "the council considered that these dismissals did not form part of the referral and decided to retain the suspension measure. In consequence, it ordered SEMOS SA purely and simply to lift the measure to suspend the 14 union representatives."

521. As to the request to annul the individual dismissals, the Ministry of Labour informed FENAME that the common law on dismissals excluded any intervention by the minister responsible for labour in the dismissal procedure (letter of 13 February 2013).

522. Finally, as regards the referral to the Council of Ministers, section L.229 of the Labour Code states that: "The decision of the arbitration council is immediately notified and commented on to the parties by the president of the arbitration council. If, within eight days following such notification to the parties, none of those parties has expressed its opposition, the decision becomes enforceable. For disputes relating to essential services, which if interrupted would be likely to endanger human life, security or health, to compromise the normal operation of the national economy, or relating to a vital professional sector, the minister responsible for labour shall, in the case of disagreement on the part of one or both parties, refer the dispute to the Council of Ministers which may enforce the arbitration council's decision." The Government states that, in this particular case, the referral to the Council of Ministers was not considered to be appropriate, in so far as mining companies are not considered to be essential services, as per the relevant legislation.

523. Finally, the Government refers to decisions handed down by the Kayes labour court following appeals by certain employees of LTA–MALI SA and the complaint filed by the company, SEMOS SA, claiming damages for the harm caused as a result of the strike.

524. As for the dismissal of 434 workers, including 26 staff delegates, by the company BCM SA in Loulo, the Government indicates that, following a strike launched by the workers on 3 August 2012, the company requested, on 9 August 2012, the regional labour director to authorize the dismissal of 434 workers, including trade union delegates, for an illegal stoppage of work. Following an investigation, the regional labour director granted his authorization to dismiss the workers concerned by letter of 15 August 2012. On 17 August 2012, the company notified each of the workers concerned of his/her dismissal.

525. On 23 August 2012, a group of staff delegates lodged with the national labour director a hierarchical appeal to annul the decision taken by the Kayes regional labour director. Following examination of the case, on 30 August 2012 the national labour director annulled the decision taken by the regional labour director. The company therefore lodged with the Employment Division of the Supreme Court an appeal to annul the decision taken by the national labour director for abuse of authority. For their part, the workers brought a case in the Kita labour court for illegal dismissal. The Government states that in this case justice must follow its natural course.

526. As regards the dismissal of the secretary-general of the trade union committee of ALS-MALI laboratories, the Government states that the contradictory investigation conducted by the Regional Labour Department of the district of Bamako, in the presence of a CSTM representative, revealed that Mr Yacouba Traoré made disparaging remarks concerning the director, when the director informed him that he was no longer able to receive him without a prior appointment. Ruling on the case, the regional labour director gave his agreement to the dismissal, on the grounds that the reason put forward was well-founded. Following his dismissal, Mr Traoré lodged a hierarchical appeal to annul the authorization decision with the national labour director. The director declared that the appeal was non-receivable by letter of 13 September 2012.

527. As to the case concerning the workers who were victims of high levels of lead, the Government specifies that the Ministry of Health and Public Hygiene set up an investigation mission, consisting of doctors from the health inspectorate, the Health Department and the National Public Health Research Institute. According to the mission report, the blood tests carried out did indeed show a level of lead higher than the norm in certain workers. Experts therefore made recommendations concerning the laboratory and recommendations were sent to the Minister of Labour. Subsequently, on 23 May 2014 the national labour director sent a letter of formal notice to the laboratory in order that it comply with the legal rules relating to occupational health and safety.

528. In conclusion, the Government states that all the technical services of the Ministry of Labour had always assumed their obligations in managing the dismissal of the workers in the mining sector. There were 502 such workers, and not 531 as alleged by the complainant organization.

C. The Committee's conclusions

529. *The Committee notes that this case relates to mass dismissals in several mining sector enterprises. According to the CSTM, the dismissals of workers and staff trade union delegates are the result of strike action and are therefore illegal.*

530. *The Committee notes that, by way of introduction, the complainant organization refers to a complaint which it had submitted previously (Case No. 2756), denouncing the fact that the*

Committee's recommendations had not been followed up. In addition, the Committee notes the Government's response. The Committee will examine these elements as part of the follow up to Case No. 2756.

531. *The Committee notes the allegations by the complainant organization relating to the mass dismissals as the result of strike action in the gold mining sector in 2012. The CSTM specifies that the 531 dismissed workers include numerous trade unionists responsible for initiating the strikes in question. Thus, according to the complainant organization, 11 trade unionists were dismissed by SEMOS SA, 38 trade unionists were dismissed from the company LTA-MALI SA, and 26 trade unionists were dismissed by the company BCM SA in Loulo. The complainant organization specifies that the trade unionists from the company SEMOS SA were dismissed without the agreement of the labour administration, in violation of sections L.231 and L.277 of the Labour Code of Mali, while the dismissal measures affecting the other 84 trade unionists were approved in advance by the administration. The Committee notes that the complainant challenges the legality of the dismissals of trade unionists and also of the dismissal of the 436 workers as the result of strike action.*

532. *The complainant organization states finally that, in accordance with current legislation, an arbitration council was set up to deal with the dismissals which took place in the companies SEMOS SA and LTA–MALI SA. However, the Government is allegedly unable to implement the arbitration council decision of 7 January 2013 to reinstate the workers.*

533. *The Committee notes the Government's detailed response on these cases. As regards the company LTA–MALI SA, the Government affirms that, on 28 and 29 June 2012, with no prior negotiation, the company's trade union committee organized a staff strike action on the pretext that it had not been informed sufficiently in advance of the arrival on the site of the labour inspector, dispatched there on 18 June 2012 by the regional labour director in order to undertake conciliation, in which the staff delegates refused to take part. Following this strike action, the company requested the Regional Labour Department to authorize the dismissal of 27 trade union representatives for abusing the exercise of the right to strike and the clear intention to harm the company. The workers concerned appear to have been summoned by the regional labour director to the regulatory investigation, but they are alleged to have refused to respond to the summons. As a result, the labour inspector granted the requested authorization for dismissal.*

534. *As to the company SEMOS SA, the Committee notes that following a failed attempt at conciliation the company's union representatives launched a two-day strike on 31 May and 1 June 2012. The company then appears to have referred a request to the labour inspectorate for authorization to dismiss 14 trade unionists as a result of incitement to undertake an illegal strike. The labour inspector appears, however, to have refused to authorize the dismissals. The company thus appears to have decided to override the labour inspector's refusal and dismissed the trade unionists concerned in October 2012.*

535. *The Committee notes the Government's statement that the Ministry of Labour received requests on several occasions from the CSTM concerning the dismissal of the union representatives, in particular to demand referral to an arbitration council, pursuant to section L.225 of the Labour Code. The Government specifies that, according to the Labour Code, as a result of failed conciliation proceedings, the minister responsible for labour may refer the matter to an arbitration council. Under these legal provisions, the Ministry of Labour set up an arbitration council by decision of 28 September 2012. The council ruled on the demands made by the trade unionists and handed down its ruling concerning the two companies on 7 January 2013. The Committee notes that the council ruled as follows: on the dismissal measures taken by the company LTA–MALI SA, "the arbitration council considered that this dismissal decision in no way violated legality. It remains*

obvious, however, that the dismissal authorization issued by the labour inspector violates sections L.231 and L.277 of the Labour Code. Consequently, the arbitration council notes that the Kayes labour inspector is at fault and not the employer." Concerning the dismissals made by the company SEMOS SA, "the Council considered that these dismissals did not form part of the referral and decided to retain the suspension measure. In consequence, it ordered SEMOS SA purely and simply to lift the measure to suspend the 14 union representatives".

536. *In general terms, the Committee recalls the following internationally recognized principles of freedom of association as regards exercising the right to strike at the national level: no one should be penalized for carrying out or attempting to carry out a legitimate strike. When trade unionists or union leaders are dismissed for having exercised the right to strike, the Committee can only conclude that they have been punished for their trade union activities and have been discriminated against. However, the principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 660, 662 and 667].*

537. *In this case, the Committee notes that the Government does not provide any information on the follow-up to the arbitration ruling of 7 January 2013. Recalling that more than two years have elapsed since the arbitration ruling was handed down, the Committee expects that appropriate measures have been taken by the public authorities to implement the ruling and requests the Government to report back on this without delay. Noting also the information on the appeals lodged with the Kayes labour court by employees of the company LTA–MALI SA and by the company SEMOS SA, the Committee requests the Government to keep it informed without delay of the decisions handed down in these cases.*

538. *As for the dismissal of 434 workers, including 26 staff delegates, by the company BCM SA in Loulo, the Committee notes the Government's statement that, following a strike launched by the workers on 3 August 2012, the company requested, on 9 August 2012, the regional labour director to authorize the dismissal of 434 workers, including trade union delegates, for an illegal stoppage of work. Following an investigation, the regional labour director granted his authorization to dismiss the workers concerned by letter of 15 August 2012. On 17 August 2012, the company notified each of the workers concerned of his/her dismissal. On 23 August 2012, however, a group of staff delegates lodged with the national labour director a hierarchical appeal to annul the decision taken by the Kayes regional labour director. Following examination of the case, on 30 August 2012 the national labour director annulled the decision taken by the regional labour director. The company therefore lodged with the Employment Division of the Supreme Court an appeal to annul the decision taken by the national labour director for abuse of authority. For their part, the workers brought a case in the Kita labour court for illegal dismissal. Noting that these proceedings are still under way, the Committee expects the Government to keep it informed without delay of the results of the different legal procedures, in particular the decision of the Supreme Court, and of the follow-up thereto.*

539. *Taking into account the time that has elapsed since the dismissal measures, and should the Supreme Court decision be in their favour, the Committee expects that the workers dismissed as the result of strike action be compensated for the prejudice suffered and to avoid reprisals recurring in the future against the exercise of the right to strike at the national level, in accordance with the internationally recognized principles of freedom of association. Finally, if they cannot be reinstated in their posts for objective and compelling reasons, duly noted by the judicial authority, the workers should be compensated in full.*

540. *Furthermore, the Committee notes the complainant's allegations relating to the dismissal of two trade unionists by the ALS–MALI laboratories for having demanded medical*

appointments for all the workers. In this regard, the Committee has pointed out that one way of ensuring the protection of trade union officials is to provide that these officials may not be dismissed, either during their period of office or for a certain time thereafter except, of course, for serious misconduct [see ***Digest****, op. cit., para. 804].*

541. *The Committee notes that the Government states that the contradictory investigation conducted by the Regional Labour Department of the district of Bamako, in the presence of a CSTM representative, revealed that the Secretary-General of the company's trade union committee, Mr Yacouba Traoré, made disparaging remarks concerning the director, when the director informed him that he was no longer able to receive him without a prior appointment. Ruling on the case, the regional labour director gave his agreement to the dismissal, on the grounds that the reason put forward was well-founded. Following his dismissal, Mr Traoré lodged a hierarchical appeal to annul the authorization decision with the national labour director. The director declared that the appeal was non-receivable by letter of 13 September 2012. The Committee notes this information.*

542. *The Committee notes, however, that in its allegations the CSTM refers to the dismissal of two trade unionists. Consequently, the Committee invites the complainant organization to approach the authorities in order to provide the information on the second trade unionist affected by a dismissal measure in the company so as to allow the labour administration to make the necessary inquiries. The Committee requests the Government to keep it informed in this regard.*

The Committee's recommendations

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

(a) Recalling that more than 18 months have elapsed since the ruling was handed down by the arbitration council on the dismissals occurred in the companies LTA–MALI SA and SEMOS SA, the Committee expects that appropriate measures have been taken by the public authorities to implement the ruling and requests the Government to report back on this without delay. In addition, the Committee requests the Government to keep it informed without delay of the decisions handed down following the appeals lodged, on all sides, with the Kayes labour tribunal.

(b) The Committee expects the Government to keep it informed without delay of the outcome of the different legal proceedings brought concerning the dismissals of 434 workers by the company BCM SA, in particular of the decision of the Supreme Court, and the follow-up thereto.

(c) The Committee observes that the complainant organization refers to the dismissal of two trade unionists by the company ALS–MALI SA. Noting the Government's response concerning the procedure followed for one union leader, the Committee invites the complainant organization to approach the authorities in order to provide the information on the second trade unionist affected by a dismissal measure in the company so as to allow the labour administration to make the necessary inquiries. The Committee requests the Government to keep it informed in this respect.

CASE NO. 3024

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

Complaint against the Government of Morocco presented by the Democratic Federation of Labour (FDT)

Allegations: The complainant organization reports the authorities' exclusion of the Democratic Union of the Judiciary (SDJ) from all collective bargaining despite it being the most representative organization in the sector, harassment of the organization's members and the violent dispersal of peaceful demonstrations by the security forces

544. The Committee last examined this case at its June 2014 meeting, when it presented an interim report to the Governing Body [see 372nd Report, paras 376–433, approved by the Governing Body at its 321st Session (June 2014).]

545. The Government sent its reply in a communication dated 25 August 2014.

546. Morocco has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Workers' Representatives Convention, 1971 (No. 135), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154). It has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. Previous examination of the case

547. In its previous examination of the case in June 2014, the Committee made the following recommendations [see 372nd Report, para. 433]:

(a) Noting with deep concern the statement that the leaders of the Democratic Union of the Judiciary (SDJ) were subjected to such violence that they required urgent treatment by the medical services, the Committee requests the Government or the complainant organization to keep it informed of any cases brought before the judicial authorities following the alleged violence, and of the outcome thereof.

(b) The Committee requests the Government to provide further information on the specific reasons for the suspension of the SDJ deputy general secretary, to keep it informed of the outcome of the judicial proceedings instituted by the latter and to send a copy of the final ruling.

(c) The Committee requests the Government to send its observations in reply to the complainant's allegations that salary deductions for strike action are applied to the activists of only one trade union and, if such actions are proven, to put a stop to this discriminatory treatment immediately.

(d) The Committee notes the Trade Unions Bill, section 37 of which provides that, in order to enjoy the status of the most representative trade union, the union must poll at the national level in the public sector at least 6 per cent of the total number of staff representatives within the joint administrative committees. It requests the Government to

keep it informed with regard to the adoption of the bill in question and the application thereof in the justice sector.

(e) The Committee requests the Government to take the necessary measures to pursue collective bargaining with the SDJ and to keep it informed of the measures taken in this regard.

(f) The Committee considers, in view of the number of workers represented by the SDJ in the justice sector and with a view to easing tension, that the Government should endeavour to take action to ensure that dialogue is renewed between the Ministry of Justice and Freedoms and the trade union, in order to continue collective bargaining and so that the views of all the unions are taken into account as part of the current reform. The Committee requests the Government to indicate any measures taken in this regard.

B. The Government's reply

548. In its communication dated 25 August 2014, the Government provides certain information in relation to the recommendations previously made by the Committee.

549. Regarding the cases brought before the judicial authorities following the alleged violence by security forces against the leaders of the Democratic Union of the Judiciary (SDJ) (recommendation (a)), the Government indicates that the Ministry of Justice and Freedoms has not received any information concerning the existence of a case before the courts against establishments or individuals related to the alleged violence.

550. Regarding the specific reasons for the suspension of the SDJ deputy general secretary (recommendation (b)), the Government states that the SDJ deputy general secretary did not observe his duty of confidentiality as head of the court registry. Furthermore, the Government adds that the reports submitted by his superiors state that he abused his power in order to encourage officials working for him to strike or participate in sit-ins at the request of his trade union. Lastly, the Government states that the administration was forced to dismiss him from his position of responsibility because he neglected his professional obligations and to safeguard the normal functioning of the court.

551. Regarding the allegations that salary deductions for strike action are, according to the complainant, applied to the activists of only the SDJ in discriminatory fashion (recommendation (c)), the Government states that the administration simply applies the existing legal provisions by retaining the wages of all workers who strike, regardless of their trade union or political affiliation.

552. The Committee's recommendations also addressed the Trade Unions Bill (recommendation (d)). The Government states that this Bill refers not only to the national Constitution but also to ILO Conventions Nos 87, 98 and 135. The Government also states that the Bill was handed over to the social partners for comment and that, once adopted, the law would apply to all public service sectors, including the courts.

553. Regarding the Committee's recommendations to pursue collective bargaining with the SDJ (recommendations (e) and (f)), the Government states that the Ministry of Justice and Freedoms took the initiative to invite the SDJ to participate in five meetings with the general secretary of the Ministry and national directors. Recently, the SDJ has been involved in reviewing transfer applications submitted by officials.

C. The Committee's conclusions

554. *The Committee recalls that this case concerns allegations of exclusion of the SDJ from all collective bargaining by the Ministry of Justice and Freedoms despite it being the most representative organization in the justice sector, acts of discrimination against its leaders, and the violent dispersal by the security forces of peaceful demonstrations organized by the SDJ.*

555. *The Committee takes note of the Government's reply that the Ministry of Justice and Freedoms has not received any information concerning the existence of a case before the courts against establishments or individuals related to the violence alleged by the SDJ (recommendation (a)). In this regard, the Committee takes note of the Government's observations. Recalling that while the complainant organization denounced the systematic violent dispersal of peaceful demonstrations by security forces, the Government stated that security forces had to intervene in order to protect the people and property from the clashes initiated by SDJ members, the Committee once again expresses its concern that public demonstrations defending professional interests are violently dispersed or result in the use of violence on both sides. It trusts that the Government and the complainant organization will in future respect the principles previously recalled with respect to the trade union's right to demonstrate and the use of force [see 372nd Report, para. 426.]*

556. *The Committee also took note of the allegations of reprisals against SDJ leaders and members for organizing or taking part in strikes. The Committee had noted in particular the statement that the SDJ deputy general secretary had been suspended without cause from his position as head of the registry at the court of first instance of Ksar el-Kebir (a city in northern Morocco) barely a week after a demonstration was organized during a visit from the Minister of Justice. In its reply, the Government justified its actions, saying that the suspension was undertaken in the general interest and had nothing to do with the official's trade union affiliation. The Committee takes note of the Government's statement that the SDJ deputy general secretary was sanctioned for not observing his duty of confidentiality as head of the court registry and that the reports submitted by his superiors state that he abused his power in order to encourage officials working for him to strike or participate in sit-ins at the request of his trade union. Lastly, the Government states that the administration was forced to dismiss him from his position of responsibility because he neglected his professional obligations and to safeguard the normal functioning of the court. In relation to this, the Committee draws the Government's attention to the provisions of the Workers' Representatives' Convention, 1971 (No. 135), in which it is expressly established that workers' representatives should enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as workers' representatives, their union membership, or the 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 nonetheless recalls that officials working in the administration of justice and the judiciary are officials who exercise their authority in the name of the State and whose right to strike could thus be subject to restrictions, such as suspension or even prohibition [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 800 and 578].*

557. *Under these circumstances, the Committee requests the Government to indicate any administrative or judicial actions filed by the SDJ deputy general secretary following the disciplinary measures imposed on him, to provide a copy of rulings handed down and to report on any follow-up action taken.*

558. *Regarding the complainant organization's allegations of withholding pay for strike action which applies to the activists of only the SDJ, the Committee had previously recalled that*

*salary deductions for days of strike did not give rise to objection from the point of view of the principles of freedom of association [see **Digest**, op. cit., para. 654]. However, if the salary deductions are applied to activists of only one trade union, as alleged in the present case, and all the unions have taken part in the strike, this situation would constitute de facto discriminatory treatment against the union concerned, affecting the principles of freedom of association. Taking note that in its latest reply the Government states that the administration simply applied the existing legal provisions by retaining the wages of all workers who went on strike, regardless of their trade union or political affiliation, and due to the lack of additional information from the complainant organization that would have enabled the Committee to confirm that only SDJ members were retaliated against, it expects the Government to ensure full respect for the principles of freedom of association mentioned above.*

559. *In its previous conclusions, the Committee had considered that, in view of the number of workers represented by the SDJ in the justice sector and with a view to easing tension, the Government should endeavour to take action to ensure that dialogue is renewed between the Ministry of Justice and Freedoms and the trade union so that the views of all the unions are taken into account as part of the current reform. The Committee notes with interest the statement that the Ministry of Justice and Freedoms has taken the initiative to invite the SDJ to participate in five meetings with the general secretary of the Ministry and national directors and that recently, the SDJ has been involved in reviewing transfer applications submitted by officials. The Committee encourages the continuation of these peaceful discussions and invites the Government to continue to report on the measures taken in this regard.*

560. *Finally, the Committee takes note of the information provided by the Government that the draft Law on Trade Unions was handed over to the social partners for comment and that, once adopted, the law would apply to all public service sectors, including the courts. The Committee requests the Government to keep it informed of any measures taken in this regard, and to send a copy of the law once it has been adopted.*

The Committee's recommendations

561. ***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 indicate any administrative or judicial actions filed by the SDJ deputy general secretary following the disciplinary measures imposed on him, to provide a copy of rulings handed down and to report on any follow-up action taken.

(b) The Committee encourages the continuation of the peaceful discussions between the Ministry of Justice and Freedoms and the Democratic Union of the Judiciary, given the important representative nature of this union, and invites the Government to continue to report on measures taken in this regard.

(c) The Committee requests the Government to keep it informed of any new developments regarding the draft Law on Trade Unions, and to send a copy of the law once it has been adopted.

CASE NO. 3052

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

Complaint against the Government of Mauritius presented by the Federation of United Workers (FTU)

Allegation: The complainant organization alleges acts of anti-union discrimination by Innodis Ltd against leaders and members of the Farm Workers' Union and Cold Storage Workers' Union in retaliation to a lawful protest action conducted in November 2013 to claim the payment of bonuses

562. The complaint is contained in a communication dated 5 December 2013 from the Federation of United Workers (FTU).

563. The Government sent its observations in a communication dated 2 April 2014.

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

A. The complainant's allegation

565. In a communication dated 5 December 2013, the FTU indicates that Innodis Ltd is a private company dealing in the distribution of dry and frozen goods. Workers of Innodis Ltd (hereinafter the company) are either member of the Farm Workers' Union (FWU) or of the Cold Storage Workers' Union (CSWU) respectively, which are both affiliated to the FTU. These two trade unions have been recognized by the company for more than 20 years.

566. The FTU states that, since 1993, each employee of the company is eligible for a performance bonus, paid on a yearly basis around October/November. In the context of the renewal of the collective agreement, a trade dispute between the two trade unions and the company was examined by the Commission for Conciliation and Mediation (CCM). The dispute involved the following points: whether the performance bonus paid to each employee in the years 2011 and 2012 respectively should represent one month basic salary or otherwise; and whether each employee be paid a salary increase of 15 per cent effective as from October 2012 exclusive of statutory increase. On 6 November 2013, a lawful protest was held by the officers of the trade unions, with the support of the FTU, in front of the Office of the Ministry of Labour, Industrial Relations and Employment, demanding its urgent intervention for the payment of the bonus.

567. According to the FTU, on 12 November 2013, a meeting was held before the Commission to discuss the dispute but, to the surprise of everybody, the management of the company came along with a motion to revoke the negotiator for the FWU and CSWU on the basis that he participated in the protest of 6 November 2013. However, the Commission denied the company's motion. As the company was not satisfied, on the next day, 13 November 2013, the negotiator was revoked through a letter from management with immediate effect

and was not allowed on the company's premises. Furthermore, the two presidents and executive members of both trade unions were convened by the management to appear before a disciplinary committee to answer for the protest they held.

568. The complainant underlines that all the workers (11 demonstrators) who participated in the protest were on approved annual leave, except the negotiator. The Ministry of Labour and Industrial Relations convened the FWU, the CSWU and the company to a meeting on 27 November 2013; however, the company refused to attend the meeting.

569. The complainant cites the following provisions of the law that would apply in this case:

- section 29(1)(c) of the Employment Relations Act (ERA) (Act No. 32 of 2008): "Every worker shall have the right … to take part, outside working hours or with consent of the employer within working hours, in the lawful activities of a trade union of which he is a member";
- section 14(2) of the ERA: "No person shall act as negotiator of a trade union unless he has been appointed by the managing committee of the trade union; or an officer unless he is qualified …";
- section 30 of the ERA: "No person shall interfere with the establishment, functioning or administration of a trade union of workers";
- section 54(1) of the ERA: "No party shall have recourse to any form of unfair labour practice during collective bargaining"; and
- section 38(1) of the Employment Rights Act (Act No. 33 of 2008): "An agreement shall not be terminated by an employer by reason of a worker becoming or being member of a trade union seeking or holding of trade union office or participating in trade union activities outside working hours or with the consent of the employer within working hours".

570. Finally, the complainant alleges that managers of the company are forcing trade union members to withdraw from the FWU. The matter has already been referred to the Commissioner of Police.

B. The Government's reply

571. The Government sent its observations in a communication dated 2 April 2014. It acknowledges that, on 8 and 26 August 2013 respectively, the FWU and the CSWU reported a labour dispute on the same issues against the company to the CCM on the following terms: (i) whether performance bonus paid to each employee in the year 2011 and 2012 respectively should represent one month basic salary or otherwise; and (ii) whether each employee be paid a salary increase of 15 per cent effective as from October 2012 exclusive of statutory increase. The FWU and the CSWU appointed Mr Atma Shanto as their negotiator by virtue of section 14 of the ERA.

572. While the dispute was being discussed at the level of the CCM, Mr Shanto and the executive members of the two trade unions held a lawful protest on 6 November 2013 in front of the office of the Ministry of Labour, Industrial Relations and Employment demanding the urgent intervention of the Ministry on the points in dispute.

573. Following the protest, the company informed Mr Shanto in a letter dated 12 November 2013 that he would henceforth not be recognized as negotiator because of, inter alia, breaches of the Procedural Agreement in force between the trade unions and the company

as well as the defamatory statements he made against the company during the protest (letter appended). On the same date, the company informed the CCM of its decision not to recognize Mr Shanto as the trade unions' negotiator.

574. However, according to the Government, following meetings held at the CCM and several concessions made by the company, an agreement was reached on 30 December 2013 between the company and both trade unions to the effect that the company would pay a performance bonus of 38 per cent of two months basic salary and a salary increase of 5 per cent spread over two years to the workers (copies of the agreements appended).

575. Furthermore, in line with section 40 of the ERA regarding access to work premises, the FWU made an application to the Employment Relations Tribunal requesting a decision granting access to the company's premises to Mr Shanto. The FWU later withdrew its application on the understanding that the agreement which was proposed at the Employment Relations Tribunal would be signed by the Chief Executive Officer following his return from abroad. However, given that the terms of agreement subsequently proposed by the company to Mr Shanto were different from those proposed at the level of the Tribunal, the latter refused to sign and went on a hunger strike as from 12 March 2014 to protest against the stand of the company. The Minister of Labour, Industrial Relations and Employment thereupon personally intervened in the matter and convened all parties to a meeting on 15 March 2014 and an agreement was reached and signed to the satisfaction of all parties (copy appended) to the effect that, inter alia: (i) Mr Shanto will be granted access to the premises of the company as the negotiator for the FWU and the CSWU; (ii) the two trade unions and their negotiator expressed their deep regrets concerning any prejudice that might have been caused by their public demonstration staged on 6 November 2013 against the company; and (iii) both the company and the trade unions undertake to comply with the provisions of the ERA and adhere to the provisions of the code of practice laid down therein. Mr Shanto thereafter put an end to his hunger strike.

576. The Government also provided some clarification made by the company on the present case. The company denies having made a motion before the CCM to revoke Mr Shanto as the negotiator of the matter. It only informed the CCM of its decision not to recognize Mr Shanto as the unions' negotiator and did not request any ruling on the matter from the Commission. The company also declares that the protest of 6 November 2013 is in clear breach of the Procedural Agreement between the parties which stipulates that there should be no communication with the media as long as discussions between parties are in progress. The company also indicated that, with a view to an amicable settlement of the matter, a draft agreement was submitted to the trade unions and Mr Shanto, wherein the company declared being prepared to reconsider its decision and recognize Mr Shanto once again as negotiator on the condition that he tender his apologies to the company and to its Chief Executive Officer for his wrongful allegations. The agreement was however rejected by the trade unions. Finally, the company denied having exerted any form of pressure on any employee to withdraw from the trade unions and contended that employees have expressed their wish to dissociate themselves from the trade union as they are dissatisfied with its acts, but are afraid to voice their concerns.

577. The Government also provided a report from the police department according to which a statement was given on March 2014 by Mr Louis David Collard, President of the FWU, to the effect that many workers had informed him that they were being intimidated by management to withdraw from the trade union. Management representatives, namely, Mr Goinsamy Moorgiah (human resource manager), Mr Mohammed Massoorula Joumun (foreman), and Mrs Vaneesha Vishnee Busawon (processor plant manager), were contacted by the police and made aware of the above complaint. They denied the allegation levelled against them. Two other workers at the company, Mr Nagamootoo Goinden and Mr Hemraz Lobine, both members of the FWU, stated for their part that they had never

been intimidated by the management to withdraw from the trade union. The police inquiry is still under way.

578. The Government concludes that the only live issue which remains to be addressed in the complaint is the alleged intimidation of workers to withdraw from their trade union, which matter is still under police inquiry.

C. The Committee's conclusions

579. *The Committee observes that in this case the complainant alleges acts of anti-union discrimination by the company against leaders and members of the FWU and the CSWU in retaliation for a lawful protest action conducted in November 2013 to claim the payment of bonuses.*

580. *From the information provided both by the complainant and the Government, the Committee observes that in August 2013, the FWU and the CSWU reported a labour dispute to the CCM against the company on the payment of performance bonuses. Both trade unions appointed a negotiator (Mr Atmar Shanto) by virtue of section 14 of the ERA. While the dispute was being discussed at the level of the CCM, Mr Shanto and the executive members of the two trade unions held a lawful protest on 6 November 2013 in front of the office of the Ministry of Labour, Industrial Relations and Employment demanding the urgent intervention of the Ministry on the points in dispute. Following the protest, the company informed Mr Shanto in a letter dated 12 November 2013 that he would henceforth not be recognized as negotiator because of breaches of the Procedural Agreement in force between the trade unions and the company which stipulates that there should be no communication with the media as long as discussions between parties are in progress, as well as the defamatory statements he made against the company during the protest. On the same date, the company informed the CCM of its decision not to recognize Mr Shanto as the trade unions' negotiator. However, following several meetings held at the CCM, an agreement was reached on 30 December 2013 between the company and both trade unions to the effect that the company would pay a performance bonus of 38 per cent of two months basic salary and a salary increase of 5 per cent spread over two years to the workers.*

581. *In the meantime, in line with section 40 of the ERA regarding access to work premises, the FWU made an application to the Employment Relations Tribunal requesting a decision granting access to the company's premises to Mr Shanto. The FWU later withdrew its application on the understanding that the agreement which was proposed at the Employment Relations Tribunal would be signed by the Chief Executive Officer following his return from abroad. However, given that the terms of agreement subsequently proposed by the company to Mr Shanto were different from those proposed at the level of the Tribunal, the latter refused to sign and went on a hunger strike as from 12 March 2014 to protest against the stand of the company.*

582. *The Committee further notes that the Minister of Labour, Industrial Relations and Employment personally intervened in the matter and convened all parties to a meeting on 15 March 2014 following which an agreement was signed to the satisfaction of all parties. According to the agreement: (i) Mr Shanto will be granted access to the premises of the company as the negotiator of the FWU and the CSWU; (ii) the two trade unions and their negotiator expressed their deep regrets concerning any prejudice that might have been caused by their public demonstration staged on 6 November 2013 against the company; and (iii) both the company and the trade unions undertake to comply with the provisions of the ERA and adhere to the provisions of the code of practice laid down therein.*

583. *As a concluding observation, the Committee acknowledges the intervention of the authorities to solve the dispute raised by the FWU and the CSWU by various meetings held at the level of the CCM and by the Ministry of Labour, Industrial Relations and Employment, which resulted in an agreement to the satisfaction of all parties, and which raise expectations for peaceful industrial relations between the company and the trade unions in the future.*

584. *The Committee further notes that the police department conducted an investigation on the alleged intimidation of workers of the company to withdraw their trade union membership. In this regard, the Committee recalls that no person should be 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 (revised) edition 2006, para. 771]. Any conduct aimed at obtaining the withdrawal of workers from membership of an enterprise trade union would seriously undermine workers' right to freedom of association.*

585. *The Committee notes that according to the police report, management representatives denied the allegations levelled against them by the President of the FWU. Additionally, two members of the FWU stated for their part that they had never been intimidated to withdraw from the trade union. The Committee also notes that the Government provided in its reply a statement made by the company whereby, inter alia, it denied having exerted any form of pressure on any employee to withdraw from the trade unions and claimed that employees have expressed their wish to dissociate themselves from the trade union but are afraid to voice their concerns. In its concluding remarks, the Government asserts that the alleged intimidation of workers to withdraw from their trade union is the only live issue which remains to be addressed in the present case and the matter is still under police inquiry. The Committee requests the Government to keep it informed in this regard.*

The Committee's recommendation

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

> ***The Committee requests the Government to keep it informed of the outcome of the police inquiry on alleged intimidation of workers of Innodis Ltd to withdraw their trade union membership.***

CASE NO. 2902

INTERIM REPORT

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

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

587. The Committee last examined this case at its October 2013 meeting when it presented an interim report to the Governing Body [see 370th Report, paras 588–598, approved by the Governing Body at its 319th Session (November 2013)].

588. Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of this case on two occasions. At its October 2014 meeting [see 373rd Report, para. 6], the Committee launched an urgent appeal and drew the attention of the Government to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of this case even if the observations or information from the Government have not been received in due time.

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

A. Previous examination of the case

590. In its previous examination of the case, the Committee made the following recommendations [see 370th Report, para. 598]:

(a) The Committee regrets that, despite the time that has elapsed since the complaint was last examined, the Government has not replied to any of the Committee's outstanding recommendations. The Committee urges the Government to be more cooperative in the future.

(b) The Committee requests the Government to clarify which agreement it is referring to in its reply and, should there be a more recent agreement, to transmit a copy thereof to the Committee. The Committee recalls that it has already requested the Government and the complainant to indicate whether the July 2011 agreement has now been implemented and cannot but strongly reiterate its previous request.

(c) In view of the gravity of the matters raised in this case, the Committee once again requests the Government to institute immediately an independent judicial inquiry into the allegations that: (i) violence was used against trade union members during a demonstration against the refusal of the enterprise to implement the tripartite agreement, injuring nine; and (ii) 30 trade union officers were dismissed following this

demonstration and/or criminal charges were brought against them, with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. The Committee requests the Government to inform it of the outcome of this investigation and to keep it informed of any follow-up measures taken. It expects that, should it be found that these unionists were dismissed or charged for the exercise of legitimate trade union activities, the Government will take all necessary steps to ensure their reinstatement and the dropping of all pending charges. If reinstatement is found not to be possible for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the union members concerned are paid adequate compensation so as to constitute a sufficiently dissuasive sanction for anti-union discrimination.

(d) The Committee once again requests the Government to indicate under which provisions of the Anti-terrorism Act the trade union officers were charged and invites it to ensure that the charges are dropped should they relate to the exercise of legitimate strike action.

B. The Committee's conclusions

591. *The Committee deeply deplores the fact that, despite the time that has elapsed since this case was last examined, the Government has not replied to any of the Committee's outstanding recommendations, although it has been invited on several occasions, including by means of an urgent appeal, to present its comments and observations on the case. The Committee urges the Government to be more cooperative in the future.*

592. *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 finds itself obliged to present a report on the substance of the case without the benefit of the information which it had hoped to receive from the Government.*

593. *The Committee once again recalls that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments on their side will recognize the importance of formulating, for objective examination, detailed replies concerning allegations made against them.*

594. *The Committee recalls that the complaint in this case was lodged in 2011 and concerned allegations that the management of the Karachi Electric Supply Enterprise refused to implement a tripartite agreement signed on 26 July 2011, to which it was a party.*

595. *In its previous examination of the case, the Committee observed that the Government had sent only partial information indicating that an agreement had been reached between the management and KESC as a result of an effective intervention of the governor of Sindh and that subsequently, the government of the province of Sindh had also been asked to make all efforts to ensure the implementation of this agreement in letter and spirit. It was not clear whether the Government was referring to the July 2011 agreement or to a more recent agreement that might have addressed the additional allegations of subsequent violence and dismissals. The Committee therefore requested the Government and the complainant to provide further information relating to this agreement and to indicate whether the July 2011 agreement has now been implemented. As no new information has been provided by either the Government or the complainant, the Committee reiterates its previous request.*

596. *The Committee further recalls the additional allegations that during a demonstration against the refusal of the enterprise to implement the tripartite agreement of July 2011, the enterprise management ordered its security guards to open fire on protesting workers,*

injuring nine, and subsequently dismissed and/or filed criminal cases against 30 trade union officers. According to the complainant, the police refused to file criminal charges against the management of the company, and the complainant was only able to bring the case of violent intervention in a peaceful demonstration and subsequent dismissals following an order of the court. The Committee once again requests the Government to provide information on the investigations instituted into the allegations with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. It expects that, should it be found that these unionists were dismissed or charged for the exercise of legitimate trade union activities, the Government will take all necessary steps to ensure their reinstatement and the dropping of all pending charges. If reinstatement is found not to be possible for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the union members concerned are paid adequate compensation so as to constitute a sufficiently dissuasive sanction for anti-union discrimination.

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

The Committee's recommendations

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

(a) The Committee regrets that, despite the time that has elapsed since the complaint was last examined, the Government has not replied to any of the Committee's outstanding recommendations. The Committee urges the Government to be more cooperative in the future.

(b) The Committee requests the Government to clarify to which agreement it referred in its previous reply and, should there be a more recent agreement, to transmit a copy thereof to the Committee. The Committee also once again requests the Government and the complainant to indicate whether the July 2011 agreement has now been implemented.

(c) In view of the gravity of the matters raised in this case, the Committee once again requests the Government to provide information on the investigation into the allegations that: (i) violence was used against trade union members during a demonstration against the refusal of the enterprise to implement the tripartite agreement, injuring nine; and (ii) 30 trade union officers were dismissed following this demonstration and/or criminal charges were brought against them, with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. It expects that, should it be found that these unionists were dismissed or charged for the exercise of legitimate trade union activities, the Government will take all necessary steps to ensure their reinstatement and the dropping of all pending charges. If reinstatement is found not to be possible for objective and compelling reasons, the Committee requests the

Government to take the necessary measures to ensure that the union members concerned are paid adequate compensation so as to constitute a sufficiently dissuasive sanction for anti-union discrimination.

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

CASE NO. 2937

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

Complaints against the Government of Paraguay presented by

- **the Central Confederation of Workers (CUT)**
- **the Union of Workers of the enterprise Itaipú Binacional – Lado Paraguayo (STEIBI)**
- **the Union of Drivers and Services of the Alto Paraná (SICONAPS/S) and**
- **the Union of Workers of Itaipú Binacional (SITRAIBI)**

Allegations: Non-compliance by Itaipú Binacional – Lado Paraguayo with numerous provisions of the collective agreement, its subsequent negotiation of a collective agreement with minority unions and its opposition to the establishment of the bi-national joint conciliation committee even though an agreement between Brazil and Paraguay provides for its establishment

599. The Committee last examined this case at its March 2014 meeting when it presented an interim report to the Governing Body [see 371st Report, paras 640–654, approved by the Governing Body at its 320th Session (March 2014)].

600. On 28 May 2014, CUT, supported by ten Itaipú Binacional – Lado Paraguayo sector trade unions, presented additional information and new allegations.

601. The Government transmitted its observations in communications sent during the month of March, and on 22 May and 1 October 2014.

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

A. Previous examination of the case

603. At its March 2014 meeting, the Committee made the following recommendation on the pending issues [see 371st Report, para. 654]:

> The Committee urges the Government to send its observations on all the allegations made in this case without delay and in particular on those reporting that the enterprise Itaipú Binacional-Lado Paraguayo: (1) failed to comply with the CCCT for the period 2010–11 which, according to the complainants, had been the subject of several complaints submitted to the enterprise and before the administrative authority; (2) in a clear demonstration of anti-union practice, signed the CCCT for the period 2011–12 with several minority trade unions, sidelining the complainant organizations, which together represent 90 per cent of the workers, and (3) failed to comply with an agreement that it had signed with the complainant organizations with a view to ending the strike and took reprisals (according to the allegations, it terminated its contracts with transport companies that employed SICONAP/S members and made the recruitment of workers in the new transport companies contingent on them giving up their SICONAP/S membership; it also intends to introduce changes to an employment sector (tourism coordination), which would have the immediate effect of making STEIBI members redundant; and has established a new trade union which has been registered by the administrative authority).

B. New allegations from the complainants

604. In its communication of 28 May 2014, CUT, endorsed by six Itaipú Binacional – Lado Paraguayo sector trade unions, alleges that the enterprise has yet to comply fully with the provisions of the most recent collective agreement on working conditions (2013–14) signed with three of its trade unions, STEIBI, SICONAP/S and SITRAIBI, despite their repeated demands. In particular, it has failed to comply with articles 1, 7, 8 and 11; article 16, paragraphs 1 and 2; articles 28, 34, 35, 41, 43, 44, 49, 50, 52 and 55; article 77, paragraph 4; article 78(A); articles 86, 88 and 92 to 94; and article 95, paragraphs 5, 6, 10, 12 to 14, 16 and 26; these complaints are mentioned in the records of eight bipartite meetings held in 2013 and 2014. A wide variety of issues are in question, including, among other things, freedom of association, housing policy, filling of vacant positions, abolition of posts, equal wages, banking hours, and the like. CUT adds that, although the management of Itaipú Binacional – Lado Paraguayo is aware of the present complaint, it has taken no decisions with a view to rectifying its conduct.

605. CUT also maintains that Itaipú Binacional – Lado Paraguayo has systematically opposed the establishment of the bi-national joint conciliation committee even though article 8 of the Protocol on Labour and Social Security Relations to the Treaty of Itaipú, which Brazil and Paraguay have signed, provides for its establishment. In support of the complaint, the representatives of four trade unions of the Brazilian branch of the enterprise also signed the CUT complaint.

C. The Government's reply

606. The Government attached to its communications, sent in March, as well as 22 May and 1 October 2014, various Ministry of Labour decisions on the issues raised in the complaint, as well as communications from Itaipú Binacional – Lado Paraguayo noting that collective agreements on working conditions are concluded annually and that every trade union recognized by the competent authority is entitled to participate in negotiations and to conclude the respective collective agreements. Itaipú Binacional – Lado Paraguayo indicates that it holds meetings with the trade unions and denies the unions' claims that it failed to comply with the provisions of collective agreements, provides an explanation and sets out its position as reflected in the records of the meetings held with the trade unions; demands proof of each case in which it allegedly failed to comply with provisions of the collective agreement; in the event of a dispute, the labour administration authority attempts to bring the parties to an agreement. The current legislation permits, and even requires, the negotiation of collective agreements with recognized trade unions, including minority unions; there are, in fact, various collective agreements. According to the enterprise, instances of non-compliance with such agreements are not only monitored by the authorities but referred to a committee comprising representatives of Itaipú Binacional – Lado Paraguayo and the trade unions, which meets on a monthly basis to monitor the implementation of the collective agreement; instances of non-compliance with a provision of the agreement are examined, negotiated and even "priced" by the parties, who establish a monetary amount known as the "conciliation of interests" at the end of each annual bargaining session; this amount was approved by the complainant unions when the collective agreement was concluded on 23 May 2011 and, in the case of article 93, it was agreed that Itaipú Binacional – Lado Paraguayo would pay its employees the equivalent of 1.3 times their wage for April 2011 as a conciliation of interests.

607. The enterprise indicates that any legal disputes which could arise with workers are reported, verified and resolved by the competent judicial authority, whose judgments are binding on the enterprise.

608. The Government notes that the complainant organizations also signed collective agreements for the periods 2012–13 and 2013–14.

609. The enterprise maintains that the collective negotiations with minority trade unions in 2011 were conducted in accordance with the law. The complainant union, STEIBI, requested the Ministry of Labour not to approve an addendum to the collective agreement signed with four trade unions. Following the negotiation of the collective agreement for the period 2010–11 with trade unions other than the complainants, the complainant unions declared a 30-day strike, during which the enterprise received reports of acts of violence against non-striking workers. Because such violence is illegal, the enterprise requested the judicial authority to confirm the illegality of the acts in question.

610. The enterprise adds that the strike was lifted after the parties signed a new collective agreement for the period 2011–12. The enterprise agreed not to file any administrative or legal actions against the workers involved in the strike and the trade unions agreed not to file any legal and/or administrative actions for non-compliance with the collective agreement for the period 2010–11; however, the trade unions, nevertheless, presented a complaint to the Committee. The measures mentioned by the complainants, such as the unilateral termination of contracts for the provision of services by contractors, are envisaged at the contractual level and should not necessarily be considered as violating the compromise agreement that ended the strike. Furthermore, the complainant trade unions could have sought legal remedies. The enterprise denies that it violated the right to freedom of association and Conventions Nos 87 and 98, as alleged by the complainant trade unions.

611. As for the substance of the complaint, the enterprise explains that in 1991, the complainant trade unions, STEIBI and STICCAP, successfully concluded the first collective agreement between the representatives of Itaipú Binacional – Lado Paraguayo and its unions. The agreement established a new benefit for workers, the so-called "housing policy", which simply meant having a home that belonged to the enterprise. Thus, the collective agreement enshrines a benefit that had already been granted by Itaipú Binacional – Lado Paraguayo since 1978. From that time, 1991, and each successive year thereafter until 2010, Itaipú Binacional – Lado Paraguayo and the trade unions included this "housing policy" benefit in their agreements.

612. The enterprise states that in 2000, in light of the social and community developments, Itaipú Binacional – Lado Paraguayo adopted the position to sell its homes because continuing to own them was no longer appropriate; moreover, the employees in receipt of that benefit were constantly expressing their intention to directly purchase the homes in which they had been living for decades, thus becoming homeowners. In 2010, Itaipú Binacional – Lado Paraguayo concluded a new collective agreement on working conditions with the trade unions, STEIBI, STICCAP, SICHAP, SICAE and SISE, which would govern labour relations between the enterprise and its employees for the period 1 May 2010 to 31 April 2011. The various labour benefits that the enterprise granted to its workers included a housing policy whereby it would provide its workers with housing that they would own. In that connection, Itaipú Binacional – Lado Paraguayo decided to invite the unions, of which its workers were members, to discuss and negotiate the transfer of homes to the employees who were living in them. Thus, it was agreed with various trade unions that the homes would be sold to the employees who were living in them at below the national market price and that, as compensation (for loss of the housing benefit), they would receive 30 per cent of the value of the home (Addendum No. 1 to the collective agreement for the period 2010–11).

613. The enterprise indicates that it is reasonable to state that this new act on the part of the employer would benefit the workers. This view was shared by all the trade unions and confirmed by their assemblies, with one exception: at the last minute, while its representatives were negotiating the addendum, STEIBI objected to the sale of the homes to the workers. Two other trade unions, SICONAP/S and SITRAIBI, gave in and adopted the position taken by STEIBI.

614. According to the enterprise, negotiation of the housing policy led to disagreement between the trade unions; their workers were divided into two camps with STEIBI, SICONAP/S and SITRAIBI (a newly established union at that time), which opposed the sale of the homes on one side, and STICCAP, SICAE, SICHAP and SISE, which agreed to the conditions of sale, on the other. This lack of agreement between the unions led to false allegations of persecution and discrimination. Paraguay's judiciary has confirmed that there had been no persecution.

615. According to the enterprise, since December 2010, the complainant trade unions have been making a systematic effort to prevent the workers from exercising their right to acquire decent housing. They opposed the Ministry's approval of Addendum No. 1 to the collective agreement for the period 2010–11, appealed against the administrative decision once it had been taken and presented the present complaint, to the detriment of truth and reality.

616. The enterprise states that the Government of Paraguay has empowered all its bodies (executive, judicial and legislative) to receive complaints from trade unions. All of these complaints have been considered analytically and objectively and, in every case, it has been decided that the sale of the homes represented social progress for the affected zone and for State policy since, through this mechanism, some 1,000 people would become

homeowners under optimal conditions. In every case, the aforementioned bodies have concluded that the arguments adduced by the complainant trade unions were totally unfounded, illogical, unreasonable and contrary to the interests of society and, in particular, of the workers. To date, over 823 homes have been sold and 823 Paraguayan families have benefited as a result of Addendum No. 1 to the collective agreement for the period 2010–11 and its administrative approval (over the objections of the complainant trade unions).

617. Lastly, the enterprise maintains that the fact that 95 per cent of its workers are union members and that various collective agreements have been concluded constitutes proof of freedom of association and non-discrimination.

D. The Committee's conclusions

618. *The Committee observes that, in their early communications, the complainant organizations allege that Itaipú Binacional-Lado Paraguayo: (1) failed to comply with the collective agreement on working conditions for the period 2010–11, which, according to those organizations, was the subject of various complaints presented to the enterprise and to the administrative authority, particularly with regard to an addendum to the collective agreement concluded with minority trade unions; (2) in an open demonstration of anti-union practice, signed the collective agreement for the period 2011–12 with several minority trade unions, sidelining the complainant organizations, which, together, represent 90 per cent of the workers; and (3) failed to observe an agreement, signed with the complainant organizations that had ended a strike and took reprisals (according to the allegations, the enterprise terminated its contracts with transport companies whose workers were members of SICONAP/S and made the hiring of workers by the new transport companies contingent on them giving up their SICONAP/S membership); it also intends to introduce changes in an employment sector (tourism coordination) that would have the immediate effect of making STEIBI members redundant.*

619. *With regard to the allegations that the enterprise failed to comply with the collective agreement with the complainant trade unions for the period 2010–11; signed a collective agreement for the period 2011–12 with minority unions and following a strike by the complainant trade unions failed to comply with the agreement not to take reprisals (it is alleged that contracts with transport subcontractors were terminated); and, made the recruitment of workers in new transport companies contingent on them giving up their SICONAP/S membership, the Committee takes note of the enterprise's statement that: (1) it did not violate the right to freedom of association or Conventions Nos 87 and 98, that 95 per cent of its workers are union members and that collective agreements had been concluded with the existing trade unions; (2) the main problem has been that the complainant trade unions (unlike other unions) have persistently opposed a collective agreement allowing the sale of homes to the people who had been allowed to live in them; this objective of the enterprise was initially endorsed by all the trade unions (including SICONAP/S and SITRAIBI) with the exception of STEIBI, which, at the last minute, opposed the sale (which would benefit some 1,000 workers); SICONAP/S and SITRAIBI then joined STEIBI in opposing the initiative; the other unions ultimately signed an addendum to the collective agreement for the period 2010–11; the complainant trade unions nevertheless opposed – unsuccessfully, as is clear from the appeals presented to various authorities – approval of the aforementioned addendum by the Ministry of Labour; (3) this situation led to a strike by the complainant trade unions with illegal acts of violence against non-striking workers; the strike was ended through an agreement between the parties with a reciprocal commitment not to take reprisals (including not filing any legal and/or administrative actions); however, a complaint on this matter was presented to the Committee; (4) the unilateral termination of contracts for the provision of services by contractors, mentioned by the complainant trade unions, is a measure envisaged at the*

contractual level and should not necessarily be viewed as violating the commitment not to take reprisals that was signed at the end of the strike; furthermore, the complainant trade unions had the right to seek legal remedies; and (5) after the strike had ended, a collective agreement with the complainant trade unions for the period 2011–12 was signed.

620. *The Committee would like to point out that the complainant trade unions are (as stated in the complaint and not contested by the enterprise) the majority unions. In that connection, without undertaking to evaluate the merits of its objective or to consider whether it benefits the workers, the addendum to the collective agreement for the period 2010–11 that the enterprise concluded with the minority unions so that workers could purchase the homes in which they were already living may raise questions in relation to the principles of freedom of association in so far as, in principle, any provision that altered the content of the collective agreement in question should have been adopted with the consent of all the signatory trade unions.*

621. *The Committee regrets that, although the complaint was presented in 2011, the Government did not send its reply until 2014. Nevertheless, the Committee considers that since, according to the enterprise, over 823 workers have purchased their homes since the strike was lifted in 2011 with the signing of an agreement, and since the collective agreement with the complainant trade unions for the period 2011–12 has been signed, the issue has been overtaken by events in so far as it would be difficult to reverse the situation with regard to ownership of the homes and the complainant trade unions have signed a new collective agreement for the period 2013–14. The Committee also notes that the enterprise challenges the present complaint by the complainant trade unions on the grounds that the agreement that ended the strike in 2011 included a provision stipulating that no complaints would be presented.*

622. *The Committee observes that, in its most recent communications, CUT alleges: (1) that Itaipú Binacional – Lado Paraguayo has failed to comply with numerous provisions of the collective agreement for the period 2013–14, to the detriment of the signatory trade unions (STEIBI, SICONAP/S and SITRAIBI); and (2) that, despite an agreement signed by Brazil and Paraguay, the enterprise has opposed the establishment of the bi-national joint conciliation committee.*

623. *The Committee takes note of the following statements by Itaipú Binacional – Lado Paraguayo transmitted by the Government: (1) workers bring legal disputes regarding the application of provisions before the judicial authority, whose judgments are binding on the employer; (2) cases of non-compliance with collective agreements are examined by a committee comprising representatives of the enterprise and the trade unions, which meets on a monthly basis; cases of failure to comply with a provision of such an agreement are examined, negotiated and even "priced" by the parties, who set an amount established annually at the end of the collective bargaining; (3) non-compliance with a provision of a collective agreement must, however, be proved; (4) the enterprise provided an explanation and set out its position in the hope that the trade unions' complaints regarding non-compliance with such provisions would be rejected; and (5) in the event of a dispute, the labour administration authority attempts to bring the parties to an agreement. The Committee takes note of the enterprise's statement that current legislation permits, and even requires, the negotiation of collective agreements with trade unions, including minority unions, and that there are, in fact, various collective agreements.*

624. *The Committee observes that the collective agreements currently in force at Itaipú Binacional-Lado Paraguayo, including the collective agreement with the trade unions represented by the complainant organization for the period 2013–14, call for the establishment of a bipartite committee to consider the cases of non-compliance mentioned by the trade unions. The Committee further observes that, according to the enterprise,*

instances of non-compliance may, in some cases, be "priced" with an amount of compensation set during the annual collective bargaining session; in other cases, the parties' positions regarding compliance with provisions affecting the workers, including members of the three trade unions represented by the claimant organizations, are radically divergent. The Committee observes that the complainant organization refers in its complaint to numerous provisions that, in its view, have not been implemented (concerning, among other things, freedom of association, the abolition of posts and the filling of vacant positions). Because the parties' opinions on those matters are sharply divided (for example, on the question of the bipartite committee envisaged in the collective agreement), it invites the Government to institute an investigation through the labour inspectorate and to keep it informed of the outcome without delay.

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

The Committee's recommendations

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

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

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

CASES NOS 2941 AND 3026

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

Complaints against the Government of Peru presented by

Case No. 2941

- **the Federation of Workers in the Lighting and Power Industry of Peru (FTLF) and**
- **the Single Union of Workers of the Institute of Forensic Medicine and Sciences of Peru (SUTRAIMELCIFOR)**

Case No. 3026

- **the General Confederation of Workers of Peru (CGTP)**
- **the Confederation of Workers of Peru (CTP)**
- **the Single Union of Workers of the National Institute of Agrarian Innovation (SUTSA INIA)**
- **the Federation of Single Unions of Agrarian Sector Workers (FESUTSA)**
- **the Federation of Municipal Workers, Employees and Labourers of Peru (FTM-Perú)**
- **the National Confederation of Workers of Peru State (CTE-Perú)**
- **the National Federation of Judicial Employees of Peru (FNTPJ) and**
- **the Autonomous Workers' Confederation of Peru (CATP)**

Allegations: The complainant organizations allege restrictions in legislation and in the practice of collective bargaining in the public sector

627. The complaint in Case No. 2941 is contained in communications dated 20 March 2012 and 7 June 2013 of the Federation of Peruvian Light and Energy Workers (FTLF). The Single Union of Workers of the Institute of Forensic Medicine and Sciences of Peru (SUTRAIMELCIFOR) sent its allegations in a communication of 28 June 2012.

628. The Government sent its observations in communications of 25 June and 14 September 2012 and 6 September 2013.

629. The complaint in Case No. 3026 is contained in communications dated 22 May and 23 September 2013 by the General Confederation of Peruvian Workers (CGTP). This is supported by the Confederation of Peruvian Workers (CTP), the Single Union of Workers of the National Institute of Agrarian Innovation (SUTSA INIA), and the Federation of Single Unions of Agrarian Sector Workers (FESUTSA), in communications dated 9 September 2013, and by the Federation of Municipal Workers, Employees and Labourers of Peru (FTM-Perú), in a communication dated 16 May 2014. The National Confederation of Workers of Peru State (CTE-Perú) submitted its allegations in communications dated 17 October and 5 December 2014. The National Federation of Judicial Employees of Peru (FNTPJ) submitted its allegations in a communication dated 13 October 2014. Lastly, the

Autonomous Workers' Confederation of Peru (CATP) submitted its allegations in a communication dated 26 December 2014.

630. The Government sent its observations in communications of 7 February, 1 and 24 September, and 1 October 2014.

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

A. The complainants' allegations

Case No. 2941

632. In its communication dated 20 March 2012, the FTLF alleges that the National Fund for Financing State Entrepreneurial Activity (FONAFE) establishes ceilings in the wages paid by state electrical companies, which are in line with the budget assigned to state companies limiting the possibilities of negotiating salary increases through collective bargaining.

633. Furthermore, the FTLF alleges that Resolution No. 284-2011-TR of the Ministry of Labour and Employment Promotion, dated 23 October 2011, rendered optional arbitration inapplicable and ineffective as a mechanism for resolving lists of demands, since it obliges the arbitrators of collective bargaining, which cover a state entity or company, to take into account the resources available in the public budget. More specifically, the above resolution imposes on the arbitrators the specific weighting criteria referring to the public sector budget, contained in articles 77 and 78 of the Political Constitution and those contained in rulings of the Constitutional Court which endorse the full observance of the budgetary rules.

634. In its communication dated 7 June 2013, the FTLF alleges that the 58th final supplementary provision of the Public Sector Budget Act for the Fiscal Year 2013, Act No. 29951, violates the right of collective bargaining, since it prohibits increasing workers' wages through collective bargaining or arbitration awards. The FTLF states that FONAFE must comply with said Act and that, as a result, state electrical companies within FONAFE's sphere are unable to negotiate economic clauses. The FTLF states that, at the beginning of 2013, it took legal protection proceedings against the Act, since it considered that the Act infringes its constitutional right to freedom of association and collective bargaining, and that the Ninth Constitutional Court declared the request non-receivable and ordered the case to be closed for good. The complainant organization considers that a ruling of this kind affects the right of collective bargaining.

635. In its communication dated 28 June 2012, SUTRAIMELCIFOR, as a representative of the workers of the National Institute of Forensic Medicine and Sciences, alleges that the General Administration of the Public Prosecutor's Office excluded it from the scope of a resolution which authorized the Ministry of Economy and Finance to carry out a study so as to determine the wage scales for 2012; and that the Public Prosecutor's Office did not allow it to form part of a commission responsible for proposing and coordinating with the Ministry of Economy and Finance the wage scales of the Public Prosecutor's Office for 2012.

Case No. 3026

636. In its communication dated 22 May 2013, the CGTP alleges that the 58th final supplementary provision of the Public Sector Budget Act for the Fiscal Year 2013, Act No. 29951, violates the right of collective bargaining, since it prohibits increasing workers' wages through collective bargaining. The CGTP considers that the Act in question contravenes the conclusions reached by the Committee on Freedom of Association in its 357th Report on Peru, in which it pointed out that the impossibility of negotiating wage increases on an ongoing basis is contrary to the principle of free and voluntary bargaining enshrined in Convention No. 98.

637. In its communication dated 23 September 2013, the CGTP alleges that the Civil Service Act, No. 30057, issued in July 2013, violates the rights of freedom of association and collective bargaining enshrined in Conventions Nos 87, 98 and 151. In specific terms, the CGTP alleges that: (1) the Act excludes public servants, public managers and trusted servants from collective rights; (2) the Act restricts collective bargaining in all public entities to working conditions only and subjects relating to wages or of economic significance are excluded from negotiation or any other participatory mechanism; (3) the Act infringes the right to strike when allowing public entities to hire, temporarily and directly, the staff necessary to guarantee the provision of the minimum services in essential services and in services vital for the entity to operate, from the beginning of the strike until its actual end. Moreover, the Act does not detail which activities constitute essential services, thereby implying that limitations on the right to strike may be extended beyond the hypothetical cases accepted by the ILO supervisory bodies as characterizing a service as "essential", and includes the notion of "services indispensable for the entity to operate", thereby extending the restrictions on this right; and (4) the process of devising the Act has avoided using the mechanism for participation or consultation of workers' organizations.

638. In its communications dated 9 September 2013, the CTP, SUTSA INIA and FESUTSA allege that the Civil Service Act, No. 30057, denies the right of collective bargaining to public servants with respect to economic conditions and therefore violates the Political Constitution of Peru and also the labour and union rights recognized in Conventions Nos 87, 98 and 151. The complainant organizations state that the Government never consulted the public workers, nor their unions or trade union associations either, and that 36 parliamentary deputies instituted proceedings in July 2013 alleging that the Act in question was unconstitutional. The complainant organizations indicate that the draft budget of Peru, 2014, likewise violates Convention No. 98 since it prohibits all public entities from readjusting or increasing remuneration, bonuses, grants, rewards and benefits of any type.

639. For its part, in its communication of 16 May 2014, the FTM-Perú alleges that Act No. 30057: (1) prohibits collective bargaining on wages and includes only changes to working or employment conditions, in accordance with the budgetary and infrastructure possibilities of the entity and the nature of the functions performed therein; (2) adds great difficulties to the bargaining process, given that the list must be approved by the National Civil Service Authority (SERVIR) and the Ministry of Economy and Finance, and that the agreements have a period of validity of not less than two years; and (3) infringes the right to strike when allowing public entities to hire, temporarily and directly, the staff necessary to guarantee the provision of minimum services in essential services and in services vital for the entity to operate, from the beginning of the strike until its actual end. Finally, the FTM-Perú states that although the Act provides that incorporation in the new system of rules provided for by the Act is voluntary, the Act also states that within a maximum period of six years, all sectors – except those excluded – will be regulated by Act No. 30057.

B. The Government's reply

Case No. 2941

640. In its communication of 25 June 2012, the Government indicates that the Peruvian State respects collective bargaining and that the rules applied by FONAFE do not violate or undermine this right. The Government explains that FONAFE establishes a wage ceiling, in accordance with the budget assigned for state companies so as to be able to implement their operational and strategic plans, and thus make such companies sustainable. The Government emphasizes that FONAFE and companies within its sphere must comply with the provisions of the Public Sector Budget Act for the Fiscal Year 2013 and that hence the actions or measures taken by FONAFE are carried out or performed on the basis of imperative or public order rules, without infringing any trade union rights.

641. As regards the allegation by the FTLF that Resolution No. 284-2011-TR of the Ministry of Labour and Employment Promotion, dated 23 October 2011, rendered optional arbitration inapplicable and ineffective as a mechanism for resolving lists of demands, since it obliges the arbitrators of collective bargaining, which cover a state entity or company, to take into account the specific weighting criteria referring to the public sector budget, contained in articles 77 and 78 of the Political Constitution, and those contained in rulings of the Constitutional Court which confirm complete observance of the budgetary rules, the Government states that in Rulings Nos 008-2005-AI/TC and 02566 2012 PA TC, the Constitutional Court made it clear that collective bargaining involving public servants must be done, taking into consideration the constitutional limit according to which the budget must be balanced and fair. The Government underlines that the Constitutional Court does not deny state workers the exercise of the right to collective bargaining, but subjects them to budgetary rules, and that the economic agreements reached must be covered by the budget.

642. As to the judgment of the Ninth Constitutional Court, referred to by the FTLF, which rejected the request for protection relating to the Public Sector Budget Act for the Fiscal Year 2013, the Government states that the fact that the judgment was not in favour of the complainant organization is no justification for said ruling affecting in any way the fundamental right to freedom of collective bargaining.

643. In its communication of 14 September 2012, the Government declares, in relation to the allegations made by SUTRAIMELCIFOR, that the legal advisory office of the Public Prosecutor's Office stated that, in accordance with the General Administrative Procedure Act, the general managerial resolution of the Public Prosecutor's Office, which excluded the complainant organization from its scope, could not be amended and that, although the Public Prosecutor's Office had no obligation to set up a commission to analyse the 2012 wage scales, it decided to form a special commission, in which another trade union participated (the Union of Workers of the Public Prosecutor's Office).

Case No. 3026

644. In its communication dated 7 February 2014, in response to the complaint submitted by the CGTP, the Government explains that the workers covered by the Act on the Foundations of Public Sector Administrative Careers and Remuneration, approved by Decree-Law No. 276 of March 1984, only have the right to collective bargaining in relation to working or employment conditions. The Government states that although the right to collective bargaining for public sector workers is not expressly recognized in the Constitution, its recognition stems from the application of Article 7 of Convention No. 151, which has been ratified by Peru and incorporated through article 55 of the Political Constitution of Peru.

645. The Government indicates that in view of articles 77 and 78 of the Political Constitution of Peru, the budget assigns fairly public resources and the draft budget must be effectively balanced. The Government also states that the Fiscal Responsibility and Transparency Act, No. 27245, was approved in November 2003, together with the General National Budget System Act, No. 28411, in December 2004, which establish the principles, processes and procedures that regulate the national budget system, in accordance with articles 77 and 78 of the Political Constitution.

646. Similarly, Act No. 29849 was approved in April 2012 in order to grant labour rights to workers hired on administrative services contracts, and Act No. 29874, of June 2012, allows measures to be implemented for the granting of labour incentives through the Assistance and Stimulus Fund Administration Committees (CAFAE), to which the Public Sector Budget Act for the Fiscal Year 2012, No. 29812, refers. The Government explains that the aim of that rule is to eliminate inequalities and inequities among the monetary increases granted to administrative workers through the CAFAE in the different budget lists included in Decree-Law No. 276.

647. As to the allegations submitted by the CGTP, according to which the Public Sector Budget Act for the Fiscal Year 2013, No. 29951, violates Conventions Nos 87 and 98, since it prohibits increases being made to the workers' wages through collective bargaining, the Government explains that the aim of the rules governing the state public budget is to order and balance state expenditure, given that the resources are public and the product of the contributions made by all citizens and that different responsibilities entrusted to the State must be fulfilled.

648. The Government states that the Constitutional Court had the opportunity to make a ruling on the right to collective bargaining and the prohibition on making any type of increases to public administration staff, even where this is the result of labour arbitration. The Government emphasizes that in Rulings Nos 008-2005-AI/TC and 02566-2012-PA-TC, the Constitutional Court made it clear that collective bargaining involving public servants must be done, taking into consideration the constitutional limit, according to which the budget must be balanced and fair. The Government adds that similar conclusions have also been put forward by the Supreme Court of Justice in Appeal No. 4169-2008-Lambayeque, which states that collective bargaining must be carried out in the public sector, taking into account the national budgetary laws which determine the scope of negotiation.

649. The Government states that, notwithstanding the above, it emerged that in various arbitration awards the arbitrators adopted contrary, and even challenging, positions, stating expressly in their pronouncements that the budgetary restrictions established in the public sector budget laws would not be applied, ordering increases in wages without any technical support or identifiable source of funding, which affect the principle of a balanced budget and create disorder in the public sector, and that the National Congress chose to regulate this situation, by including the provision in the Public Sector Budget Act for the Fiscal Year 2013, which is brought into question by the CTP.

650. In its communications dated 1 and 24 September 2014, the Government made its observations concerning the allegations relating to the Civil Service Act, No. 30057. As to the allegation that the Act excludes public servants, public managers and trusted servants from the right to join trade unions, the Government indicates that although no such exclusion exists in the strict sense of the term, a rule should be created which specifies the scope for the purposes of clearer interpretation. As regards the allegation that the Act allows, in the case of a strike, staff to be hired temporarily in order to guarantee the provision of minimum services in essential services and in services vital for the entity to operate, the Government understands that this provision would not cause problems of compatibility with the ILO Conventions, provided that the requirements established in the

Act are satisfied, that is, the services defined as essential are determined according to the criteria of the ILO supervisory bodies, the minimum services are defined with the participation of workers' organizations, and replacement workers are hired only where the minimum services have not been covered by the organization or workers exercising their right to strike and this situation leads to a serious risk to human life, safety or health. With respect to the allegation that the Act limits the right to collective bargaining by requiring to negotiate for a period of two years, the Government stresses that the Committee on Freedom of Association has held that "the duration of collective agreements is primarily a matter for the parties involved." As concerns the allegation that the Act limits the right to collective bargaining, restricting its content only to working conditions and excluding therefrom, and from any other participatory mechanism, subjects relating to wages or of economic significance, the Government understands that the Act may be viewed as taking a backward step in the recognition and effectiveness of a fundamental right such as collective bargaining, and considers that these aspects should be included in a legislative provision. On the last point, the Government reports that on 21 May 2014, the Plenum of the Constitutional Court issued a ruling which settled the case of failure to observe the Constitution brought by 34 members of the National Congress against various articles of the Act. The Government notes that, although under section 5 of the Basic Law of the Constitutional Court, the majority of votes required to declare valid the allegations contained in the complaint relating to the unconstitutional nature of Act No. 30057, since it adversely affects the right to collective bargaining, three of the judges consider that the exclusion of remuneration and budgetary matters from collective bargaining constitutes an infringement of the aforementioned constitutional right. Moreover, a further three judges consider that Act No. 30057 will be constitutional only if, within 90 days, a consultation mechanism is set up. Finally, the Government emphasizes that in both cases the Constitutional Court used the ILO Conventions ratified by Peru as a benchmark of constitutionality.

651. In its communication dated 1 October 2014, the Government states that the hiring of staff during a strike constitutes a measure of an exceptional nature, the new regulations prescribe that it is applicable in situations in which minimum services are not respected. With respect to collective bargaining, the abovementioned Act defines the scope of the right to collective bargaining and is justified by the fact that it avoids differences that currently exist in regard to the negotiation of wages and the disorder that may result from different rules in the negotiation of wages based on the employment relationship of the worker. The Act establishes technical and objective criteria for increasing wages and takes into account the principle of budgetary provision.

C. The Committee's conclusions

652. *The Committee notes that in both cases the allegations refer to legal restrictions and, in practice, to collective bargaining in the public sector and, in particular, the impossibility to increase public sector wages through collective bargaining. Case No. 2941 refers essentially to the Public Sector Budget Act for the Fiscal Year 2013, No. 29951, and more precisely to the 58th final supplementary provision which, according to the allegations of the complainant organizations, the FTLF and the CGTP, prohibits wage increases for workers through collective bargaining. The above provision states, inter alia, that negotiation or labour arbitration proceedings may contain only working conditions; that arbitration resolutions, agreements or awards which ignore said prohibition will be null and void ipso jure, and that arbitrators who fail to implement that provision will no longer be entitled to participate in public sector collective bargaining arbitration processes.*

653. *According to the complainant organization, the FTLF, and as confirmed by the Government, FONAFE must comply with the Public Sector Budget Act for the Fiscal Year 2013 and, as a result, state electrical companies in FONAFE's sphere are unable to*

negotiate economic clauses. The complainant organization also alleges that FONAFE establishes wage ceilings for state electrical companies that comply with the budget assigned for state companies, limiting the possibilities of negotiating wage increases through collective bargaining. The FTLF also objects to Ministerial Resolution No. 284 2011-TR, of 23 October 2011, which obliges the arbitrators in collective bargaining, which cover a state entity or company, to take into account the resources available in the public budget.

654. *Case No. 3026 refers essentially to the Civil Service Act, No. 30057, issued in July 2013 which according to the allegations of the complainant organizations, the CGTP, the CTP, SUTSA INIA, FESUTSA and the FTM-Perú, restricts collective bargaining in all public entities to working conditions only, and excludes from negotiation, and any other participatory mechanism, subjects relating to wages or of economic significance. The above Act states, inter alia, that civil servants have the right to request improved non-monetary compensation, including changes to working or employment conditions, in accordance with the budgetary and infrastructure possibilities of the entity and the nature of the functions performed therein.*

655. *The Committee notes the Government's observations in which it states that the exercise of the right to collective bargaining for public sector workers, in the same way as any other right, is not absolute, but is subject to the limitations of the law, including those which regulate budgetary matters. In this connection, the Government explains that, in accordance with the General National Budget System Act, No. 28411, FONAFE establishes, through its guidelines or directives, a wage ceiling in accordance with the budget assigned for state companies, so as to be able to implement their operational and strategic plans, and thus make them sustainable. The Government maintains that the actions or measures taken by FONAFE are carried out or performed on the basis of imperative or public order rules, without infringing any trade union rights.*

656. *In relation to the allegation of the complainant organizations, the FTLF and the CGTP, that the 58th final supplementary provision of the Public Sector Budget Act for the Fiscal Year 2013, No. 29951, prohibits increases in workers' wages through collective bargaining and that, as a result, state electrical companies in FONAFE's sphere are unable to negotiate economic clauses, the Committee notes that the Government states that FONAFE and companies in its sphere must comply with the Public Sector Budget Act for the Fiscal Year 2013, and that therefore the actions or measures taken by FONAFE are carried out or performed on the basis of imperative or public order rules, without infringing any trade union rights. The Government explains that the aim of the rules governing the state public budget is to order and balance state expenditure, given that the resources are public and the product of the contributions made by all citizens and that different responsibilities entrusted to the State must be fulfilled.*

657. *The Committee notes that, as alleged by the complainant organizations and confirmed by the Government, the 58th final supplementary provision of the Public Sector Budget Act, No. 29951, restricts collective bargaining and labour arbitration to working conditions only, and that section 6 of that Act prohibits the readjustment, increase or creation of any form of income for public sector workers through whatever mechanism. The Committee observes that, as indicated by the complainant organization, the FTLF, and confirmed by the Government, FONAFE must comply with Act No. 29951, and that as a result, state electrical companies within FONAFE's sphere are unable to negotiate economic clauses. The Committee notes that the complainant organization, the FTLF, attached to its complaint copies of letters sent to FONAFE and to the electrical company, Electrocentro, SA, in which it requested that the 58th final supplementary provision of Act No. 29951 should not be applied. As is clear from the attachments submitted by the complainant organization, in his reply the FONAFE Executive Director stated that Act No. 29951*

restricts collective bargaining and labour arbitration to working conditions only and emphasized that FONAFE must comply with the Act in question; for its part, the company Electrocentro, SA, stated that the Act was the responsibility of FONAFE and that it is not competent to deal with the request to revoke or contravene the content of the 58th final supplementary provision of Act No. 29951.

658. *The Committee wishes to emphasize that it has referred on various occasions to matters relating to collective bargaining in Peruvian legislation applicable to the public sector and that in the past few years it has made recommendations to the Government as part of complaints submitted by Peruvian trade union organizations, very similar to the present cases (Cases Nos 2639 and 2934). The Committee recalls that in Case No. 2639 it already examined the allegation relating to wage ceilings imposed by FONAFE in the wage scales of public electrical companies. The Committee reiterates its previous conclusions and once again recalls the principle, according to which "in so far as the income of public enterprises and bodies depends on state budgets, it would not be objectionable – after wide discussion and consultation between the concerned employers' and employees' organizations in a system having the confidence of the parties – for wage ceilings to be fixed in state budgetary laws" [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 1036]. The Committee requested the Government on that occasion "to ensure that trade unions in the public enterprises are consulted when setting budget ceilings for public enterprises with regard to wages, so that the trade unions concerned may assess the situation, express their views and positions and discuss with the authorities the considerations of general interest that these authorities may deem it necessary to highlight" [see 355th Report, para. 1013].*

659. *The Committee also recalls that in Case No. 2934 it already examined the allegation relating to Ministerial Resolution No. 284-2011-TR which obliges the arbitrators of collective bargaining, which cover a state entity or company, to take into account the resources available in the public budget. The Committee notes that in its last reply the Government referred to the need for collective bargaining to take place within the state budgetary limits. The Committee reiterates its conclusion in Case No. 2934, according to which "the requirement itself for arbitrators to take into account available resources in the public budget is not contrary to the principles of freedom of association and collective bargaining", and again requests the Government to ensure respect for its principles as regards salary restrictions in collective bargaining in the public sector [see* ***Digest****, op. cit., paras 1033-1043] [see 365th Report, para. 1257].*

660. *Furthermore, as regards the civil service reform introduced by Act No. 30057, the Committee notes that the reform applies to State workers at the three levels of government (national, regional and local), and that two draft regulations were issued together with the Act: regulations governing the general application of the Act and regulations covering the special system for local governments. Likewise, the Committee observes that, as is clear from the wording of the Act, staff covered by the old systems (workers governed by Decree-Law No. 276 (public careers), workers governed by Decree-Law No. 728 (system based on rules for the private sector) and workers governed by Decree-Law No. 1057 (hired on administrative services contracts)) may be transferred, voluntarily and subject to a merit-based public competition, to the system provided for in the Act. Act No. 30057 states that incorporation in the new system should take place gradually and that it will be finalized within a maximum period of six years.*

661. *As regards the allegations whereby the process of drafting the Civil Service Act No. 30057 circumvented the mechanism for participation or consultation of workers' organizations, the Committee notes that the Government has not responded to this allegation and therefore recalls in general terms that it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded*

*by full and detailed consultations with the appropriate organizations of workers and employers [see **Digest**, op. cit., para. 1075]. Consequently, the Committee firmly expects that in future the Government will guarantee that, in practice, the trade unions participate in the consultations on any question or proposed legislation which affects the rights of the workers it represents.*

662. *As to the allegations according to which Act No. 30057 infringes the right to strike by allowing public entities to hire, temporarily and directly, the staff necessary to guarantee the provision of minimum services in essential services and in services vital for the entity to operate, from the beginning of the strike until its actual end, the Committee notes that the Government considers that this would not cause problems of compatibility with the ILO Conventions, provided that the requirements established in the Act are satisfied, that is, the services qualified as essential are determined according to the criteria of the ILO supervisory bodies, the minimum services are defined with the participation of workers' organizations, and replacement workers are hired only where the minimum services have not been covered by the organization or workers exercising their right to strike and this situation leads to a serious risk to human life, safety or health. In this regard, the Committee recalls the principle according to which 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 [see **Digest**, op. cit., para. 573].*

663. *As to the allegations that section 40 of Act No. 30057 excludes public servants, public managers and trusted servants from collective rights, the Committee notes that the Government states that although no such exclusion exists in the strict sense of the term, a rule should be created which specifies the scope for the purposes of clearer interpretation. In this regard, the Committee recalls that Article 1(2) of Convention No. 151 states that the extent to which the guarantees provided for in this Convention shall apply to high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature, shall be determined by national laws or regulations. The Committee recalls, however, that under Convention No. 98, ratified by Peru, the right of collective bargaining can be denied only to public servants working in the state administration.*

664. *As to the allegations that section 40 of Act No. 30057 adds major difficulties to the negotiating process given that once the list has been submitted, approval must be obtained from the National Civil Service Authority (SERVIR) and from the Ministry of Economy and Finance, and the agreements reached between the representatives of the public entity and the civil servants are valid for a minimum of two years, the Committee notes that the Government stresses that the Committee on Freedom of Association has held that "the duration of collective agreements is primarily a matter for the partners involved". In this regard, the Committee recalls firstly that budgetary opportunities within the negotiating framework may be verified and, secondly, recalls the principle according to which "a statutory provision providing that a collective agreement should be in force for two years when no other period has been agreed by the parties does not constitute a violation of the right to collective bargaining" [see Digest, op. cit. para. 1049]. Consequently, the Committee will not continue with the examination of these allegations.*

665. *In relation to the allegation by the complainant organizations that section 42 of Act No. 30057 circumvents collective bargaining in all public entities to working conditions only, excluding subjects relating to wages or of economic significance from negotiation or from any other participatory mechanism, the Committee notes that the Government considers that the said provision may be viewed as taking a backward step in the recognition of a fundamental right such as collective bargaining and considers that these aspects should be included in a legislative provision. The Committee notes that section 42*

expressly states that civil servants have the right to request improvements to non-economic conditions, including changes to working or employment conditions, in accordance with the budgetary and infrastructure possibilities of the entity and the nature of the functions performed therein. The Committee therefore notes that under section 42 of the above Act, civil servants do not have the right to request improvements to their wages or subjects of economic significance.

666. *The Committee regrets to observe that in neglecting its conclusions and recommendations in previous cases, both Act No. 29951 and Act No. 30057 continue to restrict collective bargaining and labour arbitration to working conditions only and exclude from negotiation and any other participatory mechanism subjects relating to wages or of economic significance. Similarly, the Committee notes that the Public Sector Budget Act for the Fiscal Year 2014, No. 30114, together with the Public Sector Budget Act for the Fiscal Year 2013, prohibits the readjustment, increase or creation of any form of income for public sector workers, through whatever mechanism. The Committee notes with concern that those legislative restrictions are translated, in practice, into the impossibility of negotiating or participating in consultation mechanisms with trade union organizations on wage increases in the whole of the public sector. The Committee recalls that in a previous case relating to public sector port workers, it emphasized that the impossibility of negotiating wage increases on an ongoing basis is contrary to the principle of free and voluntary bargaining enshrined in Convention No. 98 [see 357th Report (Peru), para. 946]. Similarly, in previous cases, faced with allegations of obstacles and difficulties to bargaining collectively in the public sector, the Committee has stated that "it is aware that collective bargaining in the public sector calls for verification of the available resources in the various public bodies or undertakings, that such resources are dependent upon state budgets and that the period of duration of collective agreements in the public sector does not always coincide with the duration of budgetary laws – a situation which can give rise to difficulties" [see 357th Report, Case No. 2690 (Peru), para. 944] [see* ***Digest****, op. cit., paras 1037 and 1038]. Likewise, the Committee "shared the viewpoint of the Committee of Experts in its 1994 General Survey, when it stated that: 'While the principle of autonomy of the parties to collective bargaining is valid as regards public servants covered by Convention No. 151, the special characteristics of the public service described above require some flexibility in its application.' Thus, in the view of the Committee, legislative provisions which allow Parliament or the competent budgetary authority to set upper and lower limits for wage negotiations or to establish an overall 'budgetary package' within which the parties may negotiate monetary or standard-setting clauses (for example: reduction of working hours or other arrangements, varying wage increases according to levels of remuneration, fixing a timetable for readjustment provisions) or those which give the financial authorities the right to participate in collective bargaining alongside the direct employer are compatible with the Convention, provided they leave a significant role to collective bargaining. It is essential, however, that workers and their organizations be able to participate fully and meaningfully in designing this overall bargaining framework, which implies in particular that they must have access to all the financial, budgetary and other data enabling them to assess the situation on the basis of the facts" [see 365th Report (Peru), para. 1257] [see* ***Digest****, op. cit., para. 1038].*

667. *The Committee recalls that Peru has ratified Conventions Nos 98 and 151 and that, consequently, it undertook to adopt measures to stimulate and promote the full development and use of negotiating procedures between the competent public authorities and organizations of public employees concerning employment conditions, or any other methods allowing representatives of public employees to help to determine such conditions. In this context, the Committee highlights that the Government is obliged to take measures to bring its legislation into conformity with Conventions that it has ratified in respect of the collective bargaining of wages in the public (state, regional and local) sectors. The Committee requests the Government to promote collective bargaining in the*

spheres in which the complainant organizations operate (forensic medicine, agrarian innovation and electricity which, although they form part of the public sector, do not refer to state administration officials).

668. *In relation to this point, the Committee takes due note that the Government reports that on 21 May 2014, the Plenum of the Constitutional Court issued a ruling which settled the case of failure to observe the Constitution brought by 34 members of the National Congress against various sections of Act No. 30057. The Committee notes that although under section 5 of the Basic Law of the Constitutional Court, the majority of votes required to declare valid the allegations contained in the complaint relating to the unconstitutional nature of Act No. 30057, since it adversely affects the right to collective bargaining, was not reached, three of the judges considered that the exclusion of remuneration and budgetary matters from collective bargaining constitutes an infringement of the aforementioned constitutional right and the other three judges considered that Act No. 30057 will be constitutional only if, within 90 days, a consultation mechanism is set up. The Committee notes that the Government emphasizes that in both cases the members of the Constitutional Court used the ILO Conventions ratified by Peru as a benchmark of constitutionality. In this regard, the Committee notes that according to the wording of the verdict that is available to the public, the six judges considered that the exclusion of remuneration and budgetary matters from collective bargaining is contrary to the provisions of ILO Convention No. 151.*

669. *The Committee regrets that despite the Government announcement in 2013 that it would request technical assistance from the ILO, it has not made such a request and invites the Government again to avail itself of such assistance as soon as possible, in particular taking into account the fact that: (1) the specific arrangements for collective bargaining in the public sector allow such bargaining to take place before or after the budget is adopted, it being understood that, in the case of Peru, wage negotiations should take place when state budgets are prepared; and (2) that, as indicated by the Government, Act No. 30057 may be revised, in particular sections 31.2, 42, 43 and 44, which establish limitations on the right to collective bargaining on subjects relating to wages or of economic significance.*

670. *Finally, as to the allegation presented by the complainant organization SUTRAIMELCIFOR that the General Administration of the Public Prosecutor's Office excluded it from the scope of a resolution relating to the conduct of a study of the new salary scales; and that it did not allow SUTRAIMELCIFOR to form part of a commission responsible for proposing and coordinating with the Ministry of Economy and Finance the wage scales of the Public Prosecutor's Office for 2012, the Committee notes that the Government states that the legal advisory office of the Public Prosecutor's Office stated that, in accordance with the General Administrative Procedure Act, the general managerial resolution of the Public Prosecutor's Office, which excluded the complainant organization from its scope, could not be amended, and although the Public Prosecutor's Office had no obligation to set up a commission to analyse the wage scales for 2012, it decided to form a special commission in which another trade union (the Union of Workers of the Public Prosecutor's Office) participated. The Committee requests the Government to ensure that in future the Public Prosecutor's Office allows representative trade unions in public institutions, including SUTRAIMELCIFOR (which represents workers of the National Institute of Forensic Medicine and Sciences), to be consulted when determining wage scales so that the trade union organizations concerned may assess the situation, express their views and positions, and discuss with the authorities the considerations of general interest that these authorities may deem it necessary to highlight.*

671. *The Committee requests the Government to provide its observations in reply to the allegations of the CTE-Perú of 17 October and 5 December 2014, the allegations of the FNTPJ of 13 October 2014, as well as the allegations of the CATP of 26 December 2014.*

The Committee's recommendations

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

(a) The Committee once again requests the Government to ensure that the procedure contained in the FONAFE guidelines allows trade union organizations of public enterprises to be consulted when determining the budgetary ceilings for wages in public enterprises, so that the trade union organizations concerned may assess the situation, express their views and positions, and discuss with the authorities the considerations of general interest that these authorities may deem it necessary to highlight.

(b) The Committee highlights that the Government is obliged to bring its legislation into conformity with Conventions that it has ratified in respect of the collective bargaining of wages in the public (state, regional and local) sector; the Committee requests the Government to promote collective bargaining in the spheres in which the complainant organizations operate (forensic medicine, agrarian innovation and electricity).

(c) The Committee requests the Government to ensure that in future the Public Prosecutor's Office allows representative trade unions in public institutions, including SUTRAIMELCIFOR, to be consulted when determining wage scales so that the trade union organizations concerned may assess the situation, express their views and positions, and discuss with the authorities the considerations of general interest that these authorities may deem it necessary to highlight.

(d) The Committee firmly expects that in future the Government will guarantee that, in practice, trade unions participate in the consultations on any issue or proposed legislation affecting the rights of the workers they represent.

(e) The Committee requests the Government to provide its observations in reply to the allegations of the CTE-Perú of 17 October and 5 December 2014 calling into question the provisions of the new regulations on the Civil Service Act having an impact on the exercise of trade union rights, the allegations of the FNTPJ of 13 October 2014 concerning the impact of the Civil Service Act on the judicial employees, as well as the allegations of the CATP of 26 December 2014.

(f) The Committee regrets that the Government has not requested the technical assistance from the ILO that it announced it would request in 2013 and invites the Government to avail itself of ILO assistance in relation to this case.

CASE NO. 2996

DEFINITIVE REPORT

Complaints against the Government of Peru presented by
– the Confederation of Workers of Peru (CTP) and
– the Unitary Trade Union of Workers of the Banco de la Nación (SUTBAN)

Allegations: The transfer and dismissal of trade union leaders and other anti-union practices carried out by the Banco de la Nación

673. The complaint is contained in a communication from the Confederation of Workers of Peru (CTP) dated 17 October 2012; this organization submitted new allegations in a communication dated 13 March 2013. The Unitary Trade Union of Workers of the Banco de la Nación (SUTBAN) submitted its complaint in a communication dated 11 January 2013 and new allegations in communications dated 10 June and 1 August 2013, as well as additional information in a communication dated 4 August and 25 November 2014.

674. The Government sent its observations in communications dated 25 April, 3 October and 21 November 2013, as well as communications dated 4 and 15 August, 20 October and 14 November 2014.

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

A. The complainants' allegations

676. In its communications of 17 October 2012 and 13 March 2013, the CTP alleges the anti-union dismissal of Ms Rosa Isabel Méndez Tandaypán by the Banco de la Nación on 10 October 2012, without knowing that she was a member of the National Labour Council; that she was a member of the workers' delegation to the International Labour Conference in 2012; that she was a member of the negotiating committee for the list of claims submitted by the trade union of the Banco de la Nación in 2011 (which remains open as it is at the arbitration stage and for which reason the Banco de la Nación had granted her union leave until 30 June 2012); and that she had been the Vice-President of the CTP since 2011. The CTP states that, although the Banco de la Nación argues that her dismissal was attributable to an unjustified absence from work of more than three days, her dismissal was in fact attributable to her intense and successful involvement in trade union activities within the Banco de la Nación since her appointment as General Secretary in 2007 and later as Defence Secretary of the primary trade union in 2009. Her trade union activities include the conclusion of several collective agreements, the reinstatement of hundreds of workers dismissed during the 1990s, giving hundreds of workers access to indefinite contracts, and the filing of criminal complaints against high-ranking officials of the Banco de la Nación for anti-union practices. The CTP highlights that the dismissal of the trade union leader Ms Méndez Tandaypán also occurred in the context of an internal union dispute, which has already resulted in legal proceedings being brought before the judicial authority against the new executive committee of the trade union elected at the Ordinary

National Congress of 27 November 2011 (Ms Méndez Tandaypán had previously filed complaints with the Ministry of Labour against this executive committee) before a ruling invalidating the election of the new executive committee could be handed down.

677. Moreover, in its communications of 11 January, 10 June and 1 August 2013, SUTBAN alleges the anti-union transfer of its trade union delegate, who is also a member of the national electoral committee (for the elections of the executive committee), Ms Nancy Raquel Navarro Hoyos, as the result of a decision taken by the Banco de la Nación on 24 September 2012 and a series of notarized letters constituting acts of harassment and intimidation. SUTBAN states that her transfer constitutes a direct violation of the legislation protecting trade union leaders from transfers and dismissal, but also of the substantive regulations governing transfers (the exigencies of service require the transfer, which is not true in this case, as the receiving department is not in favour of the transfer; not knowing that the trade union leader had been accorded "relocated" status following her dismissal under the Fujimori Government or that she had been subsequently relocated to the Banco de la Nación; a change in post that involves performing tasks of a lower level, and so forth) and of the regulations governing health in the workplace (the psychological abuse suffered by the trade union leader at the hands of her line manager, which has been the cause of several illnesses, and so forth). According to the complainant organization, all these irregularities show that the aim of transferring the trade union leader was to cause her harm and to prevent her from performing her trade union duties. SUTBAN states that, following the submission of the complaint, the Ministry of Labour and Employment Promotion conducted an investigation within the Banco de la Nación, on the basis of which it ordered the reinstatement of the trade union leader to the post that she had occupied previously and fined the Banco de la Nación for serious offences after ascertaining that it had deliberately prevented the trade union leader from performing her duties as a trade union delegate. However, the complainant organization states that, following a strike that took place on 8 and 9 May 2009, the trade union leader was obliged to undergo a performance review for the year 2012 in which her section manager gave her a negative assessment, the same manager who had harassed this trade union leader in the past. According to the allegations, the trade union leader was subsequently subjected to public defamation and had her female sexual intimacy violated, which prompted her to file a criminal complaint in accordance with the normal procedure.

678. In its communications of 4 August and 25 November 2014, SUTBAN reiterates, once again, the anti-union nature of the transfer of its trade union leader, Ms Nancy Raquel Navarro Hoyos, as was recognized by the labour administrative authority, and indicates that the articles published in the journal *"La actualidad empresarial"* (Business News) also recognized the anti-union nature of the transfer.

B. The Government's reply

679. In its communications of 25 April, 3 October and 21 November 2013, and 25 November 2014 concerning the alleged dismissal of Ms Rosa Isabel Méndez Tandaypán by the Banco de la Nación, the Government states that this individual was performing her functions under the protection of the labour regulations contained in Legislative Decree No. 728, adopted by Supreme Decree No. 003-97-TR, the Act on Labour Productivity and Competitiveness. In order to understand fully the context that led to the dismissal of Ms Méndez Tandaypán, it is important to note that, in accordance with the collective agreements concluded between the Banco and the complainant union, the trade union is entitled to ten periods of indefinite union leave per year. In the light of this fact and based on the requests made by the trade union, Ms Méndez Tandaypán was granted union leave between 12 February 2008 and 30 June 2012. However, the Government states that the General Secretary of the complainant union wrote to the Banco on 30 November 2011 informing it that a decision had been taken to dismiss Ms Méndez Tandaypán from the

trade union and the negotiating committee for the 2011 list of claims, and that she was no longer a representative of the trade union. In Circular No. 011-2012 of 24 January 2012, the General Secretary of the trade union published the names of the new members of its executive committee for the period 28 December 2011 to 27 December 2013, from which it is clear that Ms Méndez Tandaypán is not a member of the executive committee. In another letter from the trade union dated 4 June 2012, the General Secretary of the trade union reported that, despite the fact that Ms Méndez Tandaypán was no longer a trade union leader, the Banco was continuing to grant her union leave, which prompted a request for information on the union leave granted to the individual in question.

680. As to Ms Méndez Tandaypán's dismissal, in a letter dated 13 July 2012, the Banco de la Nación informed Ms Méndez Tandaypán that her absences from work between 2 and 13 July were tantamount to the abandonment of her post, as the union leave granted to her had expired on 30 June 2012, and gave her a period of six days to submit her deposition. While her deposition did not refute the serious offence of unjustified absence from work for more than three days that had been attributed to her, no decision was taken to dismiss her; rather, she was urged to return to work. Despite knowing that the union leave granted to her would expire on 30 June 2012 and having received the abovementioned letter notifying her of that fact, Ms Méndez Tandaypán continued to absent herself from work without just cause.

681. Furthermore, having been requested on several occasions to submit her deposition, she finally did so in a letter dated 21 September 2012, which did not refute her unjustified absences from work for more than three days, for which reason, in a letter dated 4 October 2012, the Banco informed her of its decision to dismiss her for having committed the abovementioned serious offence, which is referred to in article 25, subparagraph (h) of the single consolidated text of Legislative Decree No. 728, which contains regulations that apply to Ms Méndez Tandaypán. It is for this reason that the dismissal could not be found to constitute an unjust act on the part of the institution, as it is the result of the application of the penalty provided for in the regulations for a serious offence. Moreover, by virtue of Inspection Order No. 16699-2012-MTPE/1/20.4, the Labour Inspection Directorate of the Ministry of Labour and Employment Promotion ordered an investigation to be conducted into the case of Ms Méndez Tandaypán, which culminated in the publication of an inspection report in which it was stated that the Banco had not violated any social or labour regulations. Lastly, being a member of a negotiating committee does not entitle the individual to indefinite union leave when, in fact, the relevant legislation only requires the employer to grant a maximum of 30 days of union leave per year. Ms Méndez Tandaypán was entitled to attend the meetings of the negotiating committee but not to indefinite union leave.

682. The Government adds that the union leave granted to Ms Méndez Tandaypán permanently expired on 30 June 2012. In this regard, it should be noted that there is no agreement or other document that requires the Banco to grant union leave with or without pay to leaders of primary trade unions, as the granting of such leave is governed by the tenth clause of the 2010 labour agreement concluded between the Banco and the trade union. It should also be borne in mind that union leave is granted in agreement with the duly accredited legal representative of the trade union, who, to date, in accordance with the provisions laid down by the General Registration Sub-directorate of the Registry of Trade Unions of Public Servants of the Ministry of Labour and Employment Promotion, is another worker (Mr Jorge Artemio Calderón Toro). In addition, it should be noted that union leave is granted to allow leaders of primary trade unions to attend compulsory meetings and cannot be granted to more than one person per enterprise. As the complainant organization is aware, it is currently being granted to another worker.

683. Lastly, the Government states that Ms Méndez Tandaypán has initiated legal proceedings against the Banco under Case No. 5699-2012 before the Third Labour Court of La Libertad, requesting reinstatement on the grounds of invalid dismissal and compensation for arbitrary dismissal. The complainant (Ms Méndez Tandaypán) is currently working for the Banco under a provisional court order.

684. According to the information provided by the Banco de la Nación in Communication EF/92.2000 No. 243-2013, Ms Nancy Raquel Navarro Hoyos joined the staff of the Banco on 15 August 2008 as a professional grade I analyst in the taxation unit of the accounting department, where she remained until her transfer and subsequent appointment as a technical credit specialist, which was still a professional grade post. The Government states that, according to the enterprise, Ms Navarro Hoyos was not reclassified to a lower grade, nor was her salary cut.

685. As to the anti-union transfer of the trade union leader Ms Navarro Hoyos, the Government states that (in response to the statement of the complainant union to the effect that the Ministry of Labour and Employment Promotion issued Directorate Resolution No. 450-2013-MTPE/1/20.43, in which it confirmed that the transfer of Ms Navarro Hoyos constitutes an act that was unlawful, affected her dignity and also separated her from the workers she represented; in short, a hostile act) the Labour Inspection Directorate, under Offence Notification No. 207-2013, imposed a fine on the Banco amounting to 5,735 nuevos soles (PEN) for acts of hostility; and, under Sub-directorate Resolution No. 431-2013-MTPE/1/20.43, another fine amounting to PEN3,700 for an extremely serious violation of the legislation in force, a fine which was partially revoked and subsequently confirmed in all other aspects by Directorate Resolution No. 450-2013-MTPE/1/20.4. The Government also states that, under Ministerial Resolution No. 235-2008-TR of 6 August, a decision was taken to reinstate her to her post without prejudice to the Banco's legal authority to relocate staff to meet the exigencies of its services.

686. The Government adds that, as regards Directorate Resolution No. 450, and according to the information provided by the general management of the Banco in a communication dated 15 October 2013, the Labour Division of the Legal Advice Department of the Banco has filed an administrative appeal against the decision of the Ministry of Labour.

687. The Government states that the legal proceedings initiated by Ms Navarro Hoyos against the Banco are in their final stage and before the 11th Specialized Transitory Labour Court of the judiciary, for which reason it is the responsibility of the judiciary to rule on this case and, if it finds that the fundamental rights of Ms Navarro Hoyos have been violated, it shall determine the appropriate reparation measures. In its communications of 4 and 15 August and 20 October 2014, the Government states that the Banco has also lodged an appeal against the administrative resolution which imposed the fine.

688. As to SUTBAN's allegation that Ms Navarro Hoyos has been the victim of systematic and continuous acts of hostility, the Government states that Ms Navarro Hoyos has filed the relevant criminal complaints and that the judiciary is currently examining the facts, and that the parties involved are being provided with all the guarantees of due process to allow them to submit any evidence they consider to be relevant in the exercise of the right to defence in a democratic State such as Peru.

689. However, the Government states that the supranational protection system cannot and should not be used as a fourth court, given the system's subsidiary nature, when internal legal proceedings initiated on the same grounds that formed the basis of the complaint at the international level are under way.

C. The Committee's conclusions

690. *The Committee notes that the complainant organization CTP finds the alleged dismissal of the trade union leader Ms Rosa Isabel Méndez Tandaypán to constitute an act of anti-union discrimination that it attributes to her intense and successful involvement in trade union activities over a number of years; to her being a member of the negotiating committee for the 2011 list of claims (which remains open as it is at the arbitration stage); and to a criminal complaint that she submitted against high-ranking officials of the Banco de la Nación for anti-union practices. The Committee notes that the complainant organization highlights that the dismissal occurred in the context of an internal union dispute, which has been brought before the judicial authority in the form of legal proceedings against the new executive committee of the trade union (November 2011), and that the Banco's decision to dismiss Ms Méndez Tandaypán was taken before the judicial authority could rule on the case and before the collective bargaining of the list of union claims for 2011 could be completed.*

691. *The Committee takes note of the Government's statements to the effect that: (1) the union leave granted to Ms Méndez Tandaypán on 12 February 2008 expired on 30 June 2012; (2) the General Secretary of the trade union informed the Banco on 30 November 2011 that a decision had been taken to dismiss Ms Méndez Tandaypán from the trade union and the negotiating committee for the 2011 list of claims, and that she was no longer a representative of the trade union, the subsequent General Secretary informing the Banco on 4 June 2012 that Ms Méndez Tandaypán was no longer a trade union leader and that, despite that fact, the Banco was continuing to grant her union leave, for which reason the trade union requested it to justify the use of union leave (according to the Government, the trade union leader was entitled to attend the meetings of the negotiating committee but not to indefinite union leave); (3) despite the fact that her union leave expired on 30 June 2012, Ms Méndez Tandaypán was absent from work between 2 and 13 July 2012 and was given a period of six days to submit her deposition but no decision was taken to dismiss her, rather she was urged to return to work; she subsequently continued to absent herself from work without just cause and only submitted her deposition on 21 September 2012; (4) under these circumstances, the Banco informed Ms Méndez Tandaypán on 4 October 2012 of its decision to dismiss her for having committed a serious offence, which is referred to in article 25, subparagraph (h) of the single consolidated text of Legislative Decree No. 728; and (5) the investigation conducted by the labour inspectorate into the dismissal concluded that the Banco had not violated any social or labour regulations. Lastly, the Committee notes that the Government highlights that Ms Méndez Tandaypán was not a leader of the National Trade Union of Workers of Banco de la Nación (SINATBAN) and did not have trade union immunity when she was dismissed.*

692. *Taking into account the Government's explanations, the Committee requests the Government to take the necessary remedial measures if the proceedings initiated by Ms Méndez Tandaypán requesting her dismissal to be declared invalid determine there was an anti-union motive.*

693. *As to the allegation concerning the unlawful and anti-union transfer of the trade union leader Ms Navarro Hoyos, the Committee takes note of the allegations that the trade union leader, Ms Navarro Hoyos, has filed judicial, labour and criminal complaints against her supervisor for systematic and continuous acts of hostility, which, according to the allegations, have been the cause of illness and a negative performance review. The Committee notes with interest the Government's statements indicating that under Resolution No. 235-2008-TR of the Labour Ministry a decision was taken to reinstate her to her post. The Committee notes that the administrative authority imposed a fine on the Banco for acts of hostility against the trade union leader, against which the Banco has appealed.*

The Committee's recommendation

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

> ***The Committee requests the Government to take the necessary remedial measures if the legal proceedings initiated by Ms Méndez Tandaypán requesting her dismissal to be declared invalid determine there was an anti-union motive.***

CASE NO. 2998

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

Complaint against the Government of Peru presented by
– the Confederation of Workers of Peru (CTP) and
– the National Federation of Workers of the National Programme for Direct Support to the Most Needy (the Juntos Programme) (FENATRAJUNTOS)

Allegations: Non-renewal of administrative service contracts or dismissal in two public institutions of union officials who represented their union in the collective bargaining process; among other things, refusal to grant union leave to union officials with this type of contract, obstacles to collective bargaining and coercion of union members by a representative of a public institution into leaving the union, etc.

695. The Committee last examined this case at its March 2014 meeting, when it presented an interim report to the Governing Body [see 371st Report, paras 705–732, approved by the Governing Body at its 320th meeting (March 2014)].

696. Subsequently, new allegations and additional information were presented by the Confederation of Workers of Peru (CTP) in a communication dated 17 May 2014 and by the National Federation of Workers of the National Programme for Direct Support to the Most Needy (the Juntos Programme) (FENATRAJUNTOS), a CTP affiliate, in communications dated 21 October 2013, 10 January and 12 May 2014.

697. The Government sent new observations in communications dated 31 January, 3 June, 7 July and 6, 18 and 25 August 2014.

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

A. Previous examination of the case

699. At its March 2014 meeting, the Committee made the following recommendations on the pending issues [see 371st Report, para. 732]:

(a) The Committee requests the complainant organizations to indicate whether the union officials Mr Víctor Vicente Basantez Roldán and Mr Roger Freddy Gamboa Reyes have lodged appeals before the courts against the non-renewal of their contracts.

(b) Noting with regret that the Government has not sent specific information on the allegations concerning the non-renewal of the administrative service contracts of the union officials Mr Gerald Alfonso Díaz Córdova, Mr Jorge Dagoberto Mejía Maza and Ms Estela González Bazán, of the union of workers operating in the Juntos Programme, and that neither has it responded to the allegations by the complainants concerning the refusal to grant trade union leave, the Committee requests the Government to send without delay its observations on these allegations and to institute an investigation through the Labour Inspectorate in this regard, including into the recent allegations of 30 December 2013 relating to the decrease in the number of its affiliates in the various offices of the Juntos Programme.

(c) The Committee generally recalls the principle according to which, while it does not have the mandate and will not pronounce itself with respect to the advisability of recourse to fixed-term or indefinite contracts, the Committee wishes to draw to attention that, in certain circumstances, the employment of workers with successively renewed fixed-term contracts for several years may affect the exercise of trade union rights. The Committee requests the Government to pay attention to this principle when conducting the relevant investigations.

(d) The Committee invites the complainant organizations to provide detailed information on the allegations relating to the coercion of workers to withdraw from the union.

B. Additional information and new allegations by the complainant organizations

700. In its communications of 17 May 2014, the CTP and FENATRAJUNTOS allege that the Juntos Programme, through the Public Prosecutor of the Ministry of Development and Social Inclusion, had brought an invalidation appeal against the registration of FENATRAJUNTOS.

701. In its communications of 21 October 2013, and 10 January and 12 May 2014, in response to recommendation (a) made by the Committee in its previous examination of the case, FENATRAJUNTOS states that union leader Mr Roger Freddy Gamboa Reyes has initiated legal proceedings challenging the failure to renew his contract. It adds that, between 2012 and 2013, the Juntos Programme failed to renew the contracts of 27 union leaders in Lima and in seven regions. FENATRAJUNTOS also maintains that the Juntos Programme has pressured its members to submit letters of withdrawal from the union and testimonials in support of the management exercised by the head of the Programme's national office; these letters were sent, not to the trade union as they should have been, but to the employer, because the authors were afraid that their contracts would not be renewed and were subjected to verbal threats of the consequences if they left any evidence, as union leaders in the city of Trujillo confirmed.

702. FENATRAJUNTOS also alleges that the Juntos Programme did not allow two of its leaders to participate in collective bargaining on the list of demands for 2012–13.

C. The Government's reply

703. In its communications of 31 January, 3 June, 7 July, and 6, 18 and 25 August 2014, in response to recommendation (a) made by the Committee in its previous examination of the case, the Government states that the complainant organizations have not responded to the Committee's request that they indicate whether the union official, Mr Vicente Basantes Roldán, had lodged an appeal before the administrative dispute courts against the non-renewal of his administrative service contract. The Government notes that Mr Roger Freddy Gamboa Reyes has appealed for reinstatement and is awaiting a judgment but that the Office of the Provincial Public Prosecutor has expressed the view that the complaint is baseless.

704. With respect to recommendation (b), in response to the allegations regarding the failure to renew the administrative service contracts of union leaders, the Government states that these are fixed-term contracts and that, for budgetary reasons, they cannot extend beyond the end of the fiscal year in which the worker was hired; therefore, contrary to the claimants' contention, non-renewal is not comparable to dismissal, let alone arbitrary dismissal or a unilateral decision of the employer to terminate the contract. The contracts of these three individuals were not renewed because they had expired (in the specific case of Mr Gerald Alfonso Díaz Córdoba, non-renewal was also related to the abolition of the administrative department in which he worked) and all three of them have lodged appeals before the courts challenging the failure to renew their contracts. The Government reiterates the comprehensive information on the legal regime governing administrative service contracts that it provided in its previous replies.

705. Concerning the alleged refusal to grant union leave, the Government maintains that the Juntos Programme made every accommodation, including by granting union members from remote provinces days of leave at full pay so that they could participate in the negotiations held at the Ministry of Labour and Employment Promotion in Lima (the Government mentions nine such meetings).

706. With regard to the alleged decrease in the number of union members at the various offices of the Juntos Programme, the Government states that, by Order No. 708-2012-MIDIS-PNADP-DE, the Programme requested the trade union to submit a list of its members and that the union leaders never did so. This omission by the union was reported to the Collective Bargaining Sub-directorate of the Ministry of Labour.

707. The same request was made and ignored again in 2014. Thus, the Juntos Programme does not know who the trade unions' members are and, consequently, there can be no question of a Programme plan to "decrease the number of members".

708. Furthermore, in the collective agreement concluded, the Juntos Programme undertook: (i) to respect the trade union rights of all union leaders and of unions that have been established at the national level and recognized by the Ministry of Labour and Employment Promotion; (ii) not to take reprisals against union leaders for their organizational work on behalf of the workers; (iii) to permit the holding of peaceful meetings inside the Juntos Programme buildings; and (iv) to authorize the placement of union bulletin boards in the main lobby and the various offices.

709. Concerning the new allegations that collective bargaining was hindered by an attempt to prevent two of the complainant federation's leaders from participating in the negotiations, the Government maintains that the collective agreement with the union, representing the Juntos Programme's workers for the period 2012–13, was signed on 30 September 2013 and that two of the complainant federation's leaders participated in the bargaining process

as advisers. The Government therefore regrets that, on 21 October 2013, this national federation presented a complaint to the Committee on Freedom of Association.

710. The Government states that FENATRAJUNTOS has provided no evidence in support of its allegations regarding hidden layoffs and pressure on trade union leaders and members. In that connection, according to the Office of the Second Provincial Public Prosecutor of the La Libertad judicial district, the claims regarding the case of Mr Roger Freddy Gamboa Reyes are wholly unfounded. Therefore, there has been no violation of any fundamental right of the complainant federation's workers or of their trade union rights; those rights are recognized under the law, which provides for the lodging of judicial appeals, and in the collective agreement.

711. The Government denies the allegation that the Juntos Programme authorities are supposedly pressuring trade union members.

712. With regard to the allegation that the Juntos Programme, through the Public Prosecutor in the Ministry of Development and Social Inclusion, has brought an invalidation appeal against the inclusion of the complainant federation in the registry of trade union organizations of public servants (ROSSP), the Government denies that such an appeal has been brought and adds that the current legislation and, in particular, article 4 of Supreme Decree No. 010-3003 TR, adopting the single consolidated text of the Collective Labour Relations Act, establishes that the Government must refrain from any type of action that might hinder, restrict or impinge on workers' right to form unions and from any form of interference with the establishment, administration or sustainability of the trade unions of which they are members; and that Article 3 of ILO Convention No. 87 establishes that "[t]he public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof" and that "[w]orkers' and employers' organisations shall have the right [...] to elect their representatives in full freedom ...". The Government emphasizes that FENATRAJUNTOS, its Statute and its governing board are registered for the period 27 May 2012 to 26 May 2014.

713. The Government adds that the Public Prosecutor's Office, as the State defence body, is responsible for determining whether the documents issued by public entities comply with the law and whether State organizations, such as trade unions, have been registered in accordance with the relevant legislation. The Government, through the competent bodies, is empowered to determine whether a trade union no longer meets the legal requirements for existence. Contrary to the allegations made by the CTP, the document to which FENATRAJUNTOS refers merely requests the submission of information to the Juntos Programme; it does not violate the right to freedom of association and is not, as the complainant trade unions maintain, an invalidation appeal against the registration of the complainant federation.

D. The Committee's conclusions

Issues raised during the previous examination of the case

714. *With regard to recommendation (a), made by the Committee in its previous examination of the case, the Committee takes note of the information provided by the Government: the contracts of the union leaders, Mr Gerald Alfonso Díaz Córdova, Mr Jorge Dagoberto Mejía Maza and Ms Estela González Bazán, were not renewed because they were administrative service contracts, which are fixed-term, and had expired; and the union leaders have appealed for reinstatement. The Committee requests the Government to keep it informed of the outcome of these appeals.*

715. *With respect to recommendation (b), in which the Government was requested to institute an investigation, through the labour inspectorate, into the allegations that, owing to discrimination, the number of its members in the various offices of the Juntos Programme has decreased, as well as the allegations of coercion. Concerning recommendation (d), in which the complainant organizations were requested to provide detailed information on the allegations relating to the coercion of Juntos Programme workers to withdraw from the union, the Committee observes that the Government makes no mention of the labour inspectorate investigation into the decrease in the number of union members that the Committee requested.*

716. *The Committee takes note of the most recent information provided by the complainant federation, which alleges that, between 2013 and 2014, the Juntos Programme failed to renew the contracts of 27 union leaders in Lima and in seven regions; the complainant federation stresses that union members were pressured into signing letters of withdrawal from the union, that those letters were sent not to the union, but to the employer, and that verbal threats, of which there is no evidence, gave rise to the fear of non-renewal.*

717. *The Committee notes: (1) the Government's statement that these are fixed-term contracts which expire at the end of the fiscal year; (2) the statement by the Juntos Programme that it does not know who the union members are because, despite its request, the union has refused to provide their names and that consequently, in its opinion, there can be no question of a plan to decrease the number of union members; (3) that the collective agreement includes provisions on freedom of association and prohibits reprisals against unions while the law recognizes the trade union rights of Juntos Programme workers and their right to appeal before the courts; and (4) that the complainant organizations have provided no evidence of pressure or hidden layoffs.*

718. *The Committee emphasizes that there is a contradiction between the allegations and the Government's reply. It notes, however, that the Government has not ordered an investigation, through the labour inspectorate, into the allegations of pressure to withdraw from union membership and failure to renew contracts for union-related reasons. While it is aware that it is difficult to conduct such investigations and to find evidence of this type of problem, it requests that the investigation be conducted without delay and that it be kept informed of the outcome.*

719. *The Committee recalls that fixed-term contracts should not be used deliberately for anti-union purposes. Further, the Committee points out that, in certain circumstance, the employment of workers through repeated renewals of fixed-term contracts for several years can be an obstacle to the exercise of trade union rights. The Committee requests the Government to take this principle into account when conducting the relevant investigations.*

New allegations

720. *With regard to the new allegations concerning the failure to allow two FENATRAJUNTOS leaders to participate in the union's collective bargaining with the Juntos Programme, the Committee takes note of the Government's statement that both leaders participated as advisers and that the collective agreement was signed.*

721. *Concerning the alleged refusal to grant union leave, the Committee notes the Government's reference to the provisions of the collective agreement on the placement of union bulletin boards, the holding of union meetings and the granting of union leave, particularly so that union leaders – including those from the regions – can participate in negotiations on the collective agreement (nine days of meetings).*

722. *With regard to the complainants' allegation that, in February 2013, the Juntos Programme, through the Public Prosecutor of the Ministry of Development and Social Inclusion, brought an invalidation appeal against the registration of the complainant federation, the Committee notes that the Government categorically denies this allegation and states that the complainant federation, its Statute and its governing board are registered. The Committee takes note of the Government's statement that the Public Prosecutor merely asked the Juntos Programme whether the federation still met the legal requirements for existence. While the Committee observes that the complainants' and the Government's accounts differ, it notes that in all cases the federation is still functioning normally and will therefore not pursue its examination of this allegation.*

The Committee's recommendations

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

(a) The Committee requests the Government to keep it informed of the outcome of the judicial appeals lodged by the union leaders, Mr Roger Freddy Gamboa Reyes, Mr Gerald Alfonso Díaz Córdova, Mr Jorge Dagoberto Mejía Maza and Ms Estela González Bazán against the failure to renew their administrative service contracts.

(b) With regard to the allegations concerning the use of pressure and verbal threats so that union members would withdraw from the union, while the Committee takes note of the Government's statements concerning the difficulties in conducting such investigations and in finding evidence of pressure or threats it stresses that the complainant organizations allege that there has been a significant decrease in the number of union members and that, between 2012 and 2013, the contracts of 27 union leaders were not renewed. Therefore, it again requests the Government to initiate an investigation through the labour inspectorate without delay and to keep it informed of the outcome.

(c) The Committee recalls that fixed-term contracts should not be used deliberately for anti-union purposes. Further, the Committee points out that, in certain circumstances, the employment of workers through repeated renewals of fixed-term contracts for several years can be an obstacle to the exercise of trade union rights. The Committee requests the Government to take this principle into account when conducting the relevant investigations.

CASE NO. 3009

DEFINITIVE REPORT

Complaint against the Government of Peru presented by the Single Confederation of Workers of Peru (CUT–Peru) supported by the International Trade Union Confederation (ITUC)

Allegations: Obstacles to collective bargaining at the branch level in enterprises of the telephone sector in Peru

724. The complaint is contained in a communication of the Single Confederation of Workers of Peru (CUT–Peru) dated 14 January 2013. This organization submitted additional information and new allegations in a communication dated 9 December 2013. The International Trade Union Confederation (ITUC) associated itself with the complaint of CUT–Peru in a communication dated 19 December 2013.

725. The Government sent its observations in communications dated 17 May 2013, and 17 May, 5 and 10 June 2014.

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

A. The complainants' allegations

727. In its communication of 19 December 2013, CUT–Peru, which includes among its members the Trade Union of Workers of Telefónica del Perú (SITENTEL), alleges that all the lists of demands presented by SITENTEL at the branch level since 2007 were rejected by the enterprises of the Telefónica group in Peru and its subcontractors through various forms of opposition that they initiated. In the cases where, following lengthy administrative proceedings, the Ministry of Labour issued rulings stating that SITENTEL was justified in entering into collective bargaining, the enterprises of the group in Peru and its subcontractors resorted to various delaying tactics such as appeals for review and *amparo* proceedings (for the protection of constitutional rights), to avoid entering into collective bargaining or, where it was not possible to delay it any longer, to avoid reaching any conclusion. To date, no collective bargaining process, either with subsidiaries or with subcontractors, has resulted in the signing of a collective agreement. It is therefore clear that the enterprises of the group in Peru have no interest in pursuing collective bargaining.

728. The administrative and judicial appeals that group enterprises in Peru have lodged do not recognize the bargaining capacity of SITENTEL, ignoring section 47 of Supreme Decree No. 10-2003-TR approving the Single Consolidated Text of Peru's Industrial Relations Act, which provides that "the respective union" will have the capacity for representation in the collective agreements of enterprises, which is not necessarily the enterprise union.

729. CUT–Peru states that the different enterprises of the group in Peru have not recognized the representative capacity of SITENTEL. The workers of those enterprises have indicated – in their respective general assemblies – that they wish SITENTEL to represent them in collective bargaining with the subcontractor and subsidiary enterprises. In any event, the

Ministry of Labour has recognized that SITENTEL is sufficiently representative to bargain at the enterprise level.

730. In the cases where the administrative and/or judicial authorities have recognized the right of their trade unions to enter into bargaining and have accordingly ordered the creation of bargaining committees, the enterprises of the group in Peru have not made the necessary efforts to engage in any real or constructive bargaining, let alone to reach an agreement. In short, they have failed to abide by the principle of bargaining in good faith.

731. CUT–Peru points out that the enterprises of the group in Peru are leaders in the telecommunications sector, holding a solid position in the Peruvian market and with continued growth. The enterprises in question are: Telefónica del Perú SAA, Teleatento del Perú SAC, Telefónica Gestión de Servicios Compartidos Perú SAC, Media Networks Latin America SAC, Terra Networks Peru SA, and their various subsidiaries. These enterprises also have close economic and administrative ties with a number of "partner" enterprises, which provide services for the various subsidiaries in the group.

732. CUT–Peru explains that the decision not to include the "subcontracting" enterprises of the group in Peru in collective bargaining at branch level is based on the subordinate administrative and employment relationship that these enterprises have with one of the main enterprises of the group in Peru, Telefónica del Perú SAA. Paradoxically, the group has undertaken to safeguard fundamental labour principles in the enterprises with which it signs labour or service contracts. This commitment is included in the UNI–Telefónica code of conduct, signed on 17 December 2007, and in the corporation's guiding principles.

733. Throughout its structure, the conduct of the business group contravenes respect for freedom of association and the right to collective bargaining, denying the bargaining capacity of SITENTEL and failing to comply with the rulings of the Administrative Labour Authority, which declare that the aforementioned unions are entitled to bargain with local enterprises.

734. In the cases where collective bargaining has been initiated under the mandate of the Administrative Labour Authority, the enterprises of the group in Peru have not made the slightest effort to engage in constructive collective bargaining, let alone to enter into collective agreements. This is so much so that they refuse to submit to arbitration or conciliation, or to any of the alternative dispute resolution measures proposed by the aforementioned trade union organizations.

735. Consequently, no collective agreements on working conditions have been signed since 2006, despite the existence of 25 current lists of demands, which has meant that, since then, the working conditions of SITENTEL members have not improved.

736. CUT–Peru alleges labour law violations, job insecurity and anti-union practices, acts of harassment, unfair dismissals and threats of non-renewal of contracts for supporting the SITENTEL demand that the subcontractor and subsidiary companies comply with the Ministry of Labour rulings concerning ongoing negotiations, as proposed by SITENTEL (especially considering that the non-renewal of contracts seriously damages capacity of SITENTEL to bargain collectively by reducing its membership). Furthermore, CUT–Peru denounces a failure to enter into indefinite-term contracts with its members, in addition to other forms of precarious employment.

737. A specific example is that of Telefónica del Perú and its subsidiaries and subcontractors, which carry out their activities following the productive decentralization model. Under this model, core activities are outsourced to other enterprises, diversifying the enterprise's activities among subsidiaries and subcontractors, and thereby enabling it to avoid its labour obligations, for example with regard to the real amount of profit-related pay, and to prevent

collective bargaining with the actual employer mentioned, which only agrees to enter into collective bargaining with a small number of its workers. This is evidently to the detriment of the workers and fails to comply with the principles of corporate social responsibility, which apply to all enterprises, especially transnational ones.

738. CUT–Peru also denounces the lack of effective measures to guarantee union bargaining. National regulations mostly only provide for financial sanctions for enterprises that refuse to enter into collective bargaining, and there are no mechanisms to ensure an effective restitution of the right to collective bargaining. Furthermore, by law the fines imposed by the Administrative Labour Authority must not exceed 30 tax units. In 2013, the tax unit value was of 2,700 new soles (PEN). This amount might appear high for micro- and small enterprises, but is negligible for large enterprises. It is therefore much easier for them to pay the fine than to engage in collective bargaining, as in the case of Telefónica del Perú and its subsidiaries and subcontractors.

739. In its communication of 9 December 2013, CUT–Peru states that, to date, no bargaining process with Telefónica subsidiaries or partners has resulted in the signing of a collective agreement because the enterprises of the Telefónica group in Peru are not interested in pursuing collective bargaining.

740. CUT–Peru states that the main issue raised in this complaint is not new to the ILO Committee on Freedom of Association, given that on 2 December 2008 a complaint was submitted (Case No. 2689) that reported the refusal by group enterprises and their partners to enter into collective bargaining at branch level with the higher level organizations representing their workers.

B. The Government's reply

741. In its communications of May 2013 and 10 June 2014, the Government forwards the comments of the Telefónica group enterprises with regard to this complaint. These are as follows:

(a) Trade union activities within the Telefónica group are intensive and the group currently has nine trade union organizations (SITENTEL, FETRATEL, SITRATEL Centro, SITRATEL San Martín, the Single Union of Workers of Telefónica del Perú (SUTTP), the Trade Union of Employees of Telefónica del Perú (SETP), the Single Union of Workers of Telefónica Móviles (STTM) and the Single Union of Workers of Telefónica Serviciós Comerciales (SUTTSC)). These trade union organizations are recognized as representatives of their member workers and some of the group enterprises are currently engaged in collective bargaining with those trade union organizations, depending on the enterprise and the scope of the constitution and action of the organizations. In this context, trade union membership in Telefónica group enterprises is as follows: in Telefónica del Perú SAA, it is almost 80 per cent of employees, while in Telefónica Móviles SA it is less than 30 per cent; it is 33 per cent in Telefónica Servicios Comerciales; 6 per cent in Telefónica Gestión de Servicios Comerciales SAC; 11 per cent in Telefónica Centros de Cobro SAC, and 9 per cent in T-Gestiona Logística.

(b) There are currently ten collective agreements in force in the enterprises of the Telefónica group, signed with several of these trade union organizations. Without prejudice to collective agreements signed as a result of bargaining processes, Telefónica group enterprises have also reached agreements with a number of these trade union organizations in the wake of corporate restructuring, in order to ensure that the individual and collective rights of the workers involved in those processes are not affected.

(c) It is in this context that SITENTEL alleges that all the lists of demands that it has presented to Telefónica group enterprises since 2007 have been rejected. It should be noted that SITENTEL is a telecommunications sector trade union, and that the following

Telefónica group telecommunications enterprises bargain with that trade union, by mutual consent, at the enterprise level: Telefónica del Perú (a Telefónica group enterprise providing land-line telephone services) and Telefónica Móviles (a Telefónica group enterprise providing mobile phone services), as indicated in the copies of the last collective agreements signed with that trade union. Furthermore, although it does not operate in the telecommunications sector, Telefónica Gestión de Servicios Compartidos (a Telefónica group enterprise providing administrative support services) is currently engaged in bargaining at the enterprise level with SITENTEL, voluntarily and under an agreement signed in 2001 with FETRATEL (for which SITENTEL was at the time the grass roots union). The above is established in the copy of the aforementioned agreement and of the last collective agreement signed by SITENTEL with Telefónica Gestion de Servicios Compartidos. The allegations that "to date, no bargaining process … has resulted in the signing of a collective agreement", and that "the enterprises of the Telefónica group in Peru have no interest in pursuing collective bargaining" are therefore unfounded. Furthermore, the group enterprises bargain collectively with other trade union organizations, with which they have also signed collective agreements.

(d) Although it is true that two enterprises of the Telefónica group, Telefónica Servicios Comerciales (a Telefónica group enterprise providing goods and services) and Telefónica Centro de Cobros (a Telefónica group enterprise providing payment services) opposed collective bargaining with SITENTEL in 2011, they did so on objective and reasonable grounds: That they were not enterprises of the telecommunications sector, and that they did not hold an agreement to bargain at branch level. The dispute was settled by the Administrative Labour Authority to the satisfaction of those enterprises, as indicated in the administrative rulings that SITENTEL has attached to its allegations. It should be noted that, although SITENTEL could have brought an appeal against the rulings, it did not do so and they have therefore been upheld.

(e) Currently, contrary to the principle of free and voluntary bargaining, compulsory arbitration has been imposed on both enterprises, by the unilateral decision of SITENTEL, in order to determine the level of bargaining, in accordance with section 61-A of the regulations of the Industrial Relations Act, approved by Supreme Decree No. 014-2011-TR. This is now under way. It should also be specified that Telefónica Servicios Comerciales is engaged in collective bargaining with the trade union created in that enterprise, as indicated in the last negotiating record signed by the parties at the conciliation stage.

(f) A table is provided below setting out the status of collective relations between SITENTEL and Telefónica group enterprises.

Enterprise	**TdP** (Telefónica del Perú)	**TM** (Telefónica Móvil)	**TSC** (Telefónica Servicios Comerciales)	**TGSC** (Telefónica Gestión de Servicios Compartidos)	**TCC** (Telefónica Centro de Cobro)
Total number of workers in the enterprise	2 747	2 890	298	2 043	323
SITENTEL members in the enterprise	168	38	32	35	16
Collective bargaining situation	Direct discussions	Direct discussions	Compulsory arbitration to determine the level of bargaining	Direct discussions	Compulsory arbitration to determine the level of bargaining

(g) With respect to other allegations (SITENTEL states that its members have been harassed and charged with various breaches of the regulations of Telefónica group enterprises in order to terminate their employment relationship, and this has been linked to their exercise of freedom of association and their support of the demands made by SITENTEL; these dismissals are said to damage the capacity of SITENTEL to bargain collectively by reducing its membership), the enterprises claim that the allegations made

by SITENTEL are false and are not supported by the evidence provided by SITENTEL. Although Telefónica del Perú dismissed six workers who were trade union members and it has been accused of anti-union actions on that count, the workers in question were members of the Single Union of Workers of Telefónica del Perú and their dismissal was in no way related to their trade union membership or to their exercise of freedom of association, but to serious acts of misconduct which, under labour legislation, establish a valid reason for dismissal. All those dismissal procedures have been challenged before the courts. One case has been resolved in favour of the enterprise and the other cases are still pending.

(h) As regards the allegations that the enterprise avoids entering into indefinite-term contracts with its workers and that the subcontractors of the Telefónica group fail to comply with their labour obligations, it should be noted that, under Peruvian labour law, temporary contracts are subject to compliance with the conditions established by the Act on Productivity and Labour Competitiveness, and that Telefónica group enterprises use temporary contracts when those conditions are met. Whenever workers employed by one of the enterprises in the group have considered that, in their case, the aforementioned conditions have not been met, they have challenged the validity of the temporary contract through administrative proceedings (inspections by the Ministry of Labour and Employment Promotion) or through the courts (in judicial proceedings).

(i) The proportion of workers under temporary contracts in the enterprises in which SITENTEL bargains collectively is as follows.

Enterprise	**TdP** (Telefónica del Perú)	**TM** (Telefónica Móvil)	**TGSC** (Telefónica Gestión de Servicios Compartidos)
Total number of workers	2 747	2 890	2 043
Number of workers under temporary contracts	45	134	1 546

(j) Although in the particular case of Telefónica Gestión de Servicios Compartidos, workers under temporary contracts represent 75 per cent of total contracts, the reason for this proportion is that the enterprise provides administrative support services through specific services and the implementation of projects in various sectors of activity, and that specific services of limited duration is one of the cases in which the use of temporary contracts is permitted in Peru, under section 63 of the Act on Productivity and Labour Competitiveness. In view of the above, it should be noted that the Ministry of Labour has been particularly active in its inspection of Telefónica group enterprises, where approximately 200 inspections were carried out between 2012 and May 2014. The use of temporary contracts has been one of the areas monitored in Telefónica group enterprises.

(k) It is precisely in Telefónica Gestión de Servicios Compartidos, an enterprise with which SITENTEL engages in bargaining and which hires the highest number of workers on temporary contracts, that the Ministry of Labour recently carried out an inspection in this regard. In the inspection report, the inspectors concluded that the enterprise complied with the legislation concerning temporary employment contracts.

(l) Regarding the SINTENTEL allegations, the enterprise states that Telefónica group enterprises are under obligation to apply corporate policies when they enter into service or employment contracts with other enterprises to avoid such contracts being considered illegal transfers of workers. In particular, the corporate responsibility policy for supply chains (the policy) and Corporate Directive ICC-001 (the directive) provide guiding principles for the whole Telefónica group supply chain. As an example of the above, the policy defines the respect of freedom of association as a principle to be observed by subcontractors. Furthermore, one of the prerequisites established by the directive for entering into employment or service contracts for core activities is the provision of evidence that "the subcontractor not only has an apparent legal status, but that it is verified, effective and autonomous; in other words, that it has an independent management and structure, and that it is sufficiently financially solvent to meet all its obligations and, in particular, its labour law obligations".

(m) Likewise, the directive indicates that subcontractors are responsible for meeting their wage, social security and occupational safety obligations in respect of their own staff; and it establishes mechanisms to monitor compliance with such obligations.

(n) The above indicates that subcontracting is not used by Telefónica group enterprises as a means of making jobs precarious, as SITENTEL has tried to argue through the allegations in its complaint. However, given that the subcontractors are autonomous in their managerial decisions, Telefónica group enterprises do not participate in the decisions of its subcontractors, and they are only informed of these through the monitoring of compliance with policies and directives and of the impact that this could have on the commercial relationship with its enterprises.

Collective bargaining 2001–12

742. In its communication dated 17 May 2014, the Government declares that the 2011–12 collective bargaining process between SITENTEL and the subsidiary enterprises of Telefónica del Perú SA began on 27 October 2011, when SITENTEL proposed the establishment of collective bargaining at branch level concerning the provision of telecommunication services to the following Telefónica del Perú SA subsidiary enterprises: Teleatento Perú SAC, Telefónica Servicios Comerciales Perú SAC, Telefónica Centro de Cobros SAC. and Telefónica Móviles SA In its ruling No. 14-2012/MTPE/2/14, of 13 November 2012, the Labour Directorate dismissed the appeal for review lodged by Telefónica Servicios Comerciales Perú SAC against the regional directorate ruling confirming a ruling of the Regional Directorate for Labour and Employment Promotion of Metropolitan Lima, which upheld the opposition of the aforementioned enterprises to bargaining at branch level (as requested by the trade union organization), finding that no agreement existed between the parties to establish bargaining at that level. However, the same ruling indicated that the arguments put forward by the enterprises regarding the conclusion of prior agreements at the enterprise level with SITENTEL and the fact that they did not perform telecommunications-related activities did not prevent the initiation of collective bargaining with SITENTEL. Directorate Ruling No. 14-2012-MTPE/2/14 established that the disagreement between the parties – SITENTEL and the Telefónica del Perú subsidiary enterprises – regarding the level at which the first bargaining process should be held could be resolved by means of optional arbitration, in accordance with the provisions made by the Constitutional Court in a ruling of 2009 and Supreme Decree No. 014-2011-TR. Accordingly, in the case analysed in this section, it should be noted that the Administrative Labour Authority has duly established the limits of its own decision-making capacity, simply advising as to the most appropriate mechanism for reaching a resolution on the level at which bargaining should take place, either on the initiative of the parties (via voluntary arbitration), or of one of the parties (through optional labour arbitration).

743. The Government states that the 2011–12 collective bargaining process between SITENTEL and the subcontractors of Telefónica del Perú SA began on 30 October 2010, when SITENTEL initiated collective bargaining at branch level concerning the provision of telecommunication services to the following subcontractors of Telefónica del Perú SA: ITETE Perú SA, Cobra Perú SA, Consorcio Antonio Lari Mantto and Emerson Network Power del Perú SAC In its ruling No. 021-2011-MTPE/2/14 of 4 November 2011 (which constitutes a binding administrative precedent), the General Labour Directorate declared unfounded the appeal for review lodged by the four aforementioned enterprises against the ruling of the Regional Directorate for Labour and Employment Promotion, which stated that the four subcontractors carried out telecommunications-related activities – both supplementary and ongoing – for the user enterprise Telefónica del Perú SA, and that SITENTEL was therefore fully entitled to propose collective bargaining. Directorate Ruling No. 021-2011-MTPE/2/14 was issued, together with other arguments, on the following grounds: (i) the enterprises in question were considered to be part of the telecommunications sector, in accordance with the principle of substance over form, which is recognized by the

inspectorate under the General Labour Inspection Act No. 28806. Furthermore, it was understood that, according to this principle, the services of the four enterprises do not belong or are not ascribed to the user enterprise, demonstrating that the ongoing provision of services that are supplementary but essential for the performance of the activities carried out by the user enterprise determines that the workers are part of the telecommunications sector; (ii) regarding the aforementioned administrative rulings, it stated that the erroneous interpretation of the scope of freedom of association was based on a misinterpretation of section 5 of the Industrial Relations Act, using a criterion no longer in use. Collective bargaining in the current context of productive decentralization requires harmonious consistency between freedom of association and existing labour standards relating to collective labour rights, which should be interpreted with the intention to protect, guaranteeing the full exercise of freedom of association as a fundamental right; and (iii) lastly, it stated that, in determining the level of collective bargaining, note should be taken of the pronouncements of the Constitutional Court in its ruling on Case No. 03561-2009-PA/TC regarding the application of dispute settlement mechanisms (in particular, labour arbitration) where there has been no prior bargaining between the parties and they have been unable to reach an agreement on the level at which bargaining should take place.

744. The Government adds that, although the ruling brought the administrative proceedings to an end, in March 2012 Cobra Perú SA filed an appeal for review against a directorate ruling of the Regional Directorate for Labour and Employment Promotion, which it had followed up by calling on the parties to participate in conciliation committees to help them resolve their dispute. In Directorate Ruling No. 22-2013/MTPE/2/14, of 18 April 2013, the appeal was declared inadmissible on the grounds that the administrative remedies had been exhausted. On 6 November 2011 and 24 May 2012, the Sub-Directorate for Collective Bargaining of the Regional Directorate for Labour and Employment Promotion of Metropolitan Lima requested the four subcontractors (ITETE Perú SA, Cobra Perú SA, Consorcio Antonio Larí Mantto and Emerson Network Power del Perú SAC) to convene the bargaining committee for the 2010–11 list of demands. In each case, the enterprises submitted various communications and appeals opposing the initiation of bargaining. All of these were rejected. In a communication of 29 August 2012, SITENTEL requested the Regional Directorate for Labour and Employment Promotion of Metropolitan Lima to refer the case to the General Labour Directorate. Under notification No. 15351-2012-MTPE/2/20, of 25 September 2012, this directorate transferred the request to the General Labour Directorate, which was referred to the Directorate for the Prevention and Resolution of Labour Disputes and Corporate Social Responsibility on 15 October 2012. This body sent invitations to both parties to extra-procedural or conciliatory meetings on 7, 12 and 19 November 2012. These invitations received a reply from Emerson Network Power del Perú SAC and Cobra Perú SA, which excused themselves from participating in the extra-procedural or conciliatory meetings.

745. The Government states that the Directorate for the Prevention and Resolution of Labour Dispute and Corporate Social Responsibility has promoted other alternative dispute resolution mechanisms as a result of a series of actions linked to the collective labour dispute between the parties. In general, it should be noted that the effectiveness of such mechanisms does not depend on the will of the Administrative Labour Authority (although it is true that it must optimize its efforts, as has been the case, in assisting the parties to reach a solution). The resolution of the dispute, in such scenarios, ultimately depends on the goodwill of the collective parties. This explains why the aforementioned rulings establish arbitration as a suitable example of such mechanisms.

746. Faced with the demerger of one of the enterprises affiliated to Telefónica del Perú (Telefónica Gestión de Servicios Compartidos Perú SAC) to join another enterprise (T-Gestiona Logística), when the former was in the midst of collective bargaining, the

General Labour Directorate issued a technical opinion within the scope of its legal remit, at the request of SITENTEL, contained in Report No. 024-2013-MTPE/2/14, of 8 April 2013. The report stated that such changes in the structure of enterprises were an expression of freedom of enterprise and freedom of private initiative (both freedoms are enshrined in the Peruvian Constitution) and were therefore legitimate, provided that they did not infringe the freedom of association or the right to collective bargaining when applying the reasonability test.

747. The interpretation of this case (which is not subject to any specific regulations) indicated that the initiation of collective bargaining proposed in the 2011–12 SITENTEL list of demands met the requirements for its establishment and organization at the time at which the proposal was submitted. Accordingly, given that the trade union was still in existence, the collective bargaining process should have gone ahead, applying to those members who had not been transferred from Telefónica Gestión de Servicios Compartidos Perú SAC in the aforementioned demerger, or to all the workers of that enterprise if the conditions established in that regard in Peruvian legislation were met. In addition, the aforementioned report also took into consideration the situation of the workers transferred to Tgestion Logística, stating that, in their case, the legal consequence of the application of the rules established under the Industrial Relations Act allowed those persons to preserve, under their new contracts, the benefits obtained under the collective agreement in force in Telefónica Gestión de Servicios Compartidos Perú SAC at the time of the demerger.

748. Note should also be taken of the administrative proceedings filed by Cobra Perú against the Ministry of Labour and Employment Promotion seeking a court ruling declaring: (a) as its main claim, the cancellation of Directorate Ruling No. 021-201-MTPE/2/14, issued on 4 November 2011 by the Director of the General Labour Directorate in Case No. 132173-2012-MTPE/1/20.21, declaring inadmissible the appeal for review filed by the aforementioned enterprise against Directorate Ruling No. 022-2011-MTPE/1/20, issued on 3 October 2011 by the Director of the Regional Directorate for Labour and Employment Promotion of Lima; and (b) as an additional claim, the annulment of any subsequent administrative rulings and collective bargaining pursued by SITENTEL, and consequently declaring that the enterprise was under no legal obligation to bargain with the aforementioned trade union organization.

749. On 10 February 2012, the appeal was transferred, requesting that it be declared inadmissible, given that the appeal for review had been lodged after the expiry of the period established under section 8 of Supreme Decree No. 001-93-TR, amended by section 1 of Supreme Decree No. 017-2003-TR and paragraph 7 of the Single Text on Administrative Procedures of the Ministry of Labour and Employment Promotion, approved by Supreme Decree No. 016-2006-TR and other amendments, and because the merits for the rejection of the appeal lodged by the aforementioned enterprise were in conformity with the provisions of the Political Constitution of the State, ILO Conventions, Supreme Decree No. 010-2033-TR, and Act No. 27444.

750. Ruling No. 04 of 31 January 2012 acknowledged the challenge by the Trade Union of Workers of Telefónica del Perú and of the telecommunications sector (SITENTEL) against the appeal.

751. Ruling No. 07 of 11 June 2012 sets out the points of the proceedings, establishing the following areas of controversy: (a) determining the need to declare the invalidity of Directorate Ruling No. 021-2011-MTPE/2/14 issued by the General Labour Directorate; and (b) determining the need, as a result of the above, to dismiss any administrative rulings subsequently issued and collective bargaining pursued by SITENTEL, and consequently declare that the enterprise was under no legal obligation to bargain with the aforementioned trade union organization. Ruling No. 08 of 11 September 2012 notified the parties of

Decision No. 779-2012, issued by the Provincial Public Prosecutor of the Third Public Prosecution Department of Lima, recommending that the proposed appeal should be declared unfounded, and that the rulings be added to the case file pending a final decision. As a result of the implementation of the new Labour Procedure Act, the case was referred to the 19th Specialized Transitional Labour Court of Lima, where it is currently pending a ruling as to the merits.

752. In conclusion, the General Labour Directorate declared inadmissible the appeals for review filed by the four Telefónica del Perú SA enterprises against the ruling of the Regional Directorate for Labour and Employment Promotion, stating that the four subcontractors performed telecommunications-related activities for the user enterprise, Telefónica del Perú SA (hence, SITENTEL is fully entitled to propose collective bargaining in this area). At the legal level, the Prosecutor's Office of the Ministry of Labour and Employment Promotion is seeking to ensure that the collective bargaining process pursued by SITENTEL goes ahead and that the aforementioned enterprise is declared under a legal obligation to bargain with this trade union.

753. In its communication of 5 June 2014, the Government outlines some of the main arguments supporting the provisions of Directorate Ruling No. 147-2013/MTPE/2/14: (a) the rulings issued by the regional bodies of the Administrative Labour Authority do not impose bargaining on the parties at any specific level, but simply provide for the initiation of direct discussions and, in accordance with the principle of free and voluntary negotiation, the determination of the conventional and legislative terms and conditions of any agreements which may or may not be reached. This recognizes the principle enshrined in Article 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) of the ILO and in its provisions, and outlined by the Peruvian Constitutional Court in Case No. 03561-2009-PA/TC, stating that "... the State should not and must not use coercion to impose a system of collective bargaining on any organization … . Nevertheless, this does not prevent the State from making legislative provisions for mechanisms to assist in bargaining such as conciliation, mediation or arbitration, or for supervisory bodies with a mandate to facilitate bargaining"; (b) the determination of the bargaining level in collective bargaining processes must take into consideration the points set out by the Constitutional Court in Case No. 03561-2009-PA-TC, which indicate that the level of bargaining cannot be laid down by law, thus a law imposing a negotiating level cannot be applied; and (c) in this regard, note should also be taken of the conclusions of Directorate Ruling No. 021-2011/MTPE/2/14, issued in connection with a collective bargaining process similar to that between SITENTEL and the Telefónica group subcontractors and which constitutes a binding administrative precedent. This Directorate Ruling states that the process of productive decentralization that the principal enterprise (Telefónica SAA) has undergone does not diminish the capacity of trade union organizations to bargain collectively on relevant issues, thereby permitting the recognition of freedom of enterprise and freedom of association. Therefore, with a view to maintaining harmonious accord between the enterprise's right to decentralize phases of its production and the freedom of association, the existing labour standards relating to collective labour rights should be interpreted with the intention to protect, guaranteeing the full exercise of freedom of association as a fundamental right.

Collective bargaining 2013–14

754. As regards the period 2013–14, the Government reports that on 30 October 2013, SITENTEL presented the list of demands for the period 2013–14 in order to engage in bargaining at branch level with the employers Teleatento Perú SAC, Telefónica Servicios Comerciales Perú SAC and Telefónica Centros de Cobro SAC In Directorate Ruling No. 179-2013-MTPE/2/14 of 2 December 2013, the General Labour Directorate provided for the initiation of collective bargaining between SITENTEL and the aforementioned Telefónica group enterprises. In communications dated 16, 18 and 27 December 2013,

Telefónica Centros de Cobro SAC, Telefónica Servicios Comerciales and Teleatento del Perú SAC, respectively, indicated their opposition to the collective bargaining process; in a communication sent on 16 January 2014, SITENTEL submitted a written response to the opposition by the Telefónica group enterprises.

755. As regards the list of demands presented by SITENTEL (for the 2013–14 period), the Government reports that, on 30 October 2013, SITENTEL presented the branch-level list of demands for the period 2013–14 before the Administrative Labour Authority. It included the following Telefónica group subcontractors: (i) Instalación de Tendidos Telefónicos del Perú SA; (ii) Cobra Perú SA; (iii) Antonio Lari Mantto SAC; (iv) Calatel Infraestructuras y Servicios SAC; and (v) Dominion Perú Soluciones y Servicios SAC Given that the case had a supra-regional or national reach, in accordance with section 3 of Supreme Decree No. 017-2012-TR, the list of demands was referred to the General Directorate, which issued Directorate Ruling No. 184-2013-MTPE/2/14 on 2 December 2013, initiating collective bargaining between SITENTEL and the subcontractors listed above (Case No. 152-2013-MTPE/2.J4). On 19 December 2013 and 3 January 2014, Calatel Infraestructuras y Servicios SAC and Cobra Perú SA, respectively, opposed the collective bargaining process concerning the branch-level list of demands for the period 2013–14.

756. As regards the list of demands submitted to Telefónica Gestión de Servicios Compartidos SAC by SITENTEL (for the period 2013–14), the Government declares that, on 30 October 2013, SITENTEL submitted the list of demands that it had sent to Telefónica Gestión de Servicios Compartidos SAC for the period 2013–14 to the Administrative Labour Authority.

757. In Directorate Ruling No. 181-2013-MTPE/2/14 of 2 December 2013, the General Labour Directorate initiated collective bargaining between the parties (Case No. 149-2013-MTPE/2/14).

758. On 29 January 2014, SITENTEL indicated that the direct discussion stage had been concluded. The parties are currently discussing the list of demands at the conciliation stage. They were invited to meet on 24 February, 17 and 28 March, 15 and 29 April, 12 and 26 May and 4 June and, at the request of both parties to continue with the conciliation stage, they were further invited to meet on 17 June 2014.

759. As regards the list of demands that SITENTEL submitted to Telefónica Móviles SA for the period 2013–14, the Government declares that, on 30 October 2013, SITENTEL submitted the list of demands sent to the employer, Telefónica Móviles SA, for the period 2013–14 to the Administrative Labour Authority. With due consideration of the alleged supra-regional or national nature of the process, the General Labour Directorate provided for the initiation of collective bargaining between the parties in Directorate Ruling No. 183-2013-MTPE/2/14, of 2 December 2013 (Case No. 151-2013-MTPE/2/14).

760. On 4 March 2014, SITENTEL indicated that the direct discussion stage had been concluded. The parties are currently discussing the list of demands at the conciliation stage. The parties were invited to meet on 17 and 28 March, 14 and 25 April, 7, 13, 21 and 28 May, and 4 June 2014. The parties were also invited to meet on 16 June 2014, at 2.30 p.m.

761. The Government states that, in connection with the arbitration process concerning the collective bargaining proposed by SITENTEL, the General Labour Directorate has taken a number of actions. The Government concludes by stating that: (a) SITENTEL has submitted a list of demands to Telefónica group employers and to their subcontractors, leading to the initiation of collective bargaining under the supervision of the Administrative Labour Authority, in accordance with the existing legislative framework. This process is following the course established by national legislation, whereby the parties have submitted the communications and taken the actions that they have considered necessary in relation to the

positions they hold on the collective bargaining proposals made by SITENTEL. By way of example, the trade union organization has made use of arbitration to resolve its collective demands for the periods in question with various employers; (b) in connection with this collective bargaining process, the Administrative Labour Authority has, within its remit, fulfilled its functions established by law, respecting the principles of free and voluntary bargaining, and the exclusion of state-imposed bargaining levels or conditions; and (c) the workers and trade union organizations (including CUT and SITENTEL) have access to various protection mechanisms to safeguard any relevant rights, both through administrative and judicial channels, in accordance with Peruvian law.

C. The Committee's conclusions

762. *The Committee observes that, in this case, CUT–Peru alleges that Telefónica group enterprises, whether subsidiaries or subcontractors, have systematically opposed the list of demands in collective bargaining at branch level submitted by the federation FETRATEL or the branch union SITENTEL, and that they have used a number of delaying tactics (administrative proceedings, court appeals,* amparo *proceedings, and arbitrary legal interpretations) to prevent the bargaining process (according to the allegations, bargaining and collective agreements at the enterprise level only cover a small proportion of workers), despite the level of representation held by SITENTEL (an organization with representation at the branch level), and the fact that the enterprises in question have a relationship of subordination to the main enterprise of the aforementioned group. According to the allegations, this group refuses to engage in conciliation, arbitration or other dispute resolution measures. CUT–Peru states that fines for non-compliance with labour standards do not act as a deterrent for large enterprises like the main enterprise in the Telefónica group.*

763. *The Committee notes that the complainant organization reports labour law violations, abuses in the use of temporary work, the dismissal of union members and, in one case, the simulation of an employer lockout, and it understands that the aim of these allegations is to show the importance of collective bargaining at branch level. The Committee takes note of the depositions made by the Telefónica group enterprises in this regard and, given that they radically contradict the complainant's version of events, the Committee will focus on the main issue raised by this case: the level at which collective bargaining should take place in the communications sector.*

764. *The Committee takes note of the statements made by the Telefónica group and transmitted by the Government, in which it denies the allegations and states that: (1) the Telefónica group has nine trade union organizations (including SITENTEL and FETRATEL) which, although they are branch-level organizations, bargain at the enterprise level in various enterprises (and in one enterprise that does not operate in the telecommunications sector). Membership levels vary widely (in the main enterprise it stands at 80 per cent, in two enterprises it is between 30 and 33 per cent, and in three others it stands, according to the Government, between 6 and 11 per cent), and ten collective agreements are currently in force, in addition to other collective agreements signed in connection with the reorganization of two enterprises within the group; (2) the refusal in 2011 to bargain at branch level was based on objective and reasonable criteria and the dispute was settled in a satisfactory manner for the enterprises by the Administrative Labour Authority. The trade unions did not bring judicial proceedings against the administrative rulings; (3) compulsory arbitration procedures are currently being imposed on two enterprises to determine the level at which bargaining should take place. Moreover, one of those enterprises is also currently negotiating a collective agreement at the enterprise level; and (4) according to the figures provided by the enterprise, the level of SITENTEL membership among its workers is very low. The Committee notes that the Government declares that: (a) SITENTEL presented lists of demands to the employers of the Telefónica group and its subcontractors, which have led to*

the initiation of collective bargaining under the supervision of the Administrative Labour Authority, in accordance with the existing legislative framework. This process is following the course established by national legislation, whereby the parties have submitted the communications and taken the actions that they have considered necessary in relation to the positions they hold on the collective bargaining proposals made by SITENTEL. By way of example, the trade union organization has made use of arbitration to resolve its collective demands for specific periods and with specific employers; (b) in connection with this collective bargaining process, the Administrative Labour Authority has, within its remit, fulfilled its functions established by law, respecting the principle of free and voluntary bargaining, and the exclusion of state-imposed bargaining levels or conditions; and (c) the workers and trade union organizations (including CUT and SITENTEL) have access to various protection mechanisms to safeguard any relevant rights, both through administrative and judicial channels, in accordance with Peruvian law.

765. *The Committee observes that collective bargaining in this case (for the periods 2011–12 and 2013–14) has been considerably delayed as a result of SITENTEL wanting to bargain at branch level, against the wishes of some of the enterprises in the group (the 2011–12 collective bargaining process is pending a court ruling as regards the level at which bargaining should take place; as for the 2013–14 bargaining procedure, SITENTEL has submitted lists of demands involving eight enterprises and one demand involving one enterprise – against which an appeal has been lodged by a number of these). The Committee also wishes to point out that compulsory arbitration at the request of one of the parties (under government supervision), regarding the level of bargaining, is not consistent with the principle of free and voluntary bargaining established under Convention No. 98.*

766. *The Committee observes that in the examination of a previous case relating to Peru (Case No. 2689) the Committee noted that the right to collective bargaining of the federation FETRATEL on behalf of its member trade unions in the telecommunications sector had been recognized in rulings of the Ministry of Labour of 2008 and 2009 [see 357th Report, Case No. 2689, para. 922]. The Committee therefore observes that the right of the branch federations and trade unions to bargain collectively at branch level is legally recognized.*

767. *The Committee reminds the Government that it can invite the most representative employers' and workers' organizations to establish a mechanism to resolve conflicts relating to the level at which collective bargaining should take place (for example, a body made up of independent individuals with the confidence of the parties) [see 343rd Report, Case No. 2375 (Peru), para. 181] in order to find solutions to problems related to the level of bargaining when they arise.*

768. *In these circumstances and taking into account the appeals lodged in relation to the allegations, the Committee considers that this case does not call for further examination.*

The Committee's recommendation

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

CASE NO. 3043

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

Complaint against the Government of Peru presented by
– the National Union of Health Social Security Workers (SINACUT-ESSALUD) and
– the General Confederation of Workers of Peru (CGTP)

Allegations: Anti-union dismissals, exclusion of the CGTP from the tripartite national body for social dialogue, and obstacles to the exercise of trade union rights by the complainant union

770. The complaint is contained in communications from the National Union of Health Social Security Workers (SINACUT-ESSALUD) (17 May 2013, with new allegations dated 29 August 2014) and the General Confederation of Workers of Peru (CGTP) (20 January 2014, with new allegations dated 20 January and 11 November 2014).

771. The Government sent its observations in communications dated 4 February, 30 April, 9 June and 15 December 2014.

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

A. The complainants' allegations

773. In its communication dated 17 May 2013, SINACUT-ESSALUD alleges that in point 3 of the communication of 17 May 2013, ESSALUD announced the payment of an "exceptional bonus for closure of demands" (in other words, for the conclusion of negotiations) amounting to 2,500 nuevos soles (PEN) per worker, to take effect immediately after the completion of collective bargaining with each trade union, while urging the trade union representatives to reach an agreement through direct negotiation as quickly as possible, thereby enabling the closure of the list of demands for 2013 and the subsequent payment of the said bonus.

774. Various trade unions began their negotiations in March 2013, for example the United Federation of Social Security Health Workers (FED-CUT) launched the round of negotiations for its 2013 list of demands on 21 March 2013 and closed the negotiations after nearly four months with the signature of a collective agreement on 9 July 2013, whereupon ESSALUD announced that it would pay the exceptional bonus to the FED-CUT workers on 10 July 2013. Since the ESSALUD offer was abandoned on 10 July 2013 "only to the members" of FED-CUT, the result was general discontent and protests in various ESSALUD branches, whereupon the authority was obliged to make a partial rectification, deciding to pay the bonus to all "non-unionized" workers on 12 July 2013, excluding the "unionized" workers. Union membership is now dwindling because of the precarious situation regarding wages and possible delays in negotiations involving the union to which the workers belong.

775. According to SINACUT-ESSALUD, this means that ESSALUD determines which unions are given priority to start collective bargaining (as far as the union knows, no lots are drawn and no other impartial mechanism is used to prevent "favouritism") and the unions not given priority are at a disadvantage, with the delay causing losses in membership.

776. The above situation has been calculated by ESSALUD, since it required the trade union, in order to receive the bonus, to engage as soon as possible in direct negotiations to reach an agreement enabling the closure of the list of demands for 2013; this is causing "losses in membership" and "limiting" the freedom to pass through other stages established by the legislation (namely, mediation or conciliation and arbitration).

777. SINACUT-ESSALUD points out that it duly submitted its list of demands for 2013 to ESSALUD on 28 December 2012 but since then no concrete action has been forthcoming as regards the bargaining process, thereby making it impossible to close direct negotiations as soon as possible, as stipulated by the legal provisions applicable to ESSALUD, since SINACUT-ESSALUD has not been called upon, unlike other organizations.

778. In its communication dated 29 August 2014, SINACUT-ESSALUD alleges that, by official letters of 4 and 7 March and 2 April 2014, the management of ESSALUD informed the SINACUT-ESSALUD general secretary, Mr Enrique Ramírez Dávila, without referring to his status as general secretary, that he and the other executive committee members lacked legal representativeness to act on behalf of the trade union and that for official purposes a record of registration of the executive committee issued by the Ministry of Labour and Employment Promotion (Ministry of Labour) was required. This also applied to starting direct negotiations in relation to the list of demands for 2014 which had been submitted by the union. The deduction of union members' dues would be effected by means of cheques made payable to SINACUT-ESSALUD (instead of to deputy general secretary Mr Octavio Rojas, as was done previously), otherwise payment would be settled via court order. However, the abovementioned official letters indicate that the legal personality of SINACUT-ESSALUD was being respected since it is duly registered at the Ministry of Labour. The union claims that this is a violation of Convention No. 87 and of trade union autonomy since the "act of suffrage" should be sufficient in itself to accredit the union's representatives, without any administrative registration being necessary. The requirement to register the executive committee was not imposed on other organizations such as FED-CUT.

779. In addition, full-time union leave is being withheld and no local union office is provided, both of which had been granted during the previous 25 years. This violation is an obstacle to trade union activity and is discriminatory towards SINACUT-ESSALUD by comparison with other organizations.

780. In its communications of 20 January and 11 November 2014, the CGTP alleges that, as a result of the wishes of certain political groups in one sector, it is excluded, despite its representativeness, from participating in the tripartite National Labour Council. The CGTP also alleges that the contract of Mr César Augusto Elías García, CGTP vice-president and general secretary of the Union of Machinery, Heavy and Major Equipment Technical Officers of Peru (SITTOMEP) was not renewed, whereupon he filed an *amparo* (protection of constitutional rights) appeal seeking reinstatement. This was communicated by the Volcán Compañía Minera SAA company in a letter dated 27 December 2013 after he submitted an application for trade union leave on 23 December 2013 in order to attend various meetings. The CGTP further alleges that this trade union official received death threats on his mobile phone, which he attributes to the management of the San Martín Contratistas Generales SA mining company, which dismissed him in 2006.

781. Furthermore, in its communication of 24 January 2014, the CGTP alleges the dismissal in June 2013 of Mr Andrés Avelino Pizarro Solano, organizational secretary and institutional manager for the Unified Trade Union of Electricity and Allied Workers of Lima and Callao (SUTREL) at the Luz del Sur SAA company, on a false alleged serious misconduct in the handling of funds – in the wake of false testimony by a nurse – at the time of a cash audit in this official's area of work, during which he had to briefly make himself absent while enlisting the support of a witness. As a prelude to his dismissal, the union official received a reprimand in January 2004 (for sending an email notifying the refusal of the bargaining representatives of the enterprise to reach a settlement with regard to the list of demands), and also two suspensions, one for distributing trade union fliers on 25 and 26 March 2013, the other more recently for denouncing the lack of company support for the families of two workers who had been victims of an extremely serious occupational accident; this denunciation incurred the company's displeasure, with the general manager issuing threatening statements against the union official in question.

B. The Government's reply

782. In its communications dated 4 February and 15 December 2014, the Government refers to the allegations of SINACUT-ESSALUD and to the following information from ESSALUD concerning supposed restrictions of the right to collective bargaining.

783. At the 12th ordinary session of the ESSALUD executive board, it was agreed, through an agreement dated 26 June 2013, to authorize an exceptional, one-off bonus of PEN2,500 as an extraordinary bonus to the workers of the institution which would not be regarded as remuneration or be pensionable. Moreover, as regards the form of payment of the bonus, ESSALUD established general guidelines for all workers and trade unions, with implementation to be gradual and without conditions or discrimination of any kind; to date, the bonus has been granted to all entitled workers.

784. In 2013 ESSALUD, through its bargaining committee, initiated collective bargaining processes with 11 of its trade unions, resulting in a satisfactory conclusion in nine cases with the signing of the respective collective agreements. Hence, as can be verified, ESSALUD has done nothing to violate the right to freedom of association or, especially, the right to collective bargaining.

785. At present two collective bargaining processes are still under way, one of them with SINACUT-ESSALUD, which was launched by ESSALUD. Nevertheless, SINACUT-ESSALUD did not meet the repeated requests to submit documents substantiating the legal representativeness of its leaders.

786. The accreditation of representativeness of trade union officials serves as a guarantee to the employer that the persons claiming that status represent the interests of the workers who belong to the union and are therefore authorized to act on their behalf.

787. ESSALUD has repeatedly requested accreditation from SINACUT-ESSALUD (supporting evidence submitted), and despite the fact that these requests were not met, ESSALUD does not use this as grounds for not engaging with the workers who put themselves forward as officials of that union, including with regard to initiating collective bargaining. The fact that it trusts the veracity of the union's affirmations is proof of good faith by ESSALUD with regard to all the existing trade unions. In accordance with the legislation, deductions for trade union dues are made on behalf of the trade union organization.

788. Furthermore, the Ministry of Labour sent ESSALUD details of the last SINACUT-ESSALUD executive committee, which showed that the committee's term of office was from 17 January 2003 to 16 June 2005. This being the case, a renewed request

was sent to SINACUT-ESSALUD to submit documents accrediting the status of its officials in order to address trade union requests (trade union leave, etc.). This absence of registration of the executive committee was noted by the labour inspectorate in January 2014, while the trade union invoked on that occasion the loss of the minute book.

789. The Peruvian State has not committed any act through ESSALUD that violates or otherwise affects the freedom of association of the more than 20 trade unions that exist within the institution as a whole. In the light of all the above, the Committee is requested to dismiss the allegations.

790. In its communication dated 30 April 2014, the Government forwarded the information provided by the company Luz del Sur SAA concerning the alleged anti-union dismissal of Mr Andrés Avelino Pizarro Solano, organizational secretary and institutional manager for the SUTREL, who, as indicated in the complaint, has filed a judicial appeal.

791. The Government considers that it was not necessary for the CGTP to decide to file a complaint since it was fully aware that the topic is currently under discussion in the 16th Permanent Specialized Labour Court of Lima (Case No. 22783-2013-0-1801-JR-LA-16). The relevant proceedings are currently under way, with 28 March 2014 having been set as the date for the single hearing, though this had to be rescheduled owing to the strike by judiciary workers.

792. The Government adds that, according to the company, the dismissal of Mr Pizarro occurred after the complainant was found to have committed three acts of serious misconduct warranting dismissal under the labour legislation in force. The three counts of serious misconduct are directly related to the deficiencies in Mr Pizarro's handling of the petty cash assigned to him, which were noticed by the company after implementing the regular auditing procedure.

793. According to the audit, Mr Pizarro not only failed to abide by the internal procedure for handling the petty cash under his responsibility but he also sought, unsuccessfully, to appropriate an amount of money corresponding to the said petty cash, and was obliged to raise the money in order to repay it. Such serious misconduct is in addition to Mr Pizarro's failure to perform his duties on many counts long before his dismissal. Hence this is not a case of anti-union reprisals; the presentation of the facts in the complaint contains numerous contradictions and inaccuracies. As regards the statements of the complainants regarding previous penalties as a prelude to the dismissal, ESSALUD denies this allegation and emphasizes that the complainants have not demonstrated any causal link. It also denies the existence of any threats made by the general manager against Mr Pizarro and emphasizes that these have not been substantiated.

794. In its communication of 9 June 2014, the Government refers to the allegation concerning the unfair dismissal of the trade union official Mr César Augusto Elías García by the company Volcán Compañía Minera SAA. The Government states that the labour inspectorate did not record any infringements of labour standards at the company and that Mr César Augusto Elías García and the company San Martín Contratistas Generales SA reached an out-of-court financial settlement, pointing out that if the employment relationship was terminated, this was at the wish of Mr César Augusto Elías García himself. As can be seen, the Government adds, further to the completion of the legal inspection activities within the deadlines established by the internal regulations, there has been no violation of fundamental rights to the detriment of Mr César Augusto Elías García. This being the case, the Government considers that these allegations should be dismissed.

C. The Committee's conclusions

795. *As regards the obstacles faced by the SINACUT-ESSALUD trade union in the exercise of its union rights in 2013 (obstacles to collective bargaining and discrimination towards the members of SINACUT-ESSALUD in not granting them the bonus of PEN2,500 approved by the ESSALUD executive committee) and in 2014 (union leave, deduction of membership dues, refusal to provide a union office), the Committee notes the Government's statements to the effect that: (1) ESSALUD, which has 30 trade unions, has concluded collective agreements with nine unions and two more bargaining processes are still under way with two trade unions; with one of them (SINACUT-ESSALUD), collective bargaining was initiated even though its executive committee had not been accredited (registered) with the Ministry of Labour since 2005, despite repeated requests to this effect; and (2) collective bargaining has been implemented progressively and without discrimination, and to date all workers have been granted the bonus of PEN2,500 agreed on with the ESSALUD executive committee for 2014.*

796. *The Committee observes that the Government responded to the allegations concerning the refusal to grant trade union leave, the deduction of union dues and the refusal to provide an office for the complainant union (which the union also links to the fact that its executive committee has not been registered at the Ministry of Labour) by indicating that the labour inspectorate noted the absence of registration of the trade union's executive committee in January 2014 and that registration was required in accordance with the legislation for trade union requests concerning facilities available to trade unions. Furthermore, the Committee observes that the Government has not denied that the bonus of PEN2,500 (as an exceptional, one-off payment) was tied at least initially to the launch of direct negotiations in the bargaining process, which does not appear to have occurred in the case of the 2013 negotiations between ESSALUD and the complainant union, and this has caused delays in receipt of the bonus by the union members. The Committee stresses that it is important that the complainant union should enjoy all trade union rights in the same way as the other unions at ESSALUD but at the same time would point out that the requirement of registering the union executive committee at the Ministry of Labour is not incompatible with Convention No. 87 and that, in general, this registration tends to promote recognition and protection for union officials. Hence it suggests to the complainant union that it might consider the registration of its executive committee at the Ministry of Labour and suggests to the Government that in the meantime it should facilitate the exercise of all union rights for the complainant union, including negotiation of the new collective agreement without delay.*

797. *As regards the alleged exclusion of the complainant confederation from the tripartite National Labour Council, the Committee regrets that the Government has not responded to this allegation and requests it to do so without delay.*

798. *As regards the allegations relating to the renewal of the contract of the trade union official Mr César Augusto Elías García, the Committee notes the Government's statement that the labour inspectorate did not record any infringements of the labour regulations at Volcán Compañía Minera SAA and that the union official and the company reached an out-of-court financial settlement, with the statement that if the employment relationship was terminated, this was at the wish of Mr Elías García himself. In these circumstances, the Committee will not pursue its examination of this allegation. As regards the alleged death threats via the union official's mobile phone which he attributes to another company that dismissed him in 2006, the Committee invites the complainant confederation to supply all possible information and details in this regard and to indicate whether legal action has been taken in the criminal court. The Committee requests the Government to send detailed information in this regard on the basis of the above statements.*

799. *As regards the penalties that were imposed, according to the complainant confederation, as a prelude to the dismissal of this union official, the Committee notes that the company denies these allegations and declares that the complainant confederation has not substantiated them and underlines the lack of a causal link between its statements and the dismissal.*

800. *As regards the allegations relating to the dismissal of the trade union official Mr Andrés Avelino Pizarro, the Committee notes the contradictions between the version of the complainant confederation as regards motives (anti-union reprisals) and the version of the company Luz del Sur SAA (which, on the basis of an auditing report, claims serious misconduct including the appropriation of a sum of money from the cash box for which this official was responsible in his area of work). The Committee requests the Government to keep it informed of the outcome of the legal action brought by this union official.*

The Committee's recommendations

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

(a) The Committee stresses that it is important that the complainant union should enjoy all trade union rights in the same way as the other unions at ESSALUD (collective bargaining, union leave, deduction of membership dues and union office) but at the same time would point out that the requirement of registering the union executive committee at the Ministry of Labour is not incompatible with Convention No. 87 and that, in general, this registration tends to promote recognition and protection for union officials. Hence it suggests to the complainant union that it might consider the registration of its executive committee at the Ministry of Labour and suggests to the Government that in the meantime it should facilitate the exercise of all union rights for the complainant union, including negotiation of the new collective agreement without delay.

(b) As regards the alleged exclusion of the complainant confederation from the tripartite National Labour Council, the Committee regrets that the Government has not responded to this allegation and requests it to do so without delay.

(c) As regards the alleged death threats via the union official Mr César Augusto Elías García's mobile phone which he attributes to another company that dismissed him in 2006, the Committee invites the complainant confederation to supply all possible information and details in this regard and to indicate whether legal action has been taken in the criminal court. The Committee requests the Government to send detailed information in this regard on the basis of the above statements.

(d) As regards the allegations relating to the dismissal of trade union official Mr Andrés Avelino Pizarro, the Committee notes the contradictions between the version of the complainant confederation as regards motives (anti-union reprisals) and the version of the company Luz del Sur SAA (which, on the basis of an auditing report, claims serious misconduct including the appropriation of a sum of money from the cash box for which this official was responsible in his area of work). The Committee requests the Government to keep it informed of the outcome of the legal action brought by this union official.

CASE NO. 3056

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

Complaint against the Government of Peru presented by
– the General Confederation of Workers of Peru (CGTP) and
– the Trade Union of Miners of Shougang Hierro Peru and Others (SOMSHYA)

Allegations: Anti-union practices by the company Shougang Hierro Peru SAA against the majority trade union (the complainant), including acts of favouritism towards the minority trade union, acts of discrimination and violations of the right to collective bargaining

802. The complaint is contained in a communication from the General Confederation of Workers of Peru (CGTP) and the Trade Union of Miners of Shougang Hierro Peru and Others (SOMSHYA) dated 20 November 2013.

803. The Government sent its observations in a communication dated 14 April 2014.

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

A. The complainants' allegations

805. In its communication dated 20 November 2013, the CGTP and SOMSHYA explain that in terms of the company's workforce, SOMSHYA is the most representative trade union (the company has a total of 1,260 workers, of which 933 are trade union members of SOMSHYA, which represents 74 per cent of workers).

806. However, the complainants state that the company has been carrying out a series of acts intended to affect the functioning of the trade union, in line with the findings of the Administrative Labour Authority in Report No. 67-2013 of 14 June 2013. These include, in particular, acts of interference in the establishment and functioning of the minority trade union, the "Trade Union for the Integration of Workers of Shougang Hierro Peru SAA", by granting its members favours and advantages, such as only offering and granting housing to them or scheduling them for overtime hours. These acts of interference are contained in the Report of 30 April 2013, Inspection Order No. 083-2013-MTPE/2/16, of the Administrative Labour Authority. Furthermore, the company has also been manipulating the functioning of the minority trade union by making the recruitment of new workers contingent upon becoming members of that union. In addition, the company signed a collective agreement with this trade union on 1 June 2013.

807. In contrast, the 2013–14 bargaining demands submitted by the most representative, majority trade union have not, to date, been dealt with; it is the company's aim to make bargaining contingent upon the content of the collective agreement of the minority trade union.

808. The complainants highlight that the Collective Labour Relations Act (hereafter the Act) the single consolidated version of which was approved by Supreme Decree No. 001-2003-TR, stipulates that the majority trade union is to represent the workers for the purposes of negotiating collective agreements in the relevant field, applicable to all workers whether they are trade union members or not, including workers who are members of the minority trade union. Therefore, if negotiations are permitted with the minority trade union, its members would receive benefits in addition to the benefits of the majority trade union, thus harming the majority trade union with the aim of undermining it and causing members to leave the union.

809. The complainants state that they are not calling into question the trade union status bestowed on the minority trade union, nor by any means its capacity legitimately to represent the interests of its members, but rather the fact that this union organization does not have the bargaining capacity since it operates in the same field as a more representative trade union. In this regard, the complainants state that article 9, paragraph 1 of the single consolidated text of the Act establishes "in matters of collective bargaining, the trade union with the absolute majority of members amongst workers in its field assumes the representation of all these workers, even if they are not members of the trade union". Article 47 of the Act establishes: "(a) the relevant trade union or, in its absence, the expressly elected representatives by an absolute majority of workers are entitled to negotiate collectively on behalf of the workers …". Article 34 of the Regulations under the Collective Labour Relations Act establishes:

> … in accordance with the provisions of articles 9 and 47 of the Act, in matters of collective bargaining, representation of all workers in a given field, with the exception of management and employees in positions of trust, shall be carried out by the trade union whose members constitute an absolute majority of the total number of workers in the relevant field. To this end, 'field' is understood to mean the various levels of an undertaking or a category, section or branch thereof; and the various levels of activity, trade union and sector as referred to in article 5 of the Act. Where no trade union in the same field has an absolute majority of workers therein, it shall represent only its members …

810. The complainant organizations state that Violation Report No. 67-2013, resulting from Labour Inspection Order No. 00000101-2013-MTPE/2/16, reports a series of acts contrary to the exercise of the right to freedom of association, which include, based on the statement of the minority trade union leader, blatant unlawful acts of interference in the establishment of the said trade union with the intention of affecting the majority trade union most representative by making the renewal of the contracts of minority trade union members easier, scheduling them to work overtime shifts, giving them economic benefits and providing housing.

811. It is worth noting that, in the context of the inspections arising from Inspection Order No. 00000101-2013-MTPE/2/16, the order issued to Shougang Hierro Peru SAA of 11 June 2013 stated:

> First: the abovementioned company must take the necessary steps to ensure compliance with the provisions in force regarding freedom of association, which is understood, without prejudice to the scope of the violation report, to mean that the company must refrain from acting in such a way as to violate the freedom of association of the trade union leaders and members of the Trade Union for Workers of Shougang Hierro Peru SAA and the Trade Union of Miners of Shougang Hierro Peru and Others, as such acts interfere with matters that are within the individual and collective preserve of members, by promoting the establishment of trade union organizations and favouring the members thereof by offering them better working conditions and guaranteeing the conclusion and renewal of work contracts.

B. The Government's reply

812. In a communication of 14 April 2014, the Government provides a copy of the comments and information from the company Shougang Hierro Peru SAA concerning the complaint submitted by the CGTP and SOMSHYA.

813. The company states that it respects the right to freedom of association as recognized under article 28 of the Constitution of Peru, whereby the fundamental principle of freedom of association guarantees that all workers should enjoy adequate protection against acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures.

814. With regard to Violation Report No. 67-2013 of 14 June 2013 mentioned by the complainant trade union which suggests imposing a fine of 40,700 nuevos soles (PEN) for the violation of trade union rights, anti-union discrimination and the infringement of collective bargaining rights, the company states that it has submitted the relevant evidence for its defence, in relation to which administrative proceedings are currently under way.

815. This process is provided for in the General Labour Inspection Act (No. 28806). Article 45(c) stipulates that once the violation report has been issued, the relevant party has 15 working days to submit the evidence for its defence which it considers relevant. It is "the administrative labour authority that assesses the case in the proceedings imposing sanctions, including the evidence put forward by the party being inspected in order to establish whether the latter actually infringed social and labour laws", and, where this is the case, it imposes the appropriate fine in accordance with the law. The company states that it denies the allegations made by the complainant trade union, maintaining that it does not interfere, and never has, with the establishment of any trade union, and much less threatened workers, forcing them to withdraw from their trade union organization under duress. The defendant states that the creation, establishment or formation of a trade union, whichever it may be, fall outside its sphere of competence, interference or participation, since it obtains the relevant status from the competent administrative labour authority by entry in the register. Therefore, it respects the decision of workers to form the trade unions which they believe to be relevant, especially with regard to minority trade unions which have received trade union status from the labour authority, particularly bearing in mind that Peruvian labour legislation covers the establishment of trade unions. The company indicates that it has respected the workers' rights.

816. With regard to the alleged acts of favouritism, the company states that it did not persuade workers to leave their trade union in exchange for economic benefits and housing, especially bearing in mind that article 3 of the single consolidated text of the Act establishes that "membership is free and voluntary. The employment of a worker cannot be made conditional upon membership, lack of membership or resignation from membership, a worker cannot be obliged to join a trade union nor can he be stopped from doing so". Moreover, paragraph 4 of point 7 under the heading "verified facts" in Violation Report No. 67-2013 states "… the statements are only indicia or pieces of evidence and do not constitute conclusive proof". Membership is granted to workers by the trade union, and not the company.

817. With regard to the conclusion of the collective agreement with a minority trade union, the Government reports that contrary to the complainants' claims, it is perfectly legal to conclude agreements with minority trade unions.

818. Article 9, paragraph 1, of the Act, referred to by the complainants to support their argument, only establishes that, in terms of collective bargaining, the majority trade union undertakes the representation of the entire workforce, regardless of whether workers are

members of the trade union organization. This is the only prerogative recognized under the Peruvian legal system as a preferential right of the majority trade union, since the scope of the rights cannot be extended beyond that which is expressly provided for. This means that the regulation in question may not be relied on to attempt to strengthen so-called exclusive bargaining, which certainly is not what is provided for or even suggested in that legal provision.

819. Therefore, at the same time as strictly complying with the mandate provided for in article 9, paragraph 1 by undertaking collective bargaining with the majority trade union and implementing the agreements adopted with that trade union for the benefit of all the workers in that field, there is nothing to prevent the employer – if it sees fit – from establishing, on a voluntary basis, agreements with minority trade unions, which will have a limited effect since they only affect the members of that trade union.

820. The company states that it is fundamental to bear in mind that freedom of association also involves respecting the principle of free and voluntary membership and refraining from any act that obstructs or hinders the establishment or activities of minority trade union organizations. Such obligations – applicable both to the employer and other trade union organizations – derive from the provisions of article 3 of the Act, which states that "membership is free and voluntary. The employment of a worker cannot be made conditional upon membership, lack of membership or resignation from membership, a worker cannot be obliged to join a trade union nor can he be stopped from doing so".

821. According to the complainants, when agreements are concluded with the minority trade union, additional benefits are granted to its members, thereby unjustifiably differentiating between workers in the same field and category. In this regard, the Government indicates that the benefits obtained by the minority trade union are the result of a different bargaining process than that with the majority trade union; each bargaining process is based on a set of factors that are not comparable such as: different bargaining committees, different closing dates, different stages or circumstances in which the agreement is concluded, a different overall duration of the bargaining process, etc. This situation constitutes a reasonable and objective criterion which justifies an eventual differentiation between the benefits obtained by the workers who are members of one union or another, and which can, therefore, hardly be deemed to be discrimination in the light of constitutional jurisprudence.

822. The Constitutional Court, in its ruling handed down in a different case (No. 02974-2010-PA/TC of 24 October 2011), clarified that:

> … not all inequality is necessarily discrimination, since not all types of differential treatment in the exercise of fundamental rights are banned; equality will only be infringed where unequal treatment cannot be objectively and reasonably justified (Álvarez Conde, E. *curso de Derecho Constitucional* [course of Constitutional Law], Volume I., Madrid, Tecnos, 4th edition, 2003, pp. 324–325). The application, therefore, of the principle of equality does not exclude unequal treatment and that principle is not infringed when different treatment is established, provided that it is based on objective and reasonable grounds. These clarifications must go hand in hand with a proper understanding of the difference between two constitutional law concepts, namely differentiation and discrimination. It must be noted that, in principle, differentiation is permitted under the Constitution, since not all unequal treatment is discriminatory. In other words, differentiation is where unequal treatment is based on objective and reasonable grounds …

823. However, despite being members of different trade unions, it must be pointed out that in the present case, the benefits granted to the minority trade union for the period 2013–14 under the agreement concluded on 1 June 2013 are in fact lower than those obtained for the same period by the majority trade union (Regional Directorate Decision No. 016/017-

2013-GORE-ICA-DRTPE). This situation actually required benefits to be brought into line with each other so that workers of the minority trade union could access the greater benefits obtained by the majority trade union for the workforce.

824. The complainants allege that the agreement concluded between Shougang Hierro Peru SAA and the minority trade union is an attempt to breach the *erga omnes* principle solely to undermine SOMSHYA by introducing unlawful differences between workers. Nevertheless, none of the adverse and/or unlawful effects alleged by the complainants have occurred since Shougang Hierro Peru SAA states that: (a) it has not breached the principle of *erga omnes* as it extended to all the workers that fall within that category of work benefits obtained by the majority trade union in the collective bargaining agreement for 2013–14, strictly in line with article 9, paragraph 1 of the Act; and (b) it has not in any way, differentiated between workers; it has aligned benefits in such a way as to allow workers of the minority trade union to access the greater benefits obtained by the majority trade union.

825. In light of the above, the Government requests the Committee to declare the case closed.

C. The Committee's conclusions

826. *The Committee observes that the allegations made by the CGTP and SOMSHYA refer to the following: (1) acts of favouritism by Shougang Hierro Peru SAA towards the members of a minority trade union involving, for example, loans, housing and overtime (to the detriment of SOMSHYA, the complainant organization); (2) the company has made the recruitment of new workers contingent upon them becoming members of the minority trade union; (3) the conclusion of a collective agreement with the minority trade union (a fact which has also been noted by the labour inspectorate in March 2013) despite the fact that legislation establishes the principle of* erga omnes *(that is, applying the collective agreement reached with the majority trade union to the entire workforce, regardless of whether they are trade union members). According to the allegations, the above was intended to undermine the majority trade union (the complainant organization) and cause workers to leave their trade union. The complainants state, however, that they are not calling into question the legal status bestowed on the minority trade union, but rather its bargaining capacity within an* erga omnes *system, such as that of Peru. The complainant organizations underline that the labour inspectorate suggested imposing a large fine on the company for infringement of trade union rights.*

827. *The Committee notes that based on the statements provided by the Government, the company denies the allegations of the complainant organizations and indicates that administrative proceedings are under way regarding the violation report of the labour inspectorate of June 2013. The Committee notes that the company denies that it infringed trade union rights, that it interfered with the establishment of the minority trade union or that it threatened workers, forcing them to resign from the majority trade union. With regard to the latter point, the company refers to the labour inspectorate's conclusions regarding the lack of conclusive proof. The Committee notes that the company denies all allegations of acts of favouritism (economic benefits, housing, etc.) and underlines that the statements in the Violation Report are only indicia or pieces of evidence and do not constitute conclusive proof. The Committee notes, however, that the Violation Report of the labour inspectorate identifies acts of discrimination against the members of the complainant trade union and acts of favouritism towards members of the other trade union.*

828. *The Committee observes that the Government declares that, in accordance with legislation and collective bargaining, it is lawful to conclude collective agreements with minority trade unions, which affects their respective members, and that this is compatible with the*

collective agreement with the majority trade union which affects the entire workforce. The Committee notes that the Government justifies the different types of specific benefits in the collective agreements with the minority trade union on the basis of the different bargaining committees, closing dates, duration of the bargaining process, etc. However, it states that the present complaint refers to the collective agreement 2013–14, in which the minority trade union obtained lower benefits than those obtained by the majority trade union. The Committee observes, however, that the articles in the legislation provided by the complainant organization only provide for collective bargaining rights of minority trade unions where no trade union has an absolute majority of worker members. The Committee also notes the observation made by the labour inspectorate concerning the fact that the conclusion of an agreement with the minority trade union while an agreement was being concluded with the complainant organization (that is, the majority trade union) was an anti-union practice. The Committee wishes to highlight that while Convention No. 98 is compatible both with systems that grant bargaining rights to the most representative organization which affect the entire workforce erga omnes *and systems which allow minority trade unions to bargain on behalf of their members, in the former case it is not consistent also to grant collective bargaining rights in the same field to minority trade unions and, in practice, doing so may lead to anti-union practices.*

829. *The Committee regrets the excessive delay of the administrative authorities which have still not concluded the administrative proceedings concerning the violation report against the company and recalls that justice delayed is justice denied [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 105].*

830. *Observing that the Violation Report of the labour inspectorate (March 2013), finding that the complainant trade union's rights were violated, suggested imposing a fine on the company (PEN47,000) for "very serious infringements", the Committee requests the Government to keep it informed of the outcome of the relevant administrative proceedings regarding the various anti-union practices alleged in the present case and expects the proceedings will be concluded without further delay.*

831. *The Committee also expects that if the alleged acts of discrimination and favouritism are confirmed by the labour inspectorate, the necessary measures will be taken to remedy the situation.*

The Committee's recommendations

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

(a) The Committee requests the Government to keep it informed of the outcome of the relevant administrative proceedings in the Violation Report regarding the various anti-union practices alleged in the present case in order to have all the evidence at its disposal, and regrets the excessive delay in resolving these proceedings and expects them to be concluded without delay.

(b) The Committee also expects that if the alleged acts of discrimination and favouritism are confirmed by the labour inspectorate, the necessary measures will be taken to remedy the situation.

CASE NO. 3069

INTERIM REPORT

Complaint against the Government of Peru presented by the Union of Worker Officials of the Mining Company ANTAPACCAY (SITRAMINA)

Allegations: Dismissal of 35 founding members of the complainant trade union and acts of anti-union interference by the mining company ANTAPACCAY (SITRAMINA)

833. The complaint is contained in a communication from the Union of Worker Officials of the Mining Company ANTAPACCAY (SITRAMINA) of March 2014. This organization submitted additional information and further allegations in communications dated 10 October 2014 and 9 January 2015.

834. The Government sent its observations in communications dated 12 August and 17 September 2014.

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

A. The complainant's allegations

836. In its communications of March and 10 October 2014, SITRAMINA alleges that, after the union had been set up on 23 November 2013 by 35 workers from the mining company ANTAPACCAY SA and granted legal registration on 27 November 2013 when it was registered with the Ministry of Labour, the company sent notarized dismissal letters to those 35 workers between 29 November and 3 December 2013.

837. At the same time, the mining company contacted the workers who were members of the union and offered to reinstate them in their posts, on condition that beforehand they gave up their union membership. As a result of this interference on the part of the company, 28 workers submitted individual letters withdrawing from the trade union; all the letters had the same content and were directed to the Regional Directorate of Labour of Cusco. Likewise, two workers agreed to receive compensation. Five workers who resisted the pressure exerted by the company were not reinstated: Joel Humberto Hernández Tejada, Ángel Gilbert Aparicio Arispe, David Antero Tito Flóres, Walter Gusmaldo Chirinos Herrera and Cosme Bayona Carazas.

838. In addition, the complainant union also states that the company continues to interfere in the union's operations via the workers who have been reinstated in their posts and who continue to insist on the illegal annulment of the union's registration.

839. The complainant organization states that the company is in violation of the law and claims that the dismissals are in accordance with the law since the workers in question are in positions of trust, thereby allowing them to be dismissed at any time. This situation is not true since the five dismissed workers and the persons with whom the union was originally set up have worked for the company for more than 15 years, without a break; in fact, the

workers are not in confidential positions, but are career workers who performed cataloguing, technical and/or analytical duties, and do not handle any kind of confidential information.

840. The complainant union notes that on 27 December 2013 the five workers who have not been reinstated filed a claim for protection *(amparo)* with the Constitutional Dispute Court of Cusco, requesting to be reinstated and to have their union rights recognized.

841. In its communication of 9 January 2015, the complainant union sent rulings of the Constitutional and Administrative Dispute Court of Cusco, which ordered, as a precautionary measure, the reinstatement in their posts of the five workers who were founding members of the union and who had been dismissed. As regards the proceedings before the labour administration, the Ministry of Labour approved, in the first instance, the infringement ruling (of 3 May 2014) of the labour inspectorate for the violation of freedom of association, which was, however, challenged by the company and declared null and void on 11 December 2014 (the company claimed that the evidence in its defence had not been taken into account). For that reason, the Ministry must take a further decision on the matter as the authority of first instance.

B. The Government's reply

842. In its communication dated 12 August 2014, the Government states that SITRAMINA submitted a complaint in December 2013, which led to a labour inspection during which the labour inspectors detected that the social and labour rules relating to freedom of association had been infringed, whereby a worker had been the victim of discrimination as a result of him carrying out his union activities. For that reason, it was proposed to impose a fine of 13,376 nuevo soles (PEN), through Inspection Infringement Report No. 022-2014. In accordance with General Directive No. 08-2011-MTPE/2/16, through Order No. 426-2014-MTPE/2/16.2 of 27 March 2014, the Directorate General of the Labour Inspectorate (DGIT) submitted the report on Inspection Order No. 024-2014-MPTE/2/16 and the aforementioned infringement report to the Regional Directorate of Labour and Employment Promotion of Cusco, in order to institute relevant sanctions proceedings; the ruling in question is in the process of being handed down.

843. The Government points out that the mining company ANTAPACCAY SA has indicated firstly that it categorically rejects the idea that it has engaged in any kind of anti-union practice or act and that, by contrast, its policy has always been to show complete respect for the labour rights of its workers, and in particular for the fundamental right to freedom of association.

844. In addition, it is noted that there are currently two union organizations with which it maintains a harmonious, sustainable and peaceful relationship: these are the Single Union of Workers of Xstrata Tintaya-Antapaccay, active since its establishment in 2006 with 238 workers who are currently union members; and the Unified Union of Workers of Xstrata Tintaya-Antapaccay, which began operating in 2013 and to date has 338 workers who are registered as union members. It is also indicated that the good relationship between both union organizations is demonstrated by the fact that the lists of demands raised have always been settled harmoniously, which has led the company to conclude a large number of collective agreements, including those in force for the period 2013–16. The company regrets that the complaint omits an extremely important fact for understanding the context in which this case has been brought, that is, that during 2013 the company was forced to suspend, for a three-year period, the activities of its sulphur plant located in the Tintaya area, since supplies of the mineral had been exhausted, which was authorized by the Directorate General of Mining in Resolution No. 372-2013-MEM-DGMA/V. As a result of this situation, the sulphur plant operating staff had to be relocated

to the operating premises in Antapaccay. Thus, many of the jobs being done at the Antapaccay premises began to be duplicated, thereby generating a significant number of excess staff. It was therefore necessary to alleviate a situation that generated excessive and unnecessary costs for the company and, in turn, led to workers not being able to do their jobs properly. In that context, it was agreed – with the payment of appropriate legal benefits – to lay off a considerable number of workers owing to a duplication of functions, including the five former workers mentioned in the complaint. In addition, it is clearly not appropriate to allege that anti-union attitudes were shown, given that the laying-off of the five workers – together with a significant number of other workers – was the result of the excess number of staff that the company had at that time. Further, the company also states that the Regional Directorate of Labour and Employment Promotion of Cusco informed it, only on 4 December 2013, that SITRAMINA had been set up and it only then became aware of the existence of this trade union organization.

845. The company therefore emphasizes that, when the workers were laid off, it was completely unaware that they were members of a trade union, and so any allegation of the existence of an anti-union dismissal is unsustainable.

846. The company states that the disputed facts contained in the present claim are being elucidated both through administrative and judicial channels, so that the competent State authorities may take a decision on whether there has actually been a violation of the freedom of association of the workers laid off, but that there is still no final ruling at the administrative or judicial level.

847. In its communication of 17 September 2014, the Government states that, in relation to administrative procedures, the Regional Directorate of Labour and Employment Promotion of Cusco has reported that the National Federation of Mining, Metal and Iron and Steel Workers of Peru requested the Director of the National Directorate of Inspections of the Ministry of Labour and Employment Promotion to conduct an investigation inspection regarding the right to freedom of association, discrimination for union reasons and arbitrary dismissal of workers who were members of a trade union organization. This gave rise to Inspection Order No. 024-2014-MTPE/2/16, through which infringement Report No. 22-2014 was issued against the mining company ANTAPACCAY SA, and a fine of PEN13,376 was imposed for the performance of acts which hamper the free membership of a trade union organization and also discrimination against workers for freely exercising their right to engage in union activity. Decision No. 009-2014-GR-CUSCO/DRTPE-OZTPEPAA, of 8 July 2014, declared that the evidence presented by the mining company ANTAPACCAY SA was inappropriate, and confirmed the fine proposed in infringement Report No. 22-2014, which was appealed by the company in question.

848. Finally, the Regional Directorate of Labour and Employment Promotion of the Regional Government of Cusco issued Directive No. 032-2014-GR-DRTPE-DPSCL-Cusco, dated 25 August 2014, through which it was decided to declare the above decision null and void, that a new first instance ruling should be issued and the evidence presented by the mining company ANTAPACCAY SA should be taken into consideration.

C. The Committee's conclusions

849. *The Committee observes that, in the present case, the complainant union SITRAMINA alleges that a few days after it was established, on 23 November 2013, the 35 founding members were dismissed, and that following acts of interference by the employer, making the reinstatement of the workers in their posts conditional on renouncing union membership, 28 workers withdrew from the trade union and two accepted financial compensation, such that only five workers resisted the pressure exerted by the employer;*

meanwhile, the company urged the workers who were reinstated to insist on the trade union's registration being annulled.

850. *The Committee notes the information provided by the mining company ANTAPACCAY SA on this case, forwarded by the Government, stating that: (1) it fully respects freedom of association, as evidenced by the existence of two trade unions, with 238 and 338 members respectively, which have concluded collective agreements; (2) the complaint omits an extremely important fact for understanding the context in which this case has been brought, that is, that during 2013 the company was forced to suspend, for a three-year period, the activities of its sulphur plant located in the Tintaya area, since supplies of the mineral had been exhausted, which was authorized by the Directorate General of Mining in Resolution No. 372-2013-MEM-DGM/V; as a result of this situation, the sulphur plant operating staff had to be relocated to the operating premises in Antapaccay; thus many of the jobs done being done at the Antapaccay premises began to be duplicated, which led to a significant number of excess staff; (3) it was therefore necessary to alleviate a situation that generated excessive and unnecessary costs for the company; in that context, it was agreed – with the payment of appropriate legal benefits – to lay off a considerable number of workers owing to a duplication of functions, including the five former workers mentioned in the complaint; (4) it was not therefore appropriate to make allegations of an anti-union disposition, given that the company was unaware that the workers dismissed were trade union members and that the five workers laid off – together with a significant additional number (members of SITRAMINA) – was the result of the excess number of staff that the company had at that time; and (5) there is still no definitive administrative procedure or judicial ruling on this case.*

851. *The Committee notes the information provided by the Government confirming that there is still no administrative pronouncement or judicial decision on this case, which began with a trade union complaint that led to an inspection and an infringement order imposing a fine of PEN13,376.00 for infringement of the right to freedom of association; the matter was then referred to a second instance authority by the company and that appeal led to a further examination of the case taking into account the evidence put forward by the company.*

852. *The Committee observes that the complainant union states that the five union members dismissed have been reinstated on a precautionary basis, after filing a constitutional appeal for protection (amparo), which has been challenged by the company. That challenge is in process.*

853. *In these circumstances, while noting that the complainant union and the company retain contradictory positions as regards the anti-union nature of the dismissals, the Committee requests the Government to inform it of any administrative or judicial decision issued in relation to this case, in order to examine, with all the relevant information, the allegations concerning the dismissal of the 35 founding members of the complainant union and acts of anti-union interference, including pressure to give up trade union membership.*

The Committee's recommendation

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

> ***The Committee requests the Government to inform it of any administrative or judicial decision issued in relation to this case, in order to examine, with all the relevant information, the allegations concerning the dismissal of the 35 founding members of the complainant union and acts of anti-union interference, including pressure to give up trade union membership.***

CASE NO. 3084

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

Complaint against the Government of Turkey presented by the Kristal-Is (Trade Union of Glass, Cement and Soil Workers of Turkey) supported by the IndustriALL Global Union

***Allegations:** The complainant organization alleges that section 63 of Act No. 6356, which allows the Government to suspend a strike by way of a decree and to impose a compulsory arbitration, in general, and the Government's Decree No. 2014/6524 of 27 June 2014, which suspended a strike in the glass industry for a period of 60 days on grounds of public health and national security, in particular, are not in conformity with Conventions Nos 87 and 98*

855. The complaint is contained in a communication from Kristal-Is (Trade Union of Glass, Cement and Soil Workers of Turkey) dated 15 July 2014. The IndustriALL Global Union supported the complaint in a communication dated 21 July 2014.

856. The Government sent its observations in a communication dated 28 October 2014.

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

A. The complainant's allegations

858. In its communication dated 15 July 2014, the complainant organization alleges that, by Decree No. 2014/6524 issued on 27 June 2014, the Government of Turkey suspended, for a period of 60 days, a major strike that had started on 20 June 2014 and involved the entire glass industry, on the grounds of public health and national security.

859. Kristal-Is indicates that the Decree was issued pursuant to section 63 of Act No. 6356 on trade unions and collective labour agreements, which reads as follows:

> (1) A lawful strike or lock-out that has been called or commenced may be suspended by the Council of Ministers for 60 days with a decree if it is prejudicial to public health or national security. The suspension shall come into force on the date of publication of the decree.
>
> (2) After a suspension decree has entered into force, a mediator designated according to the seventh paragraph of Article 50 shall make every effort for the settlement of the dispute during the suspension period. During the suspension period, the parties may also agree to refer the dispute to a private arbitrator.
>
> (3) If an agreement is not reached before the expiry date of the suspension period, the High Board of Arbitration settles the dispute upon the application of either parties within six working days. Otherwise, the competence of the workers' trade union shall be void.

860. The complainant organization asserts that the Turkish Government misuses the mechanism of strike suspension as a tool for eliminating the right to strike. Kristal-Is points out that the suspension mechanism provided for in section 63 of the Act which should be applied solely to essential services, the interruption of which would endanger the life, safety and health of the whole or part of the population as made clear in the decisions of the ILO supervisory bodies, is extended by the Government to apply to any ordinary strike in any service or industry. According to Kristal-Is, claiming that any strike in the glass industry threatens national security is unreasonable, unlawful and unfair.

861. Kristal-Is further states that the use of section 63 of Act No. 6356 is a strategy that the Government regularly resorts to in order to suspend strikes in industries that have no direct connection with national security or public health and amounts, in the view of the complainant, to a serious and systematic violation of the right to strike in Turkey. In this regard, Kristal-IS indicates that, from May 2000 to June 2014, four major strikes were suspended in the glass industry, four others in the rubber sector and one in the mining industry, all on the basis of national security or public health. The complainant organization adds that, in all decrees issued on the basis of section 63, the Government has never indicated any reason as to why a strike in the glass industry might be considered harmful to public health and national security. In the opinion of Kristal-Is, there is no reasonable connection between the glass industry and Turkey's national security.

862. Moreover, the complainant states that the suspension of strike under the current Turkish labour legislation usually means an indefinite ban in practice, as the law imposes a compulsory arbitration mechanism at the end of the suspension, unless the parties have either come to an agreement or voluntarily sought arbitration. This provision, according to Kritstal-Is, renders the exercise of the right to strike extremely difficult in Turkey.

863. In addition, the complainant considers that the Government has also violated the rule of law. According to Kristal-Is, the Council of State of Turkey, a high court, has, on several occasions in the past, issued decisions annulling Government decrees suspending strikes and which the latter did not comply with. The complainant refers as an example to the Government's Decree No. 2003/6479 suspending a strike in the glass sector, a decree that was subsequently annulled by a decision of the Tenth Department of the Council of the State following a complaint from Kristal-Is. However, the Government, despite the decision of the Council of the State proceeded to issuing a new decree (No. 2004/6782) on 11 February 2004 to suspend the same strike.

864. The complainant states that, despite the Committee's recommendations in Case No. 2303, dealing with a suspension of a strike pursuant to section 33 of Act No. 2822 (the predecessor of Act No. 6356) and the numerous promises made by the Government, there has been no meaningful improvement in amending the legislation: Act No. 6356 adopted in 2012 provides, in its section 63, for the same strike suspension mechanism.

865. In conclusion, the complainant organization reiterates that section 63 of Act No. 6356, which allows the Government to suspend strikes by way of decrees, is not in conformity with Conventions Nos 87 and 98 and the decisions of the ILO supervisory bodies, and considers that the Act should be brought in line with the previous recommendations of this Committee and those of the Committee of Experts on the Application of Conventions and Recommendations.

B. The Government's reply

866. In a communication dated 28 October 2014, the Government states that, on 15 January 2014, Kristal-Is and the Turkish Glass, Cement and Soil Industries Employers' Union started a round of collective bargaining in order to conclude an agreement, which would

cover several enterprises. According to the Government, after the parties had failed to reach an agreement, a mediator was appointed on 21 March 2014. Following the failure of the mediation, on 28 May 2014, Kristal-Is decided to call for a strike. By the Council of Ministers' Decision No. 2014/6524 of 25 June 2014, the strike, which had commenced on 20 June 2014 and involved 5,508 strikers, was postponed for 60 days on the grounds that it was deemed prejudicial to public health and national security in accordance with section 63 of Act No. 6356.

867. The Government points out that, pursuant to section 63 of the Act, the Undersecretary of the Minister of Labour was then appointed as a mediator in the mediation process that ensued. As the mediation did not result in an agreement between the parties, the dispute was referred to the High Arbitration Board, a body established under article 54 of the Constitution and tasked with adjudicating collective labour disputes. According to the Government, the Board has a tripartite structure composed of state, employers' and workers' representatives and serves as an important social dialogue mechanism; due to its impartial and independent nature, its decisions are final and have the force of collective labour agreements binding on all the parties. It is a mandatory appeals body to which application should be made, including in situations where the Council of Ministers suspends a strike on the ground that it is prejudicial to national security or public health. The Government states that, in the matter under examination, the Board ruled for a collective labour agreement to be in effect from 1 January 2014 to 31 December 2016.

868. With regard to the suspension of strikes that occurred from 2000 to 2005, the Government indicates that:

– concerning the decree to postpone the strike at the Turkish Bottle and Glass Factories Company (Şişecam), which was annulled by the Tenth Department of the Council of State and subsequently followed by a another suspension decree, the strike and lock-out decisions were lifted upon the parties reaching an agreement on 14 March 2004;

– with regard to the strike postponement in the rubber industry, the strike and lock-out decisions were also retracted after the parties had reached an agreement on 12 May 2004; and

– as for the strike at Erdemir Mining Industry Trade Inc., it was suspended on 21 March 2004 because the Government was of the opinion that the strike was prejudicial to national security.

C. The Committee's conclusions

869. *The Committee notes that the complainant organization, Kristal-Is, alleges that section 63 of Act No. 6356, which allows the Government to suspend a strike by way of decrees and to impose a compulsory arbitration, in general, and the Government's Decree No. 2014/6524 of 27 June 2014, which suspended a strike in the glass industry for a period of 60 days on the grounds of public health and national security, in particular, are not in conformity with Conventions Nos 87 and 98.*

870. *The Committee notes that it had dealt with similar allegations in Case No. 2303 [see Reports Nos 335 (November 2004), 338 (November 2005) and 342 (June 2006)]. The Committee recalls that, in that case, the allegations concerned a decree by which the Government suspended a strike in the glass industry on the grounds of national security, as was provided in section 33(1) of Act No. 2822 (Collective Labour Agreement, Strike and Lock-out Act, now repealed). In that case, the complainant further alleged that a suspension of a strike meant an indefinite ban in practice, as the law empowered the Labour Ministry to impose a compulsory arbitration in such cases. The Committee notes*

that the wording of section 63(1) of Act No. 6356 reproduces the wording of section 33(1) of Act No. 2822 and further provides in its subsection (3) for an arbitration, upon a request of either party to the dispute, if an agreement is not reached within 60 days. In this respect, the Committee also notes that according to article 54 of the Turkish Constitution, in cases where a strike is prohibited or postponed, the dispute shall be settled by the Board at the end of the period of postponement, which would appear to ensure that all cases of strike postponement would be terminated by compulsory arbitration.

871. *As it already did in Case No. 2303, with regard to section 33 of Act No. 2822, the Committee considers that section 63 of Act No. 6356, which allows the Government to suspend a strike and impose compulsory arbitration on the grounds of national security or public health, is not in itself contrary to freedom of association principles as long as it is implemented in good faith and in accordance with the ordinary meaning of the terms "national security" and "public health". The Committee observes, however, that the Government indicates no reason why a strike in the glass industry might be considered harmful to national security and public health. Moreover, the Committee notes that section 63 of Act No. 6356 no longer provides for the right to appeal the decision of the Council of Ministers to an independent body, whereas section 33(2) of Act No. 2822 had previously ensured a possibility to appeal to the Council of State (although the Council of State recommendations were apparently not always heeded by the Government). The Committee further considers that the repeated application of this provision, so as to prevent strikes in sectors such as the glass industry, which do not appear to have any direct connection to national security or public health, might amount to a systematic violation of the right to strike. The Committee recalls that compulsory arbitration to end a collective labour dispute and a strike is acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, for instance in the case of disputes in the public service involving public servants exercising authority in the name of the State, or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 564]. Furthermore, compulsory arbitration is acceptable in cases of acute national crisis. The Committee notes, with regret, that a strike has once again been suspended and compulsory arbitration imposed in the glass industry, and requests the Government to ensure in the future that such restrictions may only be imposed in cases of essential services in the strict sense of the term, public servants exercising authority in the name of the State or an acute national crisis.*

872. *Noting that the legislation does not provide for the possibility of appeal to an independent body of a Council of Ministers' decision to suspend a strike, the Committee recalls that responsibility for suspending a strike should not lie with the Government, but with an independent body which has the confidence of all parties concerned. The Committee requests the Government, as it has previously done with regard to section 33 of Act No. 2822, to take the necessary measures for the amendment of section 63 of Act No. 6356 so as to ensure that the final decision whether to suspend a strike rests with an independent and impartial body. It requests the Government to keep it informed of the progress made in this respect.*

The Committee's recommendations

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

(a) The Committee notes with regret that a strike has been once again suspended and compulsory arbitration imposed in the glass industry, and requests the Government to ensure in the future that such restrictions may only be imposed in cases of essential services in the strict sense of the term, public servants exercising authority in the name of the State or an acute national crisis.

(b) Noting that the legislation does not provide for the possibility of appeal to an independent body of a Council of Ministers' decision to suspend a strike, the Committee requests the Government to take the necessary measures for the amendment of section 63 of Act No. 6356 so as to ensure that the final decision whether to suspend a strike rests with an independent and impartial body. It requests the Government to keep it informed of the progress made in this respect.

CASE NO. 2254

INTERIM REPORT

Complaint against the Government of the Bolivarian Republic of Venezuela presented by
– the International Organisation of Employers (IOE) and
– the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS)

Allegations: Marginalization and exclusion of employers' associations in decision-making, thereby precluding social dialogue, tripartism and consultation in general (particularly in respect of highly important legislation directly affecting employers) and failing to comply with recommendations of the Committee on Freedom of Association; acts of violence, discrimination and intimidation against employers' leaders and their organizations; legislation that conflicts with civil liberties and with the rights of employers' organizations and their members; violent assault on FEDECAMARAS headquarters resulting in damage to property and threats against employers; and bomb attack on FEDECAMARAS headquarters

874. The Committee last examined this case at its June 2014 meeting, when it presented an interim report to the Governing Body [see 372nd Report, paras 652–761, approved by the Governing Body at its 321st Session (June 2014)].

875. The International Organisation of Employers (IOE) and the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS) subsequently sent joint communications dated 27 November 2014 and 3 March 2015. The Government sent additional information in communications dated 17 October 2014, 25 February and 10 and 12 March 2015.

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

A. Previous examination of the case

877. In its previous examination of the case at its June 2014 meeting, the Committee made the following recommendations on the matters still pending [see 372nd Report, para. 761]:

(a) While expressing its deep concern at the various and serious forms of stigmatization and intimidation by the Bolivarian authorities, groups and organizations directed against FEDECAMARAS, its member organizations, their leaders and affiliated companies, including threats of imprisonment, statements of incitement to hatred, accusations of carrying out an economic war, the occupation and looting of stores, the seizure of FEDECAMARAS headquarters, etc., the Committee wishes to point out to the Government the importance of strong measures to avoid such actions and statements against individuals and organizations that are legitimately defending their interests under Conventions Nos 87 and 98, ratified by the Bolivarian Republic of Venezuela. The Committee once again draws the Government's attention to the fundamental principle that the rights of workers and employers can develop only in a climate free from violence, intimidation and fear, as such insecure situations are incompatible with the requirements of Convention No. 87. The Committee requests the Government to ensure respect for this principle.

(b) The Committee regrets that the criminal proceedings relating to the bombing of the headquarters of FEDECAMARAS on 26 February 2008 and the kidnapping and maltreatment in 2010 of the leaders of that organization, Noel Alvarez, Luis Villegas, Ernesto Villamil and Ms Albis Muñoz (the latter was wounded by three bullets) have not yet been completed, expresses the firm hope that they will be concluded in the very near future and requests the Government to keep it informed. The Committee reiterates the importance of ensuring that the perpetrators of those crimes are sentenced in a manner commensurate with the severity of the crimes, so that such crimes are not repeated, and that FEDECAMARAS and the leaders concerned are compensated for the damage caused by these illegal acts.

(c) As regards the allegations of the seizure of farms, land recoveries, occupations and expropriations to the detriment of employers' leaders or former leaders, the Committee reiterates recommendations (e) and (f) of its previous examination of the case, requesting that those leaders or former leaders of FEDECAMARAS be compensated in a just manner. At the same time, the Committee refers to the decision of the Governing Body in March 2014, in which it "urged the Government of the Bolivarian Republic of Venezuela to develop and implement the Plan of Action as recommended by the high-level tripartite mission, in consultation with national social partners", which involved, as mentioned by the mission, "the establishment of a round table between the Government and FEDECAMARAS, with the presence of the ILO, to deal with all pending matters relating to recovery of estates and the expropriation of enterprises (including the new information communicated to the mission) and other related problems arising or that may arise in the future" and regrets that in its last communication the Government stated that a dialogue round table on questions of recovery of estates is not viable. The Committee urges the Government to implement this request and to report thereon. Furthermore, the Committee, as did the mission, notes with concern the information provided about new acts of recovery, occupation and expropriation of the property of an employers' leader of FEDECAMARAS. Finally, like the high-level tripartite mission, the Committee emphasizes "the importance of taking every measure to avoid any kind of

discretion or discrimination in the legal mechanisms governing the expropriation or recovery of land or other mechanisms that affect the right to own property".

(d) In relation to the structured bodies for bipartite and tripartite social dialogue which need to be established in the country, and the plan of action in consultation with the social partners, together with the elaboration of specific steps and concrete time frames for its implementation, and counting upon the technical assistance of the ILO recommended by the Governing Body, the Committee notes that the Government indicates that it has initiated a process of consultation with different sectors. It requests the Government to ensure that FEDECAMARAS is included in all these processes. The Committee recalls that the mission in its conclusions referred to a round table between the Government and FEDECAMARAS, with the presence of the ILO, and a tripartite dialogue round table with the participation of the ILO and an independent chairperson. Noting with regret that the Government has not yet provided a plan of action, the Committee urges the Government to implement without delay the conclusions of the high-level tripartite mission endorsed by the Governing Body and expresses the firm hope that it will take, in the very near future, all steps necessary to do so and will report thereon.

(e) Finally, the Committee, guided by the conclusions of the high-level tripartite mission, stresses the importance of immediate action being taken to create a climate of trust based on the respect of business and labour organizations, so as to promote stable and solid industrial relations. The Committee requests the Government to inform it of any measures in this regard. The Committee requests the Government as a first step in the right direction to enable a representative of FEDECAMARAS to be appointed to the Higher Labour Council.

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

B. New allegations by the complainants

878. In their communication of 27 November 2014, the IOE and FEDECAMARAS state that the Government is still ignoring the recommendations made by the high-level tripartite mission. They also report new violations of Conventions Nos 87 and 98, particularly: (i) the detention of Mr Eduardo Garmendia, president of CONINDUSTRIA, for 12 hours; (ii) the shadowing and harassment of Mr Jorge Roig, president of FEDECAMARAS; (iii) an escalation of the verbal attacks on FEDECAMARAS by high-level state officials in the media; and (iv) the adoption by the President of the Republic, in November 2014, of 50 decree laws on important economic and production-related matters without consultation of FEDECAMARAS.

879. In a communication dated 3 March 2015, the IOE and FEDECAMARAS denounce, among other allegations, the detention, in February 2015, without due process and in violation of the right of defence, of 15 entrepreneurs from various sectors including the Chairperson of the Venezuelan Association of Clinics and Hospitals, Dr Carlos Rosales Briceno, and the Chairperson of the National Association of Supermarkets and Self-Services, Mr Luis Rodriguez.

C. The Government's reply

880. In its communication dated 17 October 2014, the Government reiterated its previous statements. Concerning recommendation (a), made during the previous examination of the case, the Government states that, with regard to what the Committee considers to be various and serious forms of stigmatization by the authorities directed against FEDECAMARAS, there is a long tradition of complaints of this type; FEDECAMARAS members have expressed public, and even insulting, opinions to representatives of the Government.

881. The Government maintains that, in drawing attention to any "stigmatizing statements" by members of the Government, the Committee on Freedom of Association should bear in mind that: (1) it is common knowledge that FEDECAMARAS openly participated as an organization in the planning and implementation of a coup d'état; (2) it is common knowledge that FEDECAMARAS financed and collaborated in the occupation of a square for over two months by active military personnel, who declared that they were in an armed revolt against the legitimately formed Government; (3) FEDECAMARAS participated in, financed and implemented an illegal stoppage and sabotage of the oil industry with the announced intention of forcing the constitutional President of the Bolivarian Republic of Venezuela to resign; and (4) FEDECAMARAS publicly supported landowners' call for the defence of their land, including through armed attacks by paramilitary groups that caused the deaths of hundreds of rural leaders. These are merely the events that are common knowledge and there is no doubt that FEDECAMARAS participated directly in them as an organization.

882. As the Committee has stated, the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, intimidation and fear. However, the Government maintains that, to its knowledge, FEDECAMARAS has never been called upon to halt its activities, which, owing to the climate that they have generated, have led to some statements that might be considered "stigmatizing" in so far as it was accused of acts that were characteristic of its past behaviour. It is not the statements by members of the Government but the actions of FEDECAMARAS that have caused the people of the Bolivarian Republic of Venezuela to hate this organization. Although threats of imprisonment and persecution are mentioned in its allegations, none of the FEDECAMARAS members responsible for the aforementioned acts, which led to the deaths of hundreds of people and to the unlawful detention of the constitutional President and caused serious harm to the nation, have been arrested, thereby creating a situation of impunity that hinders the creation of a climate of trust. The Government requests the Committee to advise FEDECAMARAS to make the necessary public apology for the aforementioned acts and others that it has committed as an act of contrition which is a prerequisite for a climate of trust that will ease tensions in the wake of the statements made by both parties.

883. With respect to recommendation (b) (alleged acts of violence, threats against FEDECAMARAS and its member employers and, specifically, the abduction and mistreatment of FEDECAMARAS leaders Mr Noel Alvarez, Mr Luis Villegas, Mr Ernesto Villasmil and Ms Albis Muñoz), the Government states that it has already reported that the perpetrators have been arrested and are in custody; that this was an instance of common crime having nothing to do with the victims' status as employers' leaders or members of FEDECAMARAS; and that the victim (Ms Muñoz) has already stated, in a written communication, that she does not plan to participate in the proceedings conducted by the Public Prosecutor's Office, which she considers to be acting appropriately. The Government therefore requests the Committee on Freedom of Association not to pursue its examination of this case since it obviously has nothing to do with matters relating to freedom of association and it has been repeatedly reported that the perpetrators are in custody.

884. With regard to the alleged attack on FEDECAMARAS headquarters in February 2008, the Government states that it reported several times that the perpetrator had been identified and found guilty and has since died; it therefore requests the Committee not to pursue its examination of this matter.

885. Concerning recommendation (c) (allegations of the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders), the Government states, with respect to the alleged seizure of farms belonging to

employers' leaders Mr Eduardo Gómez Sígala, Mr Egildo Luján, Mr Vicente Brito, Mr Rafael Marcial Garmendia and Mr Manuel Cipriano Heredia, that the Ministry of Agriculture and Land and the National Land Institute (INTI) have reported that, in the case of Mr Eduardo Gómez Sígala and Mr Manuel Cipriano Heredia, the legal procedure for land recovery was followed since they failed to demonstrate their ownership of the land; thus, this does not constitute expropriation.

886. In the case of Mr Rafael Marcial Garmendia, according to these institutions, the land that he occupied has been recovered. He demonstrated his ownership of part of that land, of which he is still in possession, and the remainder, the ownership of which he was unable to demonstrate, has been recovered. Thus, he still owns the portion of the land of which he demonstrated his ownership.

887. With respect to the other two cases, concerning Mr Egildo Luján and Mr Vicente Brito, INTI has reported that its archives contain no information on any recoveries or expropriations under their names.

888. The Government maintains that it has been demonstrated that the application of the Land and Agrarian Development Act and the implementation of procedures by the state agencies in the matter did not give rise to acts of anti-union discrimination or harassment, and that the State did not act on a discretionary basis in the application of its land policy; procedures and mechanisms for the recovery and expropriation of land are determined by national law and implemented by the competent bodies.

889. Therefore, since land and agrarian development policies are not matters for examination by the Committee on Freedom of Association, the Government requests the Committee not to pursue its examination of these cases since they do not entail violations of freedom of association, let alone acts of anti-union persecution.

890. With regard to recommendation (d) (bipartite and tripartite social dialogue), the Government confirms that, as it has informed the Committee on Freedom of Association and other ILO supervisory bodies on numerous occasions, the country has broad and inclusive participatory dialogue, which is ongoing, and consultation of the people is a daily occurrence during the legislative drafting process. The Government has repeatedly called on FEDECAMARAS to participate in the national dialogue on various issues, but its invitations have been ignored. However, other employers' organizations in various sectors have responded to this call for dialogue on, among other things, economic and labour-related matters.

891. The Government notes with satisfaction the statement contained in paragraph 52 of the report of the high-level tripartite mission, whereby the mission took into consideration the inclusive dialogue highlighted by the Government and taking place in the country within the framework of the Constitution of the Bolivarian Republic of Venezuela. The Government also reaffirms that the application of, and compliance with, the ILO Conventions on freedom of association, collective bargaining and social dialogue in the country are not in question.

892. The Government reports that it is still holding consultations with the trade unions, chambers and professional associations, land committees, rural committees, municipal councils and other peoples' organizations concerning the preparation and content of the plan of action, which provides for the establishment of forums for dialogue, all in accordance with the constitutional and legal framework of the Bolivarian Republic of Venezuela. However, the Government stresses, as it indicated to the FEDECAMARAS president, that the issues that the various organizations have proposed for discussion are quite different from those recommended by the ILO mission, which were not of interest or

were based on false information that did not warrant the establishment of a round table to discuss them. The Government states that it is important for the Committee to ask the complainant organization whether it is really willing to establish a round table to discuss, for example, the attack on and abduction of the employers' leader Ms Albis Muñoz, an issue that, to date, none of the organizations consulted, not even the FEDECAMARAS members, have shown any interest in. As stated above, the Government maintains that it will inform the ILO once the consultations with the various organizations concerned are concluded. Despite these consultations, as it replied in its communication of 24 March 2014 during the corresponding session of the ILO Governing Body, the Government reaffirms the following with respect to the recommendations contained in the mission report:

(a) Concerning a dialogue round table that will address "other existing problems that may arise in the future in this area" (recovery of estates), the Government informed that this proposal is not viable to the extent that, first, it is not possible to establish a dialogue round table to address issues that could possibly arise in an uncertain future, and second, article 82 of the Law on Land and Agrarian Development establishes a clear procedure which cannot be negotiated between two parties.

(b) A tripartite dialogue round table cannot be mandated to conduct consultations on laws. It could at most be one of the bodies consulted. The Constitution of the Bolivarian Republic of Venezuela is very clear about the competencies related to the consultation, the adoption or the exemption of laws.

(c) Discussions on laws and bills are within the competence of the National Assembly. Likewise, the socio-economic policy of the country lies within under the jurisdiction of the National Executive power, in coordination with the other authorities of the State, this without limiting mechanisms for dialogue and consultation that already exist in the country and are put in place with the various sectors concerned. Consultations may be held, among other bodies, under a tripartite round table which cannot be erected as a supra-constitutional body.

(d) There is no national law that violates the rights contained in the ILO Conventions mentioned as it would be unconstitutional. In this respect, there is no legal action against any law of the country for which the Constitutional Courts have granted remedy. It is unclear to what the ILO tripartite mission refers when it indicates as an objective for the tripartite dialogue round table to achieve "compliance of national legislation with ratified Conventions". The Government recommends that the Committee on Freedom of Association and the other supervisory bodies analyse articles 86 to 97 of the Constitution of the Bolivarian Republic of Venezuela, which is the source of all the labour laws of the country, in order to determine whether some of the provisions are contrary to ratified Conventions.

893. The Government adds that the judicial or administrative procedures in force must be concluded and carried out by the competent institutions in accordance with the national legislation.

894. In conclusion, the Government states that, in order for the organizations consulted to develop a real plan for dialogue, the Committee must take a decision on these matters since, to date, there has been no reply to the Government's comments on the mission report and, specifically, on the recommendations that clearly contravene the legal framework and the national Constitution.

895. In its communication dated 25 February 2015, the Government refers to the recommendations contained in the report of the high-level tripartite mission conducted in the country in January 2014 and reiterates that the implementation of many of those measures is not viable. The Government points out that the issues that were specifically addressed during 82 per cent of the activity time during the visit of the tripartite mission in the Bolivarian Republic of Venezuela have been omitted from the mission report.

896. In the mission report, the activities of the tripartite mission during its visit to the Bolivarian Republic of Venezuela are found to be unfinished and therefore not useful. Accordingly, it is necessary for the Committee on Freedom of Association to urgently decide upon the relevance or connection of the denounced facts with Conventions Nos 87 or 98 contained in Case No. 2254, such as:

- The supposed aggression towards the citizen Albis Muñoz, leader of the civil association FEDECAMARAS, an IOE affiliate; notwithstanding the fact that during the visit of the mission it was demonstrated and not refuted that it had been a fortuitous act perpetrated by a group of offenders with a lengthy police record in the early morning hours, while exiting a restaurant, and was in no way related to trade union activity.

- The alleged land expropriation from the leaders of the civil association FEDECAMARAS, an IOE affiliate; notwithstanding the fact that during the visit of the mission it was demonstrated and not refuted that it was a policy for the recovery of illegally occupied agricultural land and that the reported cases represented only 0.74 per cent of the total reclaimed land, it was therefore not a case of trade union reprisal, and at no point in time was the legality of the occupation of this land proven before any competent body by the interested parties.

- The alleged harassment of employers, illustrated by the expropriation of the SIDETUR and Owens–Illinois companies; notwithstanding the fact that during the visit of the mission it was demonstrated and not refuted that the said cases concerned actions contemplated under the Venezuelan legal system, the owners of the enterprises had resorted to establishing legal mechanisms guaranteeing their right to defence, and it was not a trade union case.

- The alleged exclusion of the civil association FEDECAMARAS from the process of developing the Basic Act on Labour and Workers (LOTTT); notwithstanding the fact that during the visit of the mission it was demonstrated and not refuted that the National Assembly held consultations on the legal text during 12 years, consultations in which FEDECAMARAS participated directly or indirectly, through the presentation of documents.

897. The Government adds that the text of the report is dedicated primarily to the tripartite mechanisms implemented in the Bolivarian Republic of Venezuela, a topic that was not discussed during the meetings held with bodies of the Venezuelan State; and the conclusions were made at the last moment and outside of the report. The Government therefore also asks the Committee on Freedom of Association to reach a decision on the viability of the implementation of several recommendations contained in the report of the ILO high-level tripartite mission, some of the latter being illegal or unconstitutional. More specifically, the Government of the Bolivarian Republic of Venezuela has not obtained a reply with respect to the following recommendations:

- With regard to the fact that the dialogue round table will address "other existing problems that may arise in the future in this area" (recovery of estates), the proposal is not viable since addressing a topic that could possibly arise in an uncertain future cannot be subordinated to the establishment of a dialogue round table. Furthermore, section 82 of the Land and Agrarian Development Act clearly provides the legal procedures for the recovery of land; the latter could not be altered through bipartite negotiation. Moreover, the consultations held with trade union organizations of rural workers, as recommended in the conclusions of the mission report, demonstrated a total lack of interest in participating in a round table on a past topic considered as closed, under which all legal guarantees were already granted to the persons concerned.

– The Constitution of the Bolivarian Republic of Venezuela is very clear regarding the competences for consultation, adoption or abrogation of laws. It is not up to a tripartite round table to hold consultations on legislation, as it is not the competent body, let alone to take a decision concerning any legislative text, as these actions would be unconstitutional in the country.

– The discussion of laws and bills falls within the competences of the National Assembly. In addition, the socio-economic policy of the country falls within the competences of the executive branch, in coordination with the other branches of the Venezuelan State, without however limiting the consultation and dialogue mechanisms existing in the country and implemented with the various sectors involved. Consequently, a tripartite or bipartite round table cannot be a supra-constitutional body in the Bolivarian Republic of Venezuela.

– There is no national law violating the rights contained in the Conventions being reviewed by the Committee on Freedom of Association, as such a law would be unconstitutional. The Government is not aware of any legal action in which a constitutional court of the Republic would have declared the unconstitutionality of a national law based on those grounds. It is therefore difficult to know what is being referred to in the report of the tripartite mission where it is specified that the objective of the tripartite round table would consist of "bringing domestic legislation into conformity with the Conventions".

– The Constitution of the Bolivarian Republic of Venezuela provides for a referendum repealing legislation when the population believes that a particular law is contrary to the public interest. It is a fact that the complainants have not even tried to activate this legal mechanism against a law that they deem detrimental to the national interest.

– In the context of the consultation with the Bolivarian Socialist Workers' Confederation of Venezuela (CBST), a majority trade union and the most representative of Venezuelan workers, an opinion was issued that was contrary to the establishment of the committees recommended in the mission report. The CBST refuses to participate at the round table with FEDECAMARAS, as the latter chose, as part of previous round tables, to participate in illegal actions, such as committing a coup, plotting an oil sabotage, using paid assassins against *campesino* leaders and taking part in the economic sabotage of the population. The CBST reiterates that, only if the civil association FEDECAMARAS publicly recognizes the illegal actions committed in the past and condemns present actions by followers of this organization, it will then be possible to establish a dialogue with it. Meanwhile, the CBST prefers to keep the large ongoing national dialogue open, from which FEDECAMARAS has excluded itself.

898. The Government once again reiterates the recommendation and request made to the Committee on Freedom of Association and other ILO supervisory bodies with respect to the study of the content of the Constitution of the Bolivarian Republic of Venezuela and the LOTTT, from which the labour laws are derived, in order to ascertain whether the legislation is in compliance with ratified Conventions.

899. In order for the organizations and the Government to formulate a real plan whose execution is possible, it is necessary for the Committee to decide on these issues, because until now the Government has not obtained a reply to the considerations made regarding the recommendations contained in the mission report that openly violate the legal corpus and the Constitution.

900. Finally, the Government indicates that the President of FEDECAMARAS has recently shown that he saw as positive the initiative and decision taken by the President of the Republic to reconvene all sectors in a national dialogue in order to make proposals. The first meeting was held in February 2015 at the headquarters of FEDECAMARAS between the President and the representatives of this organization and representatives of the Presidential Commission of Economic Affairs.

901. The President of FEDECAMARAS expressed that the meeting had been very productive and considered that the President of the industrial organization FEDEINDUSTRIA, Miguel Pérez Adad, was the right person to coordinate these meetings and discussions with various sectors of the country. In addition, the representative of FEDECAMARAS expressed his conviction that a new opportunity would arise to search for a new constructive and cooperative stage with the national Government that will result in substantial agreements. In this regard, on 12 February 2015, FEDECAMARAS convened all private and public enterprises, workers, entrepreneurs and social organizations, through a press release, to participate in this important national debate.

902. The Government attaches press clippings in which the President of FEDECAMARAS dissociates himself from past mistakes (2002) and indicates that the past President misunderstood his role; FEDECAMARAS is an institution that may influence political power but may not exercise it.

903. In its communications dated 10 and 12 March 2015, the Government sent observations and information from the Prosecutors' Office on the new allegations of the complainants. The Government denies attacks on business and states that there are no criminal proceedings against the two employer leaders mentioned by the complainants and reports the prosecution of eight enterprise managers for offences of an economic nature. The Government also reports that, in relation to the eight enterprise managers, the judicial authority has taken measures for their preventive detention or alternative precautionary measures.

D. The Committee's conclusions

904. *Firstly, the Committee would like to recall that for years it has considered the present case (No. 2254) extremely serious and urgent and that the Governing Body decided to request the Director-General to send a high-level tripartite mission to the Bolivarian Republic of Venezuela in order to look into all the issues that were still pending with regard to Case No. 2254 and all matters relating to technical cooperation. This high-level tripartite mission was composed of the Chairperson, Employer Vice-Chairperson and Worker Vice-Chairperson of the Governing Body and was conducted from 27 to 31 January 2014. The Committee on Freedom of Association took the report on this mission fully into account during its previous examination of the case (June 2014) and, in formulating its conclusions, noted that "[t]he mission considers that it is necessary for the Government to devise a plan of action that includes stages and specific time frames" for the pending issues. With regard to technical cooperation, the mission reminded the Government that it could avail itself of the technical assistance of the International Labour Office, not only in matters concerning social dialogue and structured bodies, but also in the adoption of criteria and procedures to measure the representativeness of workers' and employers' organizations. The mission noted that the Government had made a general statement to the effect that it did not rule out the possibility of availing itself of technical cooperation programmes, if necessary. The mission considered that the Government needed to convey its willingness to do so in more specific terms.*

905. *The Committee notes with regret that the Government has not yet developed a plan of action that sets stages and specific time frames relating to the pending issues (the Government states, in its first response, that the consultations on tripartite mechanisms for social dialogue are ongoing and, in its second response, it adds that the CBST is opposed to tripartite committees), nor has it conveyed in more specific terms its willingness to avail itself of the technical assistance of the International Labour Office. The Committee regrets that the Government has instead elected once again to disparage the complainant organization, FEDECAMARAS, recalling the past (although the Government itself indicates that the President of FEDECAMARAS acknowledged his organization's past mistakes) and requesting closure of the examination of various allegations, while delaying the adoption of the measures requested and asking for a decision to be reached on the compliance of the Constitution and the LOTTT with the ratified Conventions. The Committee requests the Government to be more constructive and to duly recognize that the present case concerns serious acts of physical violence and threats against employers' organizations and leaders and against enterprises, expropriation of land belonging to union leaders and an absence of dialogue with the employers' association, FEDECAMARAS, whose full enjoyment of the rights arising from Conventions Nos 87 and 98 the Government is obliged to ensure. In this regard, the request that judgments be rendered without undue delay is fully justified.*

Recommendations (a) and (b) of the previous examination of the case

906. *The Committee notes the Government's statements concerning the pending allegations of various forms of stigmatization and intimidation by the Bolivarian authorities, groups and organizations directed against FEDECAMARAS, its member organizations, their leaders and affiliated companies, including threats of imprisonment, statements of incitement to hatred, accusations of conducting economic warfare, the occupation and looting of shops, the seizure of FEDECAMARAS headquarters, etc. The Committee notes with regret that, in reply to its request that the Government take strong measures to prevent such actions and statements against individuals, the Government merely states that it is the actions of FEDECAMARAS that have caused the hatred of the Venezuelan people, recalling events that date from 2001–02 and demanding a public apology from FEDECAMARAS as a prerequisite for a climate of trust. The Committee observes with concern that the new allegations by the IOE and FEDECAMARAS have resulted in an escalation of the authorities' verbal attacks on FEDECAMARAS and in the harassment of employers' leaders.*

907. *The Committee would like to emphasize that the Government is responsible for ensuring the safety of employers' organizations and their leaders and that, as is clear from the evidence provided to the high-level tripartite mission, the state authorities are the source of many of the threats and much of the stigmatization targeting employers' organizations and their leaders, which have been a repeated occurrence in recent years. The Committee notes with regret that the Government has failed to provide information on the strong measures that it had been requested to take in order to avoid such actions. Under these circumstances, the Committee is bound to express its regret and concern at the alleged events and reiterate the conclusions and recommendations made during its previous examination of the case.*

908. *In that regard, the Committee once again expresses its deep concern at the various and serious forms of stigmatization and intimidation by the Bolivarian authorities, groups and organizations directed against FEDECAMARAS as an institution, its member organizations, their leaders and affiliated companies, which are described in detail in the mission report, and include threats of imprisonment, the placement of posters inciting hatred, accusations of conducting economic warfare, the seizure of FEDECAMARAS*

headquarters, the occupation of shops, incitement to vandalism and looting, etc. The Committee recalls that for the contribution of trade unions and employers' organizations to be properly useful and credible, they must be able to carry out their activities in a climate of freedom and security. This implies that, in so far as they may consider that they do not have the basic freedom to fulfil their mission directly, trade unions and employers' organizations would be justified in demanding that these freedoms and the right to exercise them be recognized and that these demands be considered as coming within the scope of legitimate trade union activities [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 36]. Furthermore, the Committee recalls that freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed [see* ***Digest****, op. cit., para. 43], and that a climate of violence, in which attacks are made against trade union premises and property, constitutes serious interference with the exercise of trade union rights; such situations call for severe measures to be taken by the authorities, and in particular the arraignment of those presumed to be responsible before an independent judicial authority [see* ***Digest****, op. cit., para. 191]. The Committee draws the Government's attention to the importance of taking strong measures to stop such threats and prevent statements of incitement to hatred and the looting of property, all of which are harmful to individuals and organizations that are legitimately defending their interests under Conventions Nos 87 and 98, which have been ratified by the Bolivarian Republic of Venezuela; in the specific case of FEDECAMARAS, this refers to its leaders, member organizations and affiliated companies. The Committee once again draws the Government's attention to, and requests it to ensure compliance with, the fundamental principle that the rights of workers' and employers' organizations can only be exercised in a climate free from violence, intimidation and fear, as such situations of insecurity are incompatible with the requirements of Convention No. 87 [see 372nd Report, para. 733].*

909. *Regarding the alleged abduction and mistreatment in 2010 of FEDECAMARAS officials Mr Noel Álvarez, Mr Luis Villegas, Mr Ernesto Villamil and Ms Albis Muñoz (the latter sustained bullet wounds), the Committee observes that the Government reiterates its previous statements (to the effect that the perpetrators are in custody, that this is an instance of common crime having nothing to do with the victims' status as employers' leaders, and that, for this reason, the examination of this case should not be pursued) and that the complainant organizations have disputed the Government's position. The Committee had expressed the firm hope that the criminal proceedings would be concluded without further delay and once again notes with regret that the proceedings concerning the abduction and mistreatment of the four employers' leaders have not yet been completed. The Committee therefore reiterates its previous recommendations.*

910. *As regards the 2008 bomb attack on FEDECAMARAS headquarters, in relation to which the Government has reported the death of the perpetrator, the Committee also observes that FEDECAMARAS indicated to the high-level tripartite mission that: (1) the person who planted the bomb (a police inspector, Mr Héctor Serrano) died as a result of the explosion; (2) on 26 February 2008, a complaint was filed with the Public Prosecutor's Office; (3) on 26 August 2009, the Public Prosecutor's Office issued a ruling ordering the case to be closed for lack of sufficient evidence to establish a guilty party, which was appealed by FEDECAMARAS; (4) on 6 May 2010, the Forensic, Penal and Criminal Investigations Unit (CICPC) announced the detention of a public official, police officer, Mr Crisóstomo Montoya, for an act of terrorism in planting the explosive device (it is reported that he has been released) and that Ms Ivonne Márquez was also implicated;(5) the 28th Court of First Instance scheduled the public hearing of the oral trial for 4 November 2011, which was deferred to 30 October 2013; and (6) to date no one has been found guilty of the attack. The Committee requests the Government to send its observations on the matter.*

911. *Generally speaking, with regard to the allegations of physical and verbal violence against employers' leaders and their organizations, the Committee once more stresses that the absence of judgments against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights [see* ***Digest****, op. cit., para. 52], and that justice delayed is justice denied [see* ***Digest****, op. cit., para. 105]. The Committee reiterates the importance of ensuring that the perpetrators receive sentences that are in proportion to the seriousness of their crimes, with a view to preventing any recurrence of the latter, and of compensating FEDECAMARAS and the leaders concerned for the damage caused by those illegal acts [see 372nd Report, para. 734].*

Recommendation (c) of the previous examination of the case

912. *As regards the allegations of the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders, the Committee previously requested that Mr Eduardo Gómez Sígala, Mr Egildo Luján, Mr Vicente Brito, Mr Rafael Marcial Garmendia and Mr Manuel Cipriano Heredia be compensated in a just manner. At the same time, the Committee referred to the Governing Body's decision of March 2014, in which it "urged the Government of the Bolivarian Republic of Venezuela to develop and implement the Plan of Action as recommended by the high-level tripartite mission, in consultation with national social partners", which involved, as mentioned by the mission, "the establishment of a round table between the Government and FEDECAMARAS, with the presence of the ILO, to deal with all pending matters relating to the recovery of estates and the expropriation of enterprises (including the new information communicated to the mission) and other related problems arising or that may arise in the future". The Committee urged the Government to implement this request and to report thereon. Furthermore, the Committee, as did the mission, noted with concern the information provided about new acts of recovery, occupation and expropriation of the property of an employers' leader of FEDECAMARAS (Mr Vicente Brito). Finally, like the high-level tripartite mission, the Committee emphasized "the importance of taking every measure to avoid any kind of discretion or discrimination in the legal mechanisms governing the expropriation or recovery of land or other mechanisms that affect the right to own property".*

913. *The Committee notes the Government's statement, with regard to the alleged seizure of farms belonging to employers' leaders Mr Eduardo Gómez Sígala and Mr Manuel Cipriano Heredia, that the Ministry of Agriculture and Land and INTI have reported that, in the case of those leaders, the legal procedure for land recovery was followed since they failed to demonstrate their ownership of the land and that this did not therefore constitute expropriation; and that, in the case of Mr Rafael Marcial Garmendia, the land that he occupied has been recovered. He demonstrated his ownership of part of that land, of which he is still in possession, and the remainder, the ownership of which he was unable to demonstrate, has been recovered. In the other two cases, concerning Mr Egildo Luján and Mr Vicente Brito, INTI has reported that its archives contain no information on any recoveries or expropriations under their names. The Committee notes the Government's statement that it has been demonstrated that the application of the Land and Agrarian Development Act and the implementation of procedures by the state agencies in the matter did not give rise to acts of anti-union discrimination or harassment and that the application of land policy was not based on discretionary action by the State; the procedures and mechanisms for the recovery and expropriation of land are determined by national law and implemented by the competent bodies. The Committee notes that the Government considers that a country's land and agrarian development policies are not matters for examination by the Committee on Freedom of Association and that it requests*

the Committee not to pursue its examination of these cases since they do not entail violations of freedom of association, let alone acts of anti-union persecution.

914. *The Committee observed during previous examinations of the case that the complainant organizations maintained that the expropriations and recoveries were linked to the status of the employers' leaders in question and that they were discriminatory.*

915. *The Committee notes with regret that, with regard to the allegations that land belonging to employers' leaders was expropriated, the Government gives legal reasons for not allowing FEDECAMARAS to participate in a round table on land recovery owing to a procedure established in the Land and Agrarian Development Act. In particular, the Committee notes the Government's statement, concerning a dialogue round table that will address "other existing problems that may arise in the future in this area" (recovery of estates), that this proposal is not viable since it is not possible to establish a dialogue round table to address issues that could possibly arise in an uncertain future and that section 82 of the Land and Agrarian Development Act establishes a clear procedure which cannot be negotiated between two parties. The Government indicates that the trade union organizations of rural workers (whose names are not specified) showed a total lack of interest in participating in a round table and adds that it is not up to a tripartite round table to hold consultations on legislation. The Committee recalls that its examination of cases of expropriation or recovery of land belonging to employers' leaders has been conducted solely from the point of view of potential discrimination owing to their status as leaders. The Committee stresses that the purpose of the round table between the Government and FEDECAMARAS would be for the two parties to examine and evaluate the functioning of the existing system and the usefulness of potential legislative amendments and to examine the application of procedures in respect of these leaders. The Committee therefore reiterates its previous recommendations, including those concerning fair compensation for the current or former leaders of FEDECAMERAS in question.*

Recommendations (d) and (e) of the previous examination of the case

916. *In its previous examination of the case, the Committee noted with regret from the report of the high-level tripartite mission that the Tripartite Commission on minimum wages, which had existed under the previous labour legislation, had been abolished under the new legislation (the Basic Act on Labour and Workers (LOTTT)). It also took note of the allegations made by the IOE and FEDECAMARAS, in which they stated that the Government, again ignoring the Committee's recommendations, had continued to issue regulations with a significant impact on both private Venezuelan companies and their workers without proper tripartite consultation and social dialogue, in particular without including FEDECAMARAS as the most representative employers' organization in the country. The Committee further noted that there had been no consultation on People's Ministry of Labour and Social Security Decision No. 8248 of 12 April 2013, which regulates the National Register of Workers' Organizations but also applies to employers' organizations; the partial regulation on working time relating to the Decree with the rank, power and force of the Basic Act on Labour and Workers, published on 30 April 2013; and the previous failure to consult FEDECAMARAS with regard to the aforementioned Basic Act and many other pieces of legislation.*

917. *The Committee notes the Government's statements reiterating that the country has broad and inclusive participatory dialogue during the drafting of legislation and that consultation of the people is a daily occurrence. The Committee also notes the Government's statement that FEDECAMARAS has repeatedly been called on to participate in the national dialogue on various issues but has ignored those invitations; however, other employers' organizations in various sectors have responded to the call for*

dialogue on, among other things, economic and labour-related matters. The Committee observes that FEDECAMARAS has been denying for years that it has refused to participate in the dialogue. The Committee notes that the Government provides a new example of its call for dialogue (through a first meeting that was held in February 2015 between the representatives of FEDECAMARAS and representatives of the Presidential Commission of Economic Affairs). The Committee expresses its appreciation for this initiative and encourages the Government to promote social dialogue. The Committee notes the Government's statements concerning the consultations held with FEDECAMARAS regarding the LOTTT and wishes nonetheless to recall that, while consultations were held on preliminary draft bills between the Government and FEDECAMARAS, the 2012 final version of the draft bill was not a subject of consultations between FEDECAMARA and the executive branch.

918. *The Government states that it is still holding consultations with the trade unions, chambers and professional associations, land committees, rural committees, municipal councils and other peoples' organizations concerning the preparation and content of the plan of action for the establishment of forums for dialogue, all in accordance with the constitutional and legal framework of the Bolivarian Republic of Venezuela. However, according to the Government, the issues that the various organizations have proposed for discussion are quite different from those recommended by the ILO mission; it will inform the ILO once the consultations with the various organizations concerned are concluded. The Committee notes the Government's reiteration that discussions on laws and bills are within the competence of the National Assembly. Likewise, the socio-economic policy of the country lies within the jurisdiction of the National Executive, in coordination with the other authorities of the State, this without limiting the existing mechanisms for dialogue and consultation with the various sectors concerned. Consultations may be held under, among other bodies, a tripartite round table which cannot, however, be erected as a supra-constitutional body. The Constitution is very clear about the competencies related to consultations on the adoption and repeal of laws, and a tripartite dialogue round table cannot be mandated to conduct consultations on laws. It could at most be one of the bodies consulted. The Committee notes that, according to the Government, there is no national law that would violate the rights contained in ILO Conventions Nos 87 and 98 since this would be unconstitutional. To the Government's knowledge, there is no legal action against any law of the country for which the Constitutional Courts would have granted remedy and it is unclear to what the ILO tripartite mission refers when it indicates as an objective for the tripartite dialogue round table to achieve "compliance of national legislation with ratified Conventions". In order for the organizations consulted to develop a real plan for dialogue, the Committee must take a decision on these matters since, to date, there has been no reply to the Government's comments on the mission report and, specifically, on the recommendations that, according to the Government, clearly contravene the legal framework and the national Constitution.*

919. *The Committee would like to recall that, during previous examinations of the case, it has drawn attention to various legal provisions to which the Committee of Experts on the Application of Conventions and Recommendations has objected and which had not been submitted to tripartite consultation. The provisions in question should be submitted to such consultation and brought into conformity with Conventions Nos 87 and 98 [see 368th Report, Case No. 2917, paras 1018 and 1023].*

920. *The Committee wishes to reproduce again some of the conclusions of the high-level tripartite mission [see the mission report and 372nd Report of the Committee, paras 755–756]:*

> *The mission notes that FEDECAMARAS continues to state that there are serious deficiencies in terms of social dialogue and that it is not consulted except on rare occasions and in relation to minimum wage fixing … . The mission also notes that FEDECAMARAS and*

the Government concur that some associations that are members of FEDECAMARAS are consulted on occasion.

... the mission recalls the importance of creating the conditions necessary for initiating tripartite social dialogue with the most representative employers' and workers' organizations on matters relating to industrial relations, which requires a constructive spirit, good faith, mutual respect and respect for the freedom of association and independence of the parties, in-depth discussions over a reasonable period, and efforts to find, as far as possible, shared solutions that will, to a certain extent, attenuate the polarization afflicting Venezuelan society. The mission highlights that the inclusive dialogue recommended by the Constitution of the Bolivarian Republic of Venezuela is fully compatible with the existence of tripartite social dialogue bodies and that any negative experience of tripartism in the past should not compromise the application of ILO Conventions concerning freedom of association, collective bargaining and social dialogue, or undermine the contribution made by tripartism in all ILO member States.

In keeping with the conclusions of the Committee on Freedom of Association, the mission reminded the Government that it can avail itself of the technical assistance of the International Labour Office, not only in matters concerning social dialogue and structured bodies, but also in the adoption of criteria and procedures to measure the representativeness of workers' and employers' organizations. The mission noted that the Government made a general statement to the effect that it does not rule out the possibility of availing itself of technical cooperation programmes, if necessary. The mission considers that the Government needs to convey its willingness to do so in more specific terms. In keeping with the concern expressed above, the mission strongly invites the Government to consider the following recommendations.

Technical cooperation

Recalling, in keeping with the views expressed by the Committee on Freedom of Association, the need for and the importance of establishing structured bodies for tripartite social dialogue in the country and noting that no tangible progress has been made in that regard, the mission considers it essential for immediate action to be taken to build a climate of trust based on respect for employers' and trade union organizations with a view to promoting solid and stable industrial relations. The mission considers that it is necessary for the Government to devise a plan of action that includes stages and specific time frames for its implementation, and which provides for:

(1) the establishment of a round table between the Government and FEDECAMARAS, with the presence of the ILO, to deal with all pending matters relating to the recovery of estates and the expropriation of enterprises (including the new information communicated to the mission) and other related problems arising or that may arise in the future;

(2) the establishment of a tripartite dialogue round table, with the participation of the ILO, that is presided over by an independent chairperson who has the trust of all the sectors, that duly respects the representativeness of employers' and workers' organizations in its composition, that meets periodically to deal with all matters relating to industrial relations decided upon by the parties, and that includes the holding of consultations on new legislation to be adopted concerning labour, social or economic matters (including within the framework of the Enabling Act) among its main objectives. The criteria used to determine the representativeness of workers' and employers' organizations must be based on objective procedures that fully respect the principles set out by the ILO. Therefore, the mission believes that it is important for the Government to be able to avail itself of the technical assistance of the ILO to that end;

(3) the discussion of laws, bills, other regulations and socio-economic policy at the tripartite dialogue round table, with a view to bringing domestic legislation into conformity with the Conventions concerning freedom of association and collective bargaining ... ;

(4) the identification of the causes of the problems related to administrative and judicial proceedings that affect workers' and employers' organizations and their representatives, with a view to finding solutions that will settle all matters pending in Case No. 2254.

921. *The Committee notes with concern that, in its two communications, the Government reiterates the information that it had previously communicated concerning the invitation to all the stakeholders in the country to take part in a national conference on peace and in round tables on economic matters, in which FEDECAMARAS would participate, without explaining the progress made on the new requested measures with regard to genuine social dialogue.*

922. *The Committee recalls that, at its March 2014 meeting, taking note of the report of the high-level tripartite mission, the Governing Body urged the Government to develop and implement the Plan of Action as recommended by the high-level tripartite mission, in consultation with national social partners; and requested the Director-General to provide the required technical assistance to that end.*

923. *The Committee reiterates the conclusions and recommendations that it made during the previous examination of the case and urges the Government to immediately adopt tangible measures with regard to social dialogue and bipartite and tripartite round tables as requested by the high-level tripartite mission.*

924. *The Committee notes with great concern that there has not been rapid compliance with the decisions of the Governing Body and that the Government has not yet provided any plan of action, in consultation with the social partners, that establishes stages and specific time frames for its implementation, with the recommended technical assistance from the ILO.*

925. *The Committee recalls that the conclusions of the mission also refer to a round table between the Government and FEDECAMARAS, with the presence of the ILO, and a tripartite dialogue round table, with the participation of the ILO and an independent chairperson. The Committee urges the Government to immediately implement tripartite consultations and indicates that, although some trade union organizations may not wish to take part in tripartite round tables, the Government has a duty to promote tripartite consultations and social dialogue without excluding representative organizations, such as FEDECAMARAS.*

926. *The Committee urges the Government to implement without delay the conclusions of the high-level tripartite mission, which were endorsed by the Governing Body, and requests it to report thereon. The Committee, in line with the conclusions of the high-level tripartite mission, urges as well the Government to take immediate action to create a climate of trust based on respect for employers' and trade union organizations with a view to promoting solid and stable industrial relations. The Committee requests the Government to inform it of any measures taken in this regard.*

927. *The Committee again requests the Government, as a first step in the right direction that should not pose any problem, to enable a representative of FEDECAMARAS to be appointed to the Higher Labour Council.*

928. *The Committee notes that, in their communication of 27 November 2014, the IOE and FEDECAMARAS state that the Government is still ignoring the recommendations made by the high-level tripartite mission. They also report new violations of Conventions Nos 87 and 98, particularly: (i) the detention of Mr Eduardo Garmendia, president of CONINDUSTRIA, for 12 hours; (ii) the shadowing and harassment of Mr Jorge Roig, president of FEDECAMARAS; (iii) an escalation of the verbal attacks on FEDECAMARAS by high-level state officials in the media; and (iv) the adoption by the President of the Republic, in November 2014, of 50 decree laws on important economic and production-related matters without consultation of FEDECAMARAS. The Committee notes these allegations with concern and requests the Government to send complete observations on the matter.*

929. *The Committee notes with concern the allegation contained in the recent joint communication from the IOE and FEDECAMARAS, that 15 entrepreneurs from various sectors, including the Chairperson of the Venezuelan Association of Clinics and Hospitals and the Chairperson of the National Association of Supermarkets and Self-Services, Mr Luis Rodriquez, were detained without due process and in violation of the right of defence, as well as other allegations. The Committee notes the Government's communications of 10 and 12 March 2015 denying attacks on business and stating that there are no criminal proceedings against the two employer leaders mentioned by the complainants, reporting the prosecution of eight enterprise managers for offences of an economic nature, and reporting also that, as regards the eight enterprise managers, the judicial authority has taken measures for their preventive detention or alternative precautionary measures. The Committee requests the Government to complete its response and intends to review the issues raised therein in a detailed manner at its next meeting in May 2015.*

The Committee's recommendations

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

(a) While expressing its deep concern at the various and serious forms of stigmatization and intimidation by the Bolivarian authorities, groups and organizations directed against FEDECAMARAS, its member organizations, their leaders and affiliated companies, including threats of imprisonment, statements of incitement to hatred, accusations of conducting economic warfare, the occupation and looting of shops, the seizure of FEDECAMARAS headquarters, etc., the Committee draws the Government's attention to the importance of taking strong measures to prevent such actions and statements against individuals and organizations that are legitimately defending their interests under Conventions Nos 87 and 98, which have been ratified by the Bolivarian Republic of Venezuela.

(b) The Committee notes with regret that the criminal proceedings relating to the bomb attack on FEDECAMARAS headquarters on 26 February 2008 and the abduction and mistreatment in 2010 of the leaders of that organization, Mr Noel Álvarez, Mr Luis Villegas, Mr Ernesto Villamil and Ms Albis Muñoz (the latter sustained three bullet wounds) have not yet been completed (FEDECAMARAS appealed against the ruling ordering the closure of the case concerning the bomb attack on its headquarters), again expresses the firm hope that they will be concluded without further delay, and requests the Government to keep it informed. The Committee reiterates the importance of ensuring that the perpetrators receive sentences that are in proportion to the seriousness of their crimes, with a view to preventing any recurrence of the latter, and that FEDECAMARAS and the leaders concerned are compensated for the damage caused by these illegal acts. The Committee requests the Government to send its observations on the issues raised by FEDECAMARAS with regard to the bomb attack on its headquarters.

(c) As regards the allegations of the seizure of farms, land recoveries, occupations and expropriations to the detriment of current or former employers' leaders, the Committee requests that those current or former

leaders of FEDECAMARAS be compensated in a just manner. At the same time, the Committee refers to the decision of the Governing Body in March 2014, in which it "urged the Government of the Bolivarian Republic of Venezuela to develop and implement the Plan of Action as recommended by the high-level tripartite mission, in consultation with national social partners", which involved, as mentioned by the mission, "the establishment of a round table between the Government and FEDECAMARAS, with the presence of the ILO, to deal with all pending matters relating to the recovery of estates and the expropriation of enterprises and other related problems arising or that may arise in the future", and regrets that the Government stated in its last communication that establishing a dialogue round table on questions of recovery of estates and holding consultations on legislation are not viable. The Committee urges the Government to implement this request along the lines described in the conclusions and to report thereon. Finally, like the high-level tripartite mission, the Committee emphasizes "the importance of taking every measure to avoid any kind of discretion or discrimination in the legal mechanisms governing the expropriation or recovery of land or other mechanisms that affect the right to own property".

(d) As regards the structured bodies for bipartite and tripartite social dialogue which need to be established in the country, and the plan of action in consultation with the social partners, involving the establishment of stages and specific time frames for its implementation with the technical assistance of the ILO, as recommended by the Governing Body, the Committee notes the Government's indication that it has not yet concluded the process of consultation with different sectors and organizations and requests the Government to ensure that FEDECAMARAS is included in all these processes. The Committee recalls that the conclusions of the mission refer to a round table between the Government and FEDECAMARAS, with the presence of the ILO, and a tripartite dialogue round table, with the participation of the ILO and an independent chairperson. The Committee urges the Government to immediately adopt tangible measures with regard to bipartite and tripartite social dialogue as requested by the high-level tripartite mission. Noting that the Government has not yet provided the requested plan of action, the Committee urges the Government to implement without delay the conclusions of the high-level tripartite mission endorsed by the Governing Body and to report thereon. The Committee urges the Government to promote social dialogue and initiatives taken in this area, such as the meeting held between the authorities and FEDECAMARAS in February 2015, and to immediately implement tripartite consultations.

(e) Finally, the Committee, in line with the conclusions of the high-level tripartite mission, urges the Government to take immediate action to create a climate of trust based on respect for employers' and trade union organizations with a view to promoting solid and stable industrial relations. The Committee requests the Government to inform it of any measures taken in this regard. The Committee further requests the Government, as a first step in the right direction that should not pose any problem, to enable a representative of FEDECAMARAS to be appointed to the Higher Labour Council.

(f) The Committee notes with concern the new allegations by the IOE and FEDECAMARAS of 27 November 2014 concerning: (i) the detention of Mr Eduardo Garmendia, president of CONINDUSTRIA, for 12 hours; (ii) the shadowing and harassment of Mr Jorge Roig, president of FEDECAMARAS; (iii) an escalation of the verbal attacks on FEDECAMARAS by high-level state officials in the media; and (iv) the adoption by the President of the Republic, in November 2014, of 50 decree laws on important economic and production-related matters without consultation of FEDECAMARAS. The Committee requests the Government to send complete observations on these allegations.

(g) The Committee notes with concern the new allegations from the IOE and FEDECAMARAS and takes note of the recent Government observations on some of the allegations. The Committee requests the Government to complete its response and intends to review the issues raised therein in a detailed manner at its next meeting in May 2015.

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

Geneva, 20 March 2015

(Signed) Professor Paul van der Heijden
Chairperson

Points for decision: