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SEVENTEENTH ITEM ON THE AGENDA

Report of the Committee on Freedom of Association

381st 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, from 9 to 11 March and on 17 March 2017, under the chairmanship of Professor Paul van der Heijden.

2. The following members participated in the meeting: Mr Albuquerque (Dominican Republic), Mr Cano-Soler (Spain), Ms Onuko (Kenya), Mr Teramoto (Japan), Mr Titiro (Argentina), Mr Tudorie (Romania); Employers' group Vice-Chairperson, Mr Echavarría and members, Mr Frimpong, Ms Hornung-Draus, Ms Horvatić, Mr Mailhos and Mr Matsui; Workers' group Vice-Chairperson, Mr Veyrier (substituting for Mr Cortebeeck), and members, Mr Asamoah, Mr Martinez, Mr Ohrt and Mr Ross. The members of Argentinian, Colombian and Dominican nationality were not present during the examination of the cases relating to Argentina (Case No. 2997), Colombia (Case No. 3061 and Case No. 3092) and Dominican Republic (Case No. 3068).

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3. Currently, there are 169 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 24 cases on the merits, reaching definitive conclusions in 17 cases (9 definitive reports and 8 reports in which the Committee requested to be kept informed of developments) and interim conclusions in 7 cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

Examination of cases

4. The Committee wishes to recall the efforts it has made to facilitate the understanding of the status of cases and the relative urgency for governments to transmit their observations. The Committee is of the firm belief that these measures have further strengthened the transparency in its working methods and assisted governments in their engagement with the special procedures. This Committee session has for the first time experienced the impact of its decision to set a deadline for receipt of government observations where it had indicated its intention to examine the case at its next meeting. The Committee welcomes the efforts made by governments in this regard, which it considers has indeed assisted in the efficiency of its work and enabled it to carry out its examination in the fullest knowledge of the circumstances in question. To further improve the efficiency of its work in cases where the Committee is awaiting complete observations from governments for their examination at its next meeting, the Committee urges governments to send this information as soon as possible to enable the most effective treatment. Communications received after 8 May 2017 will not be able to be taken into account in the Committee's examination.

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

5. The Committee considers it necessary to draw the special attention of the Governing Body to Cases Nos 2445 (Guatemala), 2923 (El Salvador) and 3191 (Chile) because of the extreme seriousness and urgency of the matters dealt with therein.

Paragraph 69 of the Committee's procedures

6. In its previous report, 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, the Committee had invited the Government of the Democratic Republic of the Congo to come before it at its March 2017 meeting. In light of the current circumstances in the country, the Committee has decided to postpone its invitation to the Government until its next meeting in June.

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

7. The Committee deeply regrets that it was obliged to examine the following cases without a response from the Governments: 3076 (Republic of Maldives) and 3183 (Burundi).

Urgent appeals: Delays in replies

8. As regards Cases Nos 2949 (Swaziland), 3018 (Pakistan), 3095 (Tunisia), 3185 (Philippines), 3189 (Plurinational State of Bolivia), 3202 (Liberia) and 3203 (Bangladesh), the Committee observes that, despite the time which has elapsed since the submission of the complaints or the issuance of its recommendations on at least two occasions, it has not received the observations of the Governments. The Committee draws the attention of the Governments in question to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of these cases if their observations or information have not been received in due time. The Committee accordingly requests these Governments to transmit or complete their observations or information as a matter of urgency.

Observations requested from governments

9. The Committee is still awaiting observations or information from the Governments concerned in the following cases: 2177 and 2183 (Japan), 2318 (Cambodia), 2761 (Colombia), 3067 (Democratic Republic of the Congo), 3074 (Colombia), 3081 (Liberia), 3113 (Somalia), 3121 (Cambodia), 3124 (Indonesia), 3125 (India), 3192 (Argentina), 3196 (Thailand), 3206 (Chile), 3207 (Mexico), 3208 (Colombia), 3209 (Senegal), 3212 (Cameroon), 3213 (Colombia), 3214 (Chile), 3216 (Colombia), 3218 (Colombia), 3219 (Brazil), 3220 (Argentina), 3221 (Guatemala), 3223 (Colombia), 3224 (Peru), 3226 (Mexico), 3227 (Republic of Korea), 3228 (Peru), 3229 (Argentina), 3230 (Colombia), 3232 (Argentina), 3233 (Argentina) and 3234 (Colombia). If these observations are not received by its next meeting, the Committee will be obliged to issue an urgent appeal in these cases.

Partial information received from governments

10. In Cases Nos 2265 (Switzerland), 2508 (Islamic Republic of Iran), 2609 (Guatemala), 2817 (Argentina), 2830 (Colombia), 2869 (Guatemala), 2948 (Guatemala), 2967 (Guatemala), 2978 (Guatemala), 2982 (Peru), 3023 (Switzerland), 3027 (Colombia), 3032 (Honduras), 3042 (Guatemala), 3078 (Argentina), 3089 (Guatemala), 3091 (Colombia), 3115 (Argentina), 3120 (Argentina), 3126 (Malaysia), 3127 (Paraguay), 3133 (Colombia), 3135 (Honduras), 3137 (Colombia), 3139 (Guatemala), 3141 (Argentina),

3149 (Colombia), 3150 (Colombia), 3152 (Honduras), 3158 (Paraguay), 3161 (El Salvador), 3165 (Argentina), 3179 (Guatemala), 3190 (Peru), 3192 (Argentina), 3194 (El Salvador), 3199 (Peru), 3210 (Algeria), 3211 (Costa Rica), 3215 (El Salvador), 3217 (Colombia) and 3222 (Guatemala), 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

11. As regards Cases Nos 2254 (Bolivarian Republic of Venezuela), 2989 (Guatemala), 3016 (Bolivarian Republic of Venezuela), 3062 (Guatemala), 3068 (Dominican Republic), 3069 (Peru), 3082 (Bolivarian Republic of Venezuela), 3090 (Colombia), 3094 (Guatemala), 3103 (Colombia), 3112 (Colombia), 3116 (Chile), 3117 (El Salvador), 3119 (Philippines), 3124 (Indonesia), 3126 (Malaysia), 3129 (Romania), 3131 (Colombia), 3144 (Colombia), 3146 (Paraguay), 3156 (Mexico), 3157 (Colombia), 3159 (Philippines), 3160 (Peru), 3162 (Costa Rica), 3163 (Mexico), 3167 (El Salvador), 3168 (Peru), 3170 (Peru), 3173 (Peru), 3174 (Peru), 3175 (Uruguay), 3184 (China), 3187 (Bolivarian Republic of Venezuela), 3188 (Guatemala), 3190 (Peru), 3193 (Peru), 3195 (Peru), 3197 (Peru), 3198 (Chile), 3199 (Peru), 3200 (Peru), 3201 (Mauritania), 3204 (Peru), 3205 (Mexico), 3225 (Argentina), 3231 (Cameroon) and 3236 (Philippines), and the Committee has received the Governments' observations and intends to examine the substance of these cases as swiftly as possible.

New cases

12. The Committee adjourned until its next meeting the examination of the following new cases which it has received since its last meeting: 3235 (Mexico), 3236 (Philippines), 3237 (Republic of Korea), 3238 (Republic of Korea), 3239 (Peru), 3240 (Tunisia), 3241 (Costa Rica), 3242 (Paraguay), 3243 (Costa Rica), 3244 (Nepal), 3245 (Peru), 3246 (Chile), 3247 (Chile), 3248 (Argentina), 3249 (Haiti), 3250 (Guatemala), 3251 (Guatemala), 3252 (Guatemala), 3253 (Costa Rica) and 3254 (Colombia), and 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.

Transmission of cases to the Committee of Experts

13. The Committee draws the legislative aspects of the following cases, as a result of the ratification of Conventions Nos 87 and 98, to the attention of the Committee of Experts on the Application of Conventions and Recommendations: 2723 (Fiji), 3019 (Paraguay), 3148 (Ecuador), 3172 (Bolivarian Republic of Venezuela) and 3178 (Bolivarian Republic of Venezuela).

Cases in follow-up

14. The Committee examined 11 cases concerning the follow-up given to its recommendations and concluded its examination with respect to seven cases: Case No. 2547 (United States), 2788 (Argentina), 3002 (Plurinational State of Bolivia), 3013 (El Salvador), 3052 (Mauritius), 3063 (Colombia) and 3070 (Benin).

Case No. 2788 (Argentina)

15. The Committee last examined this case, the pending allegations for which concerned a criminal complaint for contempt of court in relation to the compulsory conciliation order against trade union officials, at its March 2013 meeting [see 367th Report, paras 17 and 18]. On that occasion, having recalled the principle that no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike and in accordance with freedom of association principles, the Committee noted that the case was at the investigation stage and requested the Government to keep it informed of any final ruling handed down in relation to this case.

16. As part of the follow-up to the case, in a communication of 29 April 2014, the Government states that on 28 June 2012 a decision was taken to shelve the proceedings in progress for alleged contempt of court against the trade union officials in question (the Government attaches a copy of the corresponding court decision).

17. *Having duly noted that the proceedings against the leaders of the complainant organization for the alleged offence of contempt of court were shelved, the Committee will not pursue its examination of this case.*

Case No. 3070 (Benin)

18. The present case, in which the complainants denounce the violent suppression by the law enforcement authorities of a peaceful march organized by the main trade union confederations of the country in December 2013, was last examined by the Committee at its June 2015 meeting [see 375th Report, paras 102–115]. On that occasion, the Committee, expressing regret that the Government had not replied to its urgent appeal, strongly urged the Government to immediately take the necessary measures to conduct an investigation into the alleged acts of violence and to take all the appropriate steps and issue the relevant instructions to the law enforcement authorities to ensure that in future the workers' right to demonstrate peacefully to defend their occupational interests may be exercised in accordance with the principles of freedom of association.

19. In a communication dated 25 June 2015, the Government indicates that the trade union organizations in question had chosen to organize their demonstration on the same day that the President of the Republic was due to deliver his message to the National Assembly on the state of the nation and that, in order to avoid the risk of disturbing public order, the Government had recommended that the union leaders postpone the march. The Government adds that it was never the intention of those in charge of security and public order to organize any repression of the demonstrators, but that the latter had attempted in every way to defy the arrangements put in place to guarantee the security of the Head of State and those involved in the ceremony at the National Assembly.

20. *The Committee observes that the demonstration had not been prohibited, but that it had been proposed to the trade union organizations to postpone it. The information provided by the Government does not include information on alternative solutions that could have been considered or discussions that could have been held with the trade union organizations in order to minimize the risks to public order (such as changing the route). According to the Government, it seems that the reaction of the security forces stemmed from disturbances at the demonstration. While taking note of this information, the Committee wishes to recall that the authorities should endeavour to come to an understanding with the organizers of the demonstration on where and under what conditions the demonstration should take place, and that the intervention of the forces of order should remain in due proportion to the danger to law and order that the authorities are attempting to control. Noting that there are no other*

outstanding issues, the Committee considers that the present case does not require further examination.

Case No. 3002 (Plurinational State of Bolivia)

21. The Committee last examined this case, the allegations for which concerned the non-compliance by the National Health Fund (CNS) with a collective agreement and retaliation against trade unionists at its October 2014 meeting [see 373rd Report, paras 58–78]. On that occasion, the Committee requested the Government to inform it urgently of the outcome of the proceedings initiated against two officials of the CNS National Legal Department and against the Fund's Administrative and Financial Manager for acting in excess of their authority in signing the collective agreement of 26 December 2011.

22. As part of the follow-up to the case, in a communication of 12 August 2015, the Government states that, through Decision No. 209/12, the legal action against the CNS Administrative and Financial Manager and the two officials of the CNS National Legal Department concerned for allegedly acting in excess of their authority was declared null and void, on the basis of Report No. 540/12 of 31 October 2012 of the CNS National Legal Department. The Government specifies that the persons in question were acquitted of the charge of acting in excess of their authority since they had acted in line with special and sufficient authorization.

23. *Having duly noted that the proceedings initiated in relation to acting in excess of authority in the signing of a collective agreement had been dismissed, the Committee will not pursue its examination of this case.*

Case No. 3063 (Colombia)

24. The Committee last examined this case, concerning the allegation of violations of the right to collective bargaining in a number of enterprises within the energy sector, at its June 2015 meeting [see 375th Report, paras 116–135]. On that occasion, the Committee encouraged the Quindío Power Company (EDEQ SA ESP) and the complainant organization (the Trade Union of Electricity Workers of Colombia (SINTRAELECOL)) to intensify their efforts, begun in 2014, to establish relations built on dialogue and mutual respect and requested the Government to keep it informed of the results of the negotiations. In addition, the Committee invited the complainant and the Pacific Power Company (EPSA) to consider the use of domestic (national) conciliation mechanisms in order to resume the dialogue, and requested the Government to keep it informed of developments in the situation and of the outcome of the appeal for annulment of the arbitral award in relation to the collective dispute between the said enterprise and the complainant.

25. The Committee notes the information provided by the Government in its communication dated 15 February 2015. The Government states that the Labour Cassation Chamber of the Supreme Court of Justice, through a ruling dated 6 February 2014, decided not to annul the arbitral award issued to resolve the collective dispute between EPSA and SINTRAELECOL, with the exception of the wage increase that was set by the Court to take retroactive effect from 1 March 2011 instead of 1 January 2011. The Government adds that the Quindío Power Company initiated a new bargaining process with SINTRAELECOL, culminating in the signing of an agreement, in force in 2017, which helped to establish industrial peace in the enterprise. *The Committee notes this information with satisfaction.*

26. In an additional communication dated 9 March 2016, regarding the situation of relations between SINTRAELECOL and Termotasajero SA, concerning which the Committee had decided not to pursue its examination of the allegation of misinterpretation of a provision of the collective agreement, the Government indicates that: (i) the enterprise and the trade union

signed a collective agreement in February 2016; and (ii) the trade union expressed its satisfaction with the contents of the agreement reached, which, according to the trade union itself, constitutes a new reference framework. *The Committee notes this information with satisfaction. In the light of the various pieces of information provided, the Committee will not continue its examination of the present case.*

Case No. 3058 (Djibouti)

27. The Committee examined the substance of this case at its March 2015 meeting. The case relates to allegations of harassment and discriminatory measures against trade union leaders and members in the education sector, as well as to the removal from the territory of a regional head of an international trade union organization [see 374th Report, paras 337–358]. On that occasion, the Committee made the following recommendations:

(a) The Committee requests the Government to provide information on the current employment status of the education sector employees who, 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.

28. In a communication dated 4 April 2015, the Government expresses regret that this case has been examined by the Committee, when the leaders of the complainant national organizations, namely the Djibouti Secondary Teachers' Union (SYNESED) and the Primary Teachers' Union (SEP), are not in compliance with the national legislation owing to their failure to hold a congress for several years. Reaffirming its commitment to freedom of association, protection of the right to organize, freedom of expression and freedom of opinion, the Government once again denies the allegations of repression of and threats against trade union leaders. The Government indicates that the – allegedly arbitrary – dismissals of education sector employees were based on article 35 of the general public service regulations, which provides that "a public servant shall be dismissed for dereliction of duty, without consultation of the disciplinary board, in the event that he or she has been absent without authorization for six consecutive weeks". The Government adds that it ensured that it was in compliance with all the provisions of the regulations in this regard. As to the death of Mr Mahamoud Elmi Rayaleh in detention, the Government states that the forensic report found that the death, which occurred while Mr Rayaleh was asleep, had no traumatic or pathological cause.

29. *The Committee notes the information provided by the Government, which is broadly a repetition of the information previously provided, without the additional details requested by the Committee. The Committee therefore once against 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 report of the independent commission that investigated the circumstances of his death and found that there was no evidence to corroborate anything of a suspicious or criminal nature in this regard. As to the 45 education sector employees for whose dismissal the Government had not provided any clarifications, thus possibly suggesting that they were all dismissed for dereliction of duty following six consecutive weeks of unauthorized absence from their new posts. Under these circumstances, the Committee will not pursue its examination of this aspect of the case unless it receives additional information from the complainant organizations showing that the dismissals were of an anti-union nature.*

Case No. 3013 (El Salvador)

30. The Committee last examined this case, concerning allegations of the refusal of the Ministries of Economy and Finance to approve a collective agreement, at its June 2014 meeting [see 372nd Report, paras 246–263]. On that occasion, the Committee: (a) requested the Government to guarantee respect for the principles referred to in the conclusions in the future, and urged it once again to take steps to amend section 287 of the Labour Code so that collective agreements that have been concluded and signed by the parties in an autonomous official institution, such as the Salvadorian Tourism Institute (ISTU), do not have to be submitted for approval by the Ministry of Tourism, which itself has to seek the opinion of the Ministry of Finance; (b) referred once again the legislative aspect of this case to the Committee of Experts on the Application of Conventions and Recommendations; and (c) regretted that the collective agreement negotiated by the complainant organization and the ISTU had not been approved and requested the Government to take steps to bring the parties and the authorities in question together with a view to overcoming this situation.

31. In the follow-up to the case, in a communication dated 30 October 2014, the Government provided observations in relation to amending section 287 of the Labour Code – a matter that is being examined by the Committee of Experts on the Application of Conventions and Recommendations. Moreover, with regard to the collective labour agreement negotiated by the complainant union and the ISTU, the Government states that the Executive Directorate of the Ministry of Finance complied with agreement No. 15/2012, which stipulated that the collective labour agreement would enter into force as of 1 January 2013. The Government also states that the collective agreement was subsequently revised by the parties and duly registered on 22 April 2013, with a validity of three years from the time of its registration. The Government adds that, on the date of its communication, no complaints had been received in regard to the abovementioned collective agreement.

32. *The Committee notes with interest that, according to the Government's indications, the collective agreement negotiated between the complainant union and the ISTU was approved and registered, and so came into force, and therefore the Committee will not pursue its examination of this case.*

Case No. 2547 (United States)

33. The Committee last examined this case – which concerns a decision of the National Labor Relations Board (NLRB) denying graduate teaching and research assistants at private universities the right, under the National Labor Relations Act (NLRA), to engage in organizing or collective bargaining – at its October 2014 meeting [see 373rd Report, paras 17–20]. On that occasion, the Committee noted with interest that there were significant developments on this matter before the NLRB (possible application of the NLRA to student athletes and reconsideration of the decision in Brown University), the agreement reached between the Graduate Student Organizing Committee/United Auto Workers (GSOC/UAW) and New York University (NYU) to bargain in good faith and the ensuing determination of the representative union through a representation election. The Committee requested the Government to continue to keep it informed of developments as regards the NLRB's reconsideration of the decision in Brown University and in relation to the progress made under the GSOC/UAW agreement with NYU.

34. In its communication dated 17 January 2017, the Government indicates that on 23 August 2016, the NLRB issued a decision in Columbia University (02-RC-143012) whereby it held that student assistants working at private colleges and universities were statutory employees covered by the NLRA (the authority to define the term "employee" rests primarily with the NLRB absent an exception enumerated within the NLRA). The case dealt with an election petition filed in December 2014 by the Graduate Workers of Columbia-GWC, UAW, which

sought to represent both graduate and undergraduate teaching assistants, along with graduate and departmental research assistants at the university. Since the NLRA contains no clear language prohibiting student assistants from its coverage, the NLRB majority found no compelling reason to exclude student assistants from the protections of the Act. The NLRB thus reversed the decision in Brown University stating that it deprived an entire category of workers of the protections of the Act without a convincing justification.

35. *The Committee notes with satisfaction the decision in Columbia University by which the NLRB overruled the decision in Brown University and held that student assistants working at private colleges and universities were statutory employees within the meaning of section 2(3) of the NLRA permitting them to seek union representation and engage in collective bargaining. In these circumstances, the Committee will not pursue its examination of the case.*

Case No. 2723 (Fiji)

36. The Committee last examined this case at its May 2016 meeting [see 378th Report, paras 244–271] when it made the following recommendations [see 378th Report, para. 271]:

(a) Warmly welcoming the signature of the Joint Implementation Report (JIR) of 29 January 2016 signed in the wake of the ILO tripartite mission, as well as the adoption on 10 February 2016 of the Employment Relations (Amendment) Act of 2016 introducing the changes agreed to in the JIR, the Committee is pleased to note the progress which has given rise to the Governing Body decision that the article 26 complaint would not be referred to a commission of inquiry, and that the procedure be closed. The Committee requests the Government to keep it informed of the developments in relation to the follow-up given to the JIR and the 2016 ERP amendment.

(b) Welcoming that in the JIR the parties have reached agreement on the restoration of check-off facilities, the Committee also urges the Government once again to ensure that swift arrangements are made between the parties to ensure the full reactivation of the check-off facility in the public sector and the relevant sectors considered as "essential national industries".

(c) The Committee asks the Office to provide as soon as possible the requested technical assistance in respect of the list of essential services and industries, and requests the Government to keep it informed of any developments in this regard.

(d) With respect to the alleged acts of assault, harassment and intimidation of trade union leaders and members for their exercise of the right to freedom of association, the Committee requests the FTUC to provide information on the developments reported by the Government, failing which it will no longer pursue the examination of these allegations with respect to Mr Anthony. The Committee also requests the complainants to furnish further information on the alleged acts of assault, harassment and intimidation against Mr Attar Singh (General Secretary of the FICTU), Mr Mohammed Khalil (President of the Fiji Sugar and General Workers' Union (FSGWU) – Ba Branch General), Mr Taniela Tabu (Secretary of the Viti National Union of Taukei Workers) and Mr Anand Singh (lawyer), should there be pending issues in this regard.

(e) With respect to the criminal charges related to the exercise of trade union activity brought against Mr Daniel Urai, FTUC President and General Secretary of the National Union of Hospitality, Catering and Tourism Industries Employees (NUHCTIE), the Committee, pleased to note that the sedition charges brought against him and another person four years ago had been dropped, once again urges the Government, as regards the remaining criminal charges of unlawful assembly on the grounds of failure to observe the terms of the PER, to take the necessary measures to ensure that these charges are also immediately dropped, and requests the Government once again to indicate whether there are any charges still pending against Mr Nitendra Goundar, a NUHCTIE member.

(f) Welcoming the repeal of the ENID by the 2015 amendment of the ERP and highlighting the need to remedy the persisting negative impact of the ENID after its repeal, the

Committee recalls its previous conclusions that the abrogation by the ENID of the collective agreements in force is contrary to Article 4 of Convention No. 98 concerning the encouragement and promotion of collective bargaining, and requests the Government to devise ways as to how to address the issue, and to keep it informed in this respect.

(g) The Committee once again requests the Government to consider abrogation or amendment of the POAD so as not to place unjustified restrictions on freedom of assembly. Furthermore, it again requests the Government to reinstate Mr Rajeshwar Singh, FTUC Assistant National Secretary, in his position representing workers' interests on the ATS Board without delay, should this not yet be the case.

(h) The Committee requests the Government to take measures to review section 14 of the Political Parties Decree in consultation with the representative national workers' and employers' organizations with a view to its amendment so as to ensure respect for the principles enunciated in its conclusions.

(i) The Committee reiterates its expectation that, after seven years, the case of Tevita Koroi will be deliberated by the ERAB without further delay, and that, in the framework of this exercise, the conclusions that the Committee made in this regard when examining this case at its meeting in November 2010 [see 358th Report, paras 550–553] will be duly taken into account, with a view to rehabilitating Mr Koroi.

(j) The Committee requests the Government to provide without delay its observations to the remaining allegations of the complainants, specified in its conclusions, and invites the complainants to furnish further information on the status of these matters.

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

37. The Fiji Islands Council of Trade Unions (FICTU) provides additional information in a communication dated 23 September 2016. In particular, the FICTU alleges that: (i) on 10 September 2016, the police approached Attar Singh, the General Secretary of the FICTU, at his home and asked him to accompany them to the Central Police Station in Suva; (ii) Mr Singh was informed that the police were from the criminal investigations department and were effecting an arrest regarding his attendance at an unlawful meeting which discussed the 2013 Constitution at the Presbyterian Church Hall in Suva; (iii) Mr Singh was interrogated from 1 p.m. to 5 p.m. on 10 September 2016, locked up overnight in a police cell and interrogated again the following day, with breaks, until 7.30 p.m., when he was released and told the file was being forwarded to the Director of Public Prosecutions who would decide on the charges to be laid; (iv) others were also locked up and interrogated for the same reasons: Sitiveni Rabuka and Mahendra Chaudhry (former Prime Ministers), Professor Biman Prasad (leader of the National Federation Party), Dr Tupeni Baba (an academic) and Jone Dakuvula (Chairperson of Pacific Dialogue, the non-governmental organization which held the meeting). The complainant further alleges that the Government has not taken any attempt to act on the Committee's recommendation to abrogate or amend the Public Order (Amendment) Decree No. 1 of 2012 (POAD) but instead renewed its enforcement. The complainant also denounces that a permit issued to a non-governmental organization to discuss reforms in the sugar industry prohibits defamatory and provocative language, which may be considered as new levels of restrictions intended to curtail free expression and discussions. The complainant, therefore, requests the Government to remove all restrictions on peaceful assembly, free association and free speech, not to lay criminal charges on any of the persons questioned in relation to the September 2016 meeting and not to enforce the POAD. In its communication dated 25 October 2016, the FICTU provides a press release of the Director of Public Prosecutions, in which he indicates that there was insufficient evidence to sustain the charges of breach of the Public Order Act against the persons arrested.

38. The Government provides its observations in communications dated 1 June, 30 August and 20 October 2016 and 10 January 2017. The Government indicates, with regard to the follow-up given to the Joint Implementation Report (JIR) and the 2016 amendment of the

Employment Relations Promulgation (ERP) (recommendation (a)), that: (i) it is committed to implementing the JIR; (ii) the expanded Employment Relations Advisory Board (ERAB), a forum that allows for the maintenance of social dialogue and the implementation of real change and labour reform, has committed to meeting monthly to continue reviewing labour laws, including the ERP Matrix, to ensure their compliance with the ILO Conventions ratified by Fiji; (iii) the ERAB met three times between July and October 2016 and sought technical assistance and advice from the Office in order to examine opportunities to promote better labour relations in Fiji; (iv) the reinstatement of individual grievances terminated by the Essential National Industries (Employment) Decree, 2011 (ENID) is dealt with by the Arbitration Court which, as an independent institution, can determine the manner in which the reinstated grievances will proceed; as of June 2016, 186 cases of reinstated individual grievances have been sent to the Arbitration Court for adjudication; (v) in line with the 2016 amendment to the ERP, which provides for the establishment of enterprise unions, 29 enterprise unions or in-house unions were registered; (vi) the provision of the 2016 ERP amendment that enables employees terminated during the operation of the ENID to seek compensation from the Arbitration Court represents a significant achievement and concession by the social partners, as it allows individuals whose employment was terminated to receive compensation without the need to undergo a stringent court process on proof; furthermore, the period of 28 days to request such compensation has been extended by further three weeks and a user-friendly form was provided to be filled by the applicants and it can be submitted at any court registry around the country; (vii) since the repeal of the ENID, workers in the public sector can raise their grievances individually or collectively through the Employment Relations Tribunal and Employment Relations Court, and the Arbitration Court (to date, 21 cases have been filed by government employees); and (viii) the reinstatement of civil service grievances terminated under the Employment Relations (Amendment) Decree No. 21 of 2011 (Decree No. 21) was discussed at the ERAB and, as a result of these discussions, such grievances will be deliberated by the Arbitration Court.

39. The Government further states that the Ministry of Finance, the Ministry of Public Enterprises and the Ministry of Local Government, Housing and Environment issued circulars in April 2015 and January and March 2016 to implement the Government's decision to restore the check-off facilities in the public sector. Accordingly, Government employees who wish to, can have their trade union fees deducted directly from their salary or wage and sent to the trade union. As regards recommendation (c), the Government specifies that the ERAB has sought assistance and expertise from the Office to assist it to consider, gauge and determine the list of essential services and industries now existing under the law and will deliberate on the response from the Office, as per its mandate.

40. Concerning the allegations of physical attacks, intimidation, threats and assaults against trade union leaders and members for their exercise of the right to freedom of association, the Government indicates that all incidents of criminal offences are independently and thoroughly investigated upon lodging a complaint with the police department or the Office of the Director of Public Prosecutions but that no such complaints were filed by Mohammed Khalil (General Secretary of the Fiji Sugar Workers' Union – Ba Branch), Attar Singh (General Secretary of the FICTU), Tanial Tabu (General Secretary of the Viti National Union of Taukei Workers) or Anand Singh (lawyer) and no investigations were thus conducted in this regard.

41. With regard to the pending criminal charges filed against Daniel Urai and Nitendra Goundar, the Government reiterates that: (i) Mr Urai and Mr Goundar were charged for the offence of unlawful assembly contrary to the Public Order Act; (ii) Mr Urai and five other trade unionists were charged for unlawful strike under the ERP; (iii) Mr Urai was also charged for urging political violence contrary to the Crimes Decree, 2009; and (iv) all charges were filed in relation to the commission of separate criminal offences and not in relation to Mr Urai's trade union activities. The Government indicates that while the charges for unlawful strike

and for urging political violence were withdrawn, the charges for the offence of unlawful assembly are proceeding through the Nadi Magistrates' Court, where the case was called on 28 November 2016. The Government adds in this regard that no charges were filed regarding the breach of the Public Emergency Regulations and the remaining charge concerns breaches of the Crimes Decree, 2009.

42. The Government further states that the collective agreements abrogated by the ENID cannot be restored, as new collective agreements have been negotiated and are in place and the restoration of the previous agreements would create disparity. It adds that it is up to the employers and workers to decide whether or not they agree to reinstate previous collective agreements or whether these should form the basis for renegotiations.

43. With regard to the request to consider the abrogation or amendment of the POAD so as not to place unjustified restrictions on freedom of assembly and to reinstate Rajeshwar Singh (Assistant National Secretary of the Fiji Trades Union Congress (FTUC)), the Government reiterates that under section 8 of the Public Order Act, 1978, any person who wishes to organize or convene a meeting or procession in a public place must first make an application for a permit, in order to ensure the carrying out of administrative functions such as the closure of roads and the provision of law enforcement officers to maintain order; for other instances a permit is not required.

44. The Government further indicates, as regards section 14 of the Political Parties Decree, that it is undertaking reforms to create transparent rules of governance and a legal system based on substantive equality and justice. It explains that section 14(2) of the Political Parties Decree and section 57 of the Constitution ensure the political neutrality of public officers, where public office includes an office in any federation, congress, council or affiliation of trade unions or employers. According to the Government, this ensures that persons in public offices do not engage in political activity which may compromise the political neutrality of that person's office, do not publicly indicate support for or opposition to any political party, do not use trade union funds to fund their political campaign and do not use their positions to advance a personal political agenda. The Government also indicates that trade union officials have recently contested general elections and that most of them were not successful and have returned to their former trade union positions.

45. As regards Mr Koroi, the Government reiterates that he was charged for breaching the Civil Service Act, 1999, and that a disciplinary process – a normal employer–employee exercise – was undertaken, in which Mr Koroi was found to be in breach of the Civil Service Act, 1999, resulting in the termination of his employment.

46. The Government further provides its observations on the complainants' 2013 allegations of trade union rights violations in "essential national industries" as governed by the ENID and intimidation and threats in the context of a strike ballot in the sugar sector and indicates that: (i) in 2013, members of the Fiji Sugar and General Workers' Union (FSGWU) held a ballot to call a strike regarding their pay at the Fiji Sugar Corporation (FSC); while the required number to proceed with the strike was obtained, it did not take place by choice of the workers; (ii) the FSC is not an essential service or industry and members of the union were at liberty to consult their representatives; (iii) although the Public Order Act, 1978 requires a permit for meetings in public places to ensure the carrying out of administrative functions, such as the closure of roads and the provision of law enforcement officers to maintain order, in the instance alleged by the complainants (arrest of more than 30 protestors who had assembled to denounce the entry into force of the new Constitution on 6 September 2013), such permission was not sought by the individuals for the act they wanted to carry out in the public place; (iv) pursuant to section 145 of the ERP, trade union representatives can access a workplace to conduct union business provided that there is authorization in writing by the trade union and consent of the employer; and (v) collective bargaining is freely exercised in

the public and private sectors as it is guaranteed by article 20(4) of the Constitution and Part 16 of the ERP, which underlines the duty of good faith.

47. Concerning the additional allegations from the FICTU, of arrest and detention of trade unionists in September 2016, the Government indicates that the persons arrested and detained were suspected of breach of section 8 of the Public Order Act, which states that any meeting in a public place where members of the public are given access requires a permit, as they attended a public meeting for which no permit had been issued. The Government indicates that on 17 October 2016, after careful review of the evidence, the Director of Public Prosecutions found that there was insufficient evidence to sustain the charges against the persons arrested and detained, as there was no intention on their part to attend a meeting in breach of the Public Order Act. Accordingly, no charges were filed against the persons arrested, including Attar Singh.

48. *The Committee notes the information provided by the Government concerning the follow-up to the JIR and the 2016 ERP amendment. In particular, it welcomes the registration of 29 enterprise unions in line with the 2016 amendment to the ERP and notes that the expanded ERAB meets monthly to review labour laws to ensure their compliance with ratified ILO Conventions. Noting that the Arbitration Court is competent to deal with reinstated individual grievances discontinued under the ENID and under Decree No. 21, with compensation claims for termination of employment under the ENID and with collective grievances of workers in the public sector, the Committee welcomes that an important number of cases of reinstated individual grievances have already been sent to the Arbitration Court for adjudication. The Committee requests the Government to keep it informed on the functioning in practice of the ERAB and the Arbitration Court, including the progress achieved by these entities and trusts that the Government will continue to show commitment to implementing the JIR and the 2016 ERP amendment. Recalling that it has referred the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations, the Committee trusts that the Government will be in a position to provide the Committee of Experts with concrete information on the progress made in addressing all pending matters in this regard in the near future.*

49. *The Committee welcomes that, according to the Government, the check-off facilities in the public sector have been restored, and trusts that workers in the other sectors considered as "essential national industries" will be able to benefit from such facilities in the near future.*

50. *The Committee notes the Government's indication that the collective agreements abrogated by the ENID could not be reinstated as new collective agreements have been negotiated but that employers and workers could agree to reinstate previous collective agreements or use them as the basis for renegotiations. In this respect, the Committee requests the Government to indicate whether all collective agreements abrogated by the ENID were replaced by newly negotiated collective agreements and, should this not be the case, to take the necessary measures to ensure that, at least in the public sector, collective agreements abrogated by the ENID can be used as a basis for renegotiations.*

51. *With regard to the POAD and the restrictions on freedom of assembly, the Committee notes that the Government reiterates that under section 8 of the Public Order Act, 1978, any person who wishes to organize or convene a meeting or procession in a public place must first make an application for a permit. In this regard, the Committee also notes the additional information provided by the complainants denouncing the arrest, detention and interrogation of several persons in relation to their attendance at a meeting in September 2016 which was considered illegal by the authorities, and the Government's response that although the detained persons were suspected of breach of section 8 of the Public Order Act, after careful review of the evidence no charges were filed against them. The Committee also notes that according to the press release of the Director of Public Prosecutions, while the*

arrest and detention of the persons suspected of having committed an offence was lawfully justified, it took the police five days after the meeting to act and it would appear that the police were selective in who they arrested, given that a large number of people had taken part in the public meeting. The Committee wishes to emphasize the importance it attaches to freedom of assembly in the context of trade union rights and, in view of the concerns previously raised as to the adverse effects the POAD can have on legitimate trade union activities, requests the Government to ensure that it is not used to impede the exercise of these rights. Regretting further that the Government does not provide any information on the reinstatement of Rajeshwar Singh (FTUC Assistant National Secretary) on the ATS Board, the Committee requests the Government once again to reinstate him in his position representing workers' interests without delay, should this not yet be the case.

52. *With respect to the alleged acts of assaults, harassment and intimidation of trade union leaders and members for their exercise of the right to freedom of association made previously in this case, the Committee will no longer pursue the examination of these allegations in view of the absence of the additional information requested from the complainants.*

53. *As regards the pending criminal charges related to the exercise of trade union activity brought against union leaders from the National Union of Hospitality, Catering and Tourism Industries Employees Union (NUHCTIE), the Committee notes that, while the charges of unlawful strike were dropped, the criminal charges pending against Mr Daniel Urai and Nitendra Goundar for the offence of unlawful assembly contrary to the Public Order Act are proceeding before the Nadi Magistrates' Court, where the case was called on 28 November 2016. The Committee once again urges the Government to take the necessary measures to ensure that all pending criminal charges for unlawful assembly against Mr Urai and Mr Goundar are immediately dropped, especially in view of the Committee's recommendation in relation to the POAD, and requests the Government to keep it informed of any developments in this regard.*

54. *The Committee further notes that, with regard to the case of Tevita Koroi, the Government simply reiterates that the employment of Mr Koroi was terminated as a result of a disciplinary process in which he was found to be in breach of the Civil Service Act, 1999. The Committee notes with regret that despite previous indications that the case would be reviewed by the ERAB, the Government does not submit any new information in this regard. The Committee, therefore, reiterates its expectation that, after several years, the case of Mr Koroi will be deliberated by the ERAB without further delay, and that, in the framework of this exercise, the conclusions that the Committee made in this regard when examining the case at its meeting in November 2010 [see 358th Report, paras 550–553] will be duly taken into account, with a view to rehabilitating Mr Koroi.*

55. *Lastly, the Committee notes the Government's reply to the 2013 FTUC allegations relating to trade union rights violations in "essential national industries" as governed by the ENID and intimidation and threats in the context of a strike ballot in the sugar sector, and observes that, although invited to do so, the complainants have not provided any further information on the status of these matters. In view of the repeal of the ENID by the 2015 ERP amendment and the elimination of the explicit outright prohibition of industrial action in "essential national industries", the Committee expects the Government to guarantee in the future the right to exercise legitimate trade union activities in the sugar sector and other "essential national industries", and will no longer pursue the examination of the 2013 FTUC allegations.*

Case No. 3052 (Mauritius)

56. The Committee last examined this case at its March 2015 session [see 374th Report, paras 562–586], when it requested 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.

57. In a communication dated 9 October 2015 the Government informed the Committee that the police inquiry revealed no conflict between the Farm Workers' Union and the management of Innodis Ltd and the workers did not lodge any further complaint.

58. *The Committee notes the information provided by the Government and considers that the present case calls for no further examination.*

Case No. 3171 (Myanmar)

59. The Committee last examined this case, in which the complainant alleged anti-union practices, including harassment, discrimination and dismissals of trade union members and officials, as well as interference in union activities, denial of access to workplace and attempts to dismantle the Bagan Hotel Union, carried out by the management of the Bagan Hotel River View, at its June 2016 meeting [see 378th Report, paras 467–493]. On that occasion, the Committee made the following recommendations [see 378th Report, para. 493]:

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

(b) The Committee requests the Government to carry out an investigation into the specific allegation of intimidation after a peaceful demonstration of union and non-union members and, if found to be true, to ensure an effective remedy, including sufficiently dissuasive sanctions, so that such acts do not recur.

(c) The Committee expects that the final judgment in this case will be issued without delay and requests the Government to provide a copy of the judgment of the Supreme Court once it is handed down.

(d) The Committee requests the Government to take measures to bring the union and the employer together with a view to reaching agreement on the specific access of the union officials to the workplace so as to allow for the proper exercise of their functions, with due respect for the rights of property and management. It requests the Government to keep it informed of the progress made in this regard.

(e) The Committee asks the Government to review the relevant legislation, in consultation with the employers' and workers' organizations concerned, with a view to making any necessary amendments, so as to ensure the effective protection of workers against anti-union discrimination and interference by providing for swift means of redress, appropriate remedies and sufficiently dissuasive sanctions. The Committee encourages the Government to avail itself of ILO technical assistance in this respect and invites it to give consideration to the ratification of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

60. In its communication dated 5 July 2016, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) indicates that in March 2016, the management of the hotel and the trade union signed an agreement providing for the reinstatement of the five unjustly terminated union leaders and that despite initial delays in negotiations and in securing the leaders' physical reinstatement, all five

union leaders are now back at their jobs and good faith negotiations are under way. The complainant states that the Government's observations on the complaint appear to have helped generate a positive environment to resolve the dispute and that it is significant that the response did not contest or even comment on the fact that Government bodies themselves recorded the employer's wish to see the union disbanded and for union leaders to resign from their employment.

61. Referring to the Committee's recommendation concerning the need to ensure the effective protection of workers against anti-union discrimination and interference by providing for swift means of redress, appropriate remedies and sufficiently dissuasive sanctions, the complainant indicates that the Application of Writs Act, which the Government claims bars it from enforcing its own decisions based on ILO jurisprudence, is a dangerous legal loophole as it allows an appeals process to remain open for up to two years even if both parties to a dispute have reached a settlement. According to the complainant, this can be used to deprive workers from exercising and accessing their rights, and modifying or eliminating this legislation is, therefore, urgent in order to create a climate conducive to the exercise of fundamental trade union rights in Myanmar.

62. In its communication dated 5 October 2016, the Government indicates with regard to recommendation (a) that it has set up a tripartite investigation team into the allegations of anti-union discrimination, harassment and intimidation of union members and officials at the hotel.

63. Regarding the Committee's requests to provide a copy of the judgment of the Supreme Court of the Union (recommendation (c)) and to take measures to bring the union and the employer together with a view to reaching an agreement on the specific access of the union officials to the workplace (recommendation (d)), the Government reiterates that after numerous conciliation and arbitration efforts concerning the dispute between the chairman of the hotel group and the five union members, the employer was not satisfied with the decisions made and filed an application for a Writ of Certiorari to the Supreme Court of the Union, while paying damages and compensation to the workers in line with the decision of the Arbitration Council. The Government provides a copy of the judgment dated 1 February 2016, in which the Supreme Court did not find a breach of discipline which would justify the dismissal of union members and considered the decision to reinstate the workers and pay them compensation just. However, having found that the Arbitration Council acted outside its competence when it awarded additional compensation to the workers, the arbitration decision was set aside. As a result, the workers had to give back to the employer the additional compensation of 3,065,000 Myanmar (Burma) Kyat (MMK) awarded by the Arbitration Council and the employer reinstated the five workers on 1 June 2016. The Government indicates that the workers have already re-entered their workplace.

64. With regard to its previous commitment to conduct awareness-raising activities to enhance workers' and employers' understanding of labour laws, the Government informs that the Ministry of Labour, Immigration and Population has been making earnest efforts to this effect and organized numerous awareness-raising activities at factories, industries, shops and establishments throughout the country. Between April and August 2016, awareness-raising activities on labour laws were conducted in 3,554 factories or establishments located in 14 regions or states and concerned a total of 178,130 attendees.

65. Regarding recommendation (e), the Government enumerates various measures taken to review the legislation, including discussions on the issue with representatives of employers' and workers' organizations; bipartite meetings between employers and workers; appointment of an expert in the field of labour policies at the Ministry of Labour, Immigration and Population with the support of the Japanese Government; creation of a Technical Working Group on Labour Law Reforms under the National Tripartite Dialogue

Forum in 2015; and establishment of Stakeholders Forums on Labour Law Reforms, which are conducted with the aim of sharing the Government's plan, vision and progress with the international business and labour community, receiving inputs and feedback on the labour law reform planning process and gaining insights on how to address particular labour challenges based on international experiences – two such forums took place in May 2015 and September 2016. The Government indicates that social dialogue is a priority means for taking measures in the labour law reforms. The Government provides further information in a communication dated 3 March 2017 which will be examined when the Committee next reviews this case.

66. *The Committee takes due note of the information provided and observes from the outset that both the complainant and the Government report progress with regard to the labour relations at the hotel and, in particular, the effective reinstatement of the five union members and their access to the workplace following the judgment of the Supreme Court (provided by the Government), as well as ongoing good faith negotiations. The Committee further welcomes the Government's commitment to enhance workers' and employers' understanding of labour laws by means of awareness-raising activities conducted throughout the country.*

67. *As regards the investigation into the allegations of discrimination, harassment and intimidation of union members and officials at the hotel, the Committee trusts that the tripartite investigation team will conclude its work without delay and requests the Government to keep it informed of the outcome. It further requests the Government to indicate whether this investigation team is also looking into the specific allegations of intimidation after a peaceful demonstration of union and non-union members, and if not, to indicate the steps taken to ensure an investigation into these allegations and ensure an effective remedy, if found to be true.*

68. *The Committee further notes, on the one hand, the complainant's allegations that the Application of Writs Act needs to be modified, as it allows an appeals process to remain open for two years even if both parties to a dispute have reached a settlement and can thus deprive workers from exercising and accessing their rights and, on the other hand, the Government's indication that various measures were undertaken or are envisaged in order to amend existing labour laws. In light of this information and its previous recommendations on this point, the Committee trusts that the labour law reform will continue to progress in consultation with the employers' and workers' organizations concerned, with a view to making any necessary amendments, including as appropriate in respect of the Application of Writs Act, so as to ensure the effective protection of workers against anti-union discrimination and interference by providing for swift means of redress, appropriate remedies and sufficiently dissuasive sanctions. The Committee once again encourages the Government to avail itself of the technical assistance of the Office in this regard and invites it to give consideration to the ratification of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).*

Case No. 2086 (Paraguay)

69. The Committee last examined this case, relating to the trial and sentencing for "breach of trust" of the three presidents of the trade union confederations, the United Confederation of Workers (CUT), the Paraguayan Confederation of Workers (CPT) and the Trade Union Confederation of State Employees of Paraguay (CESITEP), Mr Alan Flores, Mr Gerónimo López and Mr Reinaldo Barreto Medina, at its November 2012 meeting [see 365th Report, paras 114–116]. On that occasion, the Committee requested the Government to: (i) send its observations concerning the communications of CESITEP (reporting that Mr Alan Flores continued to take refuge in Argentina and that, after serving more than two-thirds of the four-year sentence imposed on him, Mr Reinaldo Barreto Medina was granted parole, but

the Public Prosecutor's Office challenged that decision); and (ii) ensure that Mr Alan Flores was able to return to Paraguay without being arrested in connection with those proceedings. The Committee recalls that on previous examinations of the case, it had deeply deplored the fact that judicial proceedings had gone on for more than ten years, and had taken note that in 2003 an ILO mission had visited Paraguay in connection with the case and had stated on that occasion, among other things, that "the court of first instance violated the principle of *nullum crimen sine lege*, which prohibits applying criminal law retroactively, and the sentence was handed down on the basis of a rule of criminal law promulgated after the acts at issue took place" and that "the accused have served a substantial part of the terms of imprisonment imposed by the court of first instance" [see 332nd Report, para. 122]. The Committee again reiterated the importance of ensuring that those trade union officials were not subject to criminal sanctions, including imprisonment.

70. In the follow-up to the case, the Committee takes note of the following information provided by CESITEP, in communications dated 9 September 2013, 26 May, 6 June, 30 September and 5 November 2014, 29 May 2015 and 30 May 2016: (i) reporting further abuses of power and prevarication by the judicial authorities, as well as anti-union harassment, and irregularities in the process through which the union leaders were sentenced, which had gone on for more than 16 years; (ii) reporting in September 2013 on the persecution of, and arrest warrant for, Mr Reinaldo Barreto Medina, claiming that both he and another union leader, Mr Florencio Florentín, should have obtained release without supervision but had not been granted it; (iii) claiming that, despite the fact that on 24 August 2013 Mr Reinaldo Barreto Medina had fully served his sentence, it was not then ruled that his sentence had in fact been fully served and the case subsequently remained open so as to comply with the alleged "probationary period" (a legal concept used to impose a further sentence through a probationary period of two years); (iv) claiming that, although Mr Reinaldo Barreto Medina's sentence was finally terminated and his final discharge granted through resolution No. 1461 dated 12 September 2014, that resolution was appealed by the Public Prosecutor's Office on 30 September 2014; (v) reporting that with regard to this complaint, a formal complaint was submitted to the Inter-American Commission on Human Rights (CIDH) against the State of Paraguay, processed as case No. 12821; (vi) challenging the allegations from the Government of corruption regarding the case and defending the union leaders' handling of the actions that led to their convictions; (vii) deploring both the death in hiding of the president of the CTP, Mr Gerónimo López, due to a lack of medical assistance, as well as the political exile of the president of the CUT, Mr Alan Flores; and (viii) requesting a direct contacts mission to the country.

71. Furthermore, the Committee takes note of the following information provided by the Government in communications dated 12 March and 14 July 2014, and 23 June 2015, indicating that: (i) Mr Alan Alberto Flores is a fugitive from justice and is residing in Argentina, where he has applied for political asylum; (ii) Mr Reinaldo Barreto Medina was granted parole on 20 July 2012, and on 12 September 2014 his sentence was declared terminated, but the Public Prosecutor's Office appealed this decision as an appeal against the decision to grant parole to the union leader, lodged by the same Public Prosecutor's Office, remained unresolved; and (iii) Mr Gerónimo López Gómez, while a fugitive from justice, passed away in September 2012 (according to information provided to the Government by the CTP).

72. *The Committee regrets the allegations regarding the death while in hiding and as a fugitive from justice of the president of CTP, Mr Gerónimo López; the situation of Mr Alan Flores, residing abroad as a fugitive from justice; and that the Public Prosecutor's Office has appealed the decisions to grant Mr Reinaldo Barreto Medina parole and to declare his sentence terminated. The Committee can only firmly reiterate its previous recommendations and request that the Government keeps it informed in this regard, as well as regarding the*

result of the appeal from the Public Prosecutor's Office against the decision to terminate the sentence of Mr Reinaldo Barreto Medina.

* * *

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

Case	Last examination on the merits	Last follow-up examination
2096 (Pakistan)	March 2004	June 2016
2512 (India)	November 2007	November 2015
2528 (Philippines)	June 2012	November 2015
2566 (Islamic Republic of Iran)	November 2016	–
2673 (Guatemala)	June 2010	June 2016
2684 (Ecuador)	June 2014	–
2750 (France)	November 2011	March 2016
2752 (Montenegro)	November 2016	–
2755 (Ecuador)	June 2010	March 2011
2758 (Russian Federation)	November 2012	June 2015
2763 (Bolivarian Republic of Venezuela)	November 2016	–
2780 (Ireland)	March 2012	–
2797 (Democratic Republic of the Congo)	March 2014	–
2850 (Malaysia)	March 2012	June 2015
2872 (Guatemala)	November 2011	–
2883 (Peru)	November 2016	–
2934 (Peru)	November 2012	–
2952 (Lebanon)	March 2013	June 2016
2976 (Turkey)	June 2013	March 2016
3022 (Thailand)	November 2016	–
3024 (Morocco)	March 2015	March 2016
3039 (Denmark)	November 2014	June 2016
3046 (Argentina)	November 2015	–
3055 (Panama)	November 2015	–
3072 (Portugal)	November 2015	–
3083 (Argentina)	November 2015	–
3102 (Chile)	November 2015	–
3105 (Togo)	June 2015	–
3110 (Paraguay)	June 2016	–
3123 (Paraguay)	June 2016	–

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

75. In addition, the Committee has received information concerning the follow-up of Cases Nos 1787 (Colombia), 1865 (Republic of Korea), 1962 (Colombia), 2153 (Algeria), 2341 (Guatemala), 2362 (Colombia), 2400 (Peru), 2434 (Colombia), 2488 (Philippines),

2540 (Guatemala), 2583 (Colombia), 2595 (Colombia), 2603 (Argentina), 2637 (Malaysia), 2652 (Philippines), 2656 (Brazil), 2667 (Peru), 2679 (Mexico), 2694 (Mexico), 2699 (Uruguay), 2700 (Guatemala), 2706 (Panama), 2708 (Guatemala), 2710 (Colombia), 2715 (Democratic Republic of the Congo), 2716 (Philippines), 2719 (Colombia), 2725 (Argentina), 2745 (Philippines), 2746 (Costa Rica), 2751 (Panama), 2756 (Mali), 2763 (Bolivarian Republic of Venezuela), 2768 (Guatemala), 2786 (Dominican Republic), 2789 (Turkey), 2793 (Colombia), 2807 (Islamic Republic of Iran), 2816 (Peru), 2827 (Bolivarian Republic of Venezuela), 2833 (Peru), 2837 (Argentina), 2840 (Guatemala), 2852 (Colombia), 2854 (Peru), 2856 (Peru), 2860 (Sri Lanka), 2871 (El Salvador), 2895 (Colombia), 2896 (El Salvador), 2900 (Peru), 2915 (Peru), 2916 (Nicaragua), 2917 (Bolivarian Republic of Venezuela), 2924 (Colombia), 2925 (Democratic Republic of the Congo), 2929 (Costa Rica), 2937 (Paraguay), 2944 (Algeria), 2946 (Colombia), 2953 (Italy), 2954 (Colombia), 2960 (Colombia), 2962 (India), 2973 (Mexico), 2979 (Argentina), 2980 (El Salvador), 2985 (El Salvador), 2987 (Argentina), 2988 (Qatar), 2991 (India), 2992 (Costa Rica), 2994 (Tunisia), 2995 (Colombia), 2998 (Peru), 2999 (Peru), 3006 (Bolivarian Republic of Venezuela), 3020 (Colombia), 3021 (Turkey), 3026 (Peru), 3030 (Mali), 3033 (Peru), 3036 (Bolivarian Republic of Venezuela), 3040 (Guatemala), 3041 (Cameroon), 3043 (Peru), 3051 (Japan), 3054 (El Salvador), 3057 (Canada), 3058 (Djibouti), 3059 (Bolivarian Republic of Venezeula), 3064 (Cambodia), 3065 (Peru), 3066 (Peru), 3075 (Argentina), 3077 (Honduras), 3085 (Algeria), 3087 (Colombia), 3093 (Spain), 3096 (Peru), 3098 (Turkey), 3101 (Paraguay), 3114 (Colombia), 3140 (Montenegro), 3142 (Cameroon), 3169 (Guinea), 3177 (Nicaragua) and 3182 (Romania), which it will examine as swiftly as possible.

CASE NO. 3186

DEFINITIVE REPORT

Complaint against the Government of South Africa presented by the National Transport Movement (NTM)

Allegations: The complainant organization alleges that the rail company refuses to grant the NTM certain trade union rights, as well as collective bargaining rights, notwithstanding the fact that it represents the majority of their employees

76. The complaint is contained in communications from the National Transport Movement (NTM) dated 29 January and 10 February 2016.

77. The Government forwarded its response to the allegations in a communication dated 31 August 2016.

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

A. The complainant's allegations

79. In a communication dated 29 January 2016, the complainant organization, the NTM, denounces that the Passenger Rail Agency of South Africa (PRASA), a state-owned company, and the Government, severely trampled on the rights to freedom of association and the rights to collective bargaining of the NTM and its members and flagrantly violated ILO Conventions Nos 87 and 98 by refusing to grant the NTM both organizational rights and collective bargaining rights, notwithstanding the fact that it represents the majority of the employees.

80. The complainant indicates that it had submitted the notice for intention to exercise organizational rights along with 7,058 completed membership forms to management, which received and acknowledged the membership forms in writing. The 7,058 members of the NTM allegedly constitute 54 per cent of the 13,000 employees employed by the company who fall under the bargaining unit. The NTM, like any other registered trade union seeking organizational rights and collective bargaining rights, was required to meet a 19 per cent threshold as set out in the rail company's Bargaining Forum Constitution.

81. According to the NTM, it made numerous efforts to engage and resolve the aforementioned complaints with the company and the Department of Labour, but to no avail. To this end, memoranda of demands were submitted. The NTM wrote to management on 26 October 2015, but to date has received no response and/or acknowledgement thereof (letter attached to the complaint referring to proof of submission of several NTM stop orders/membership forms acknowledged by management).

82. The complainant adds that, notwithstanding the fact that section 13 of the Labour Relations Act (LRA) provides that the employers are obliged to effect trade union subscription fees deductions upon receipt of the membership forms from a sufficiently representative trade union, the company received the NTM membership forms and opted not to effect trade union subscription fees deductions as allegedly ordered by government officials.

83. The complainant denounces that the former head of the company boasted to the NTM about having been instructed by the Government not to recognize the NTM, having high-level political support in this regard, and told the NTM office bearers that he would advise the Minister of Labour to deregister the NTM as a punishment for the complaints lodged at the Office of the Public Protector, which subsequently found him guilty of the complaints thereof.

84. The complainant alleges that, conversely: (i) the company colluded with the South African Transport and Allied Workers Union (SATAWU) by continuing to deduct subscription fees in favour of SATAWU in the process disregarding and/or refusing to process the resignations which NTM members submitted; and (ii) the company continues to recognize the trade unions that represent a minority of employees such as SATAWU, which has an alliance with the ruling party through the Congress of South African Trade Unions (COSATU) as well as the United National Transport Union (UNTU).

85. The complainant concludes that the refusal to grant the NTM organizational and collective bargaining rights is a baseless and flagrant contravention of both the national and the international labour framework and/or legislation, as the said refusal is based on political considerations. The complainant consequently contends that the company is bound by national labour legislation (section 21 of the LRA), as well as the Constitution of South Africa (article 23) and the ILO Conventions to grant the NTM both organizational and collective bargaining rights. The abuse of powers by the enterprise and the Government is informed by the fact that the State invested over 123 billion South African rand (ZAR) in

respect of the renewal of the rolling stock as well as sour grapes deriving from the exposure of corruption in the company.

86. In a communication dated 10 February 2016, the complainant states that the complaint has not been referred to any court of law in South Africa as the Government frustrated and thwarted all efforts on the part of the NTM to resolve the matter.

87. According to the complainant, the company and the Government disregarded the Commission for Conciliation Mediation and Arbitration (CCMA) settlement agreement, under the terms of which the NTM was to be granted organizational rights. Following the Government's intervention or orders, the company refused to comply with the aforesaid settlement agreement, let alone to recognize the NTM, thereby disregarding the fact that the NTM had submitted 7,058 membership forms to the company, which the complainant states were received and acknowledged in writing.

88. The complainant further alleges that, on 3 February 2016, security officials of the enterprise assaulted Mr John Makaleng, union official of the NTM, for simply performing lawful trade union activities next to the company premises. The said security officials are yet to be arrested notwithstanding the fact that Mr Makaleng opened a criminal case against them.

B. The Government's reply

89. In a communication dated 31 August 2016, the Government states that article 23(4) of the Constitution of the Republic of South Africa protects the rights of trade unions to determine their own administration, and to form and join a federation. Section 8 of the LRA fits into this framework by specifically providing for the autonomy of trade unions in respect of their organizations, structure and administration. Only a registered trade union can exercise organizational rights in terms of the LRA. The LRA does not compel trade unions to register, but it encourages these coalitions to register. It does this by granting most of the rights set out in the LRA only to registered unions.

90. Organizational rights provide methods by which the trade union can make its influence in the workplace felt, by which the union can recruit members or represent the interest of members. Organizational rights are also important in making it possible for a trade union to establish collective bargaining relations with an employer. To recruit members and to represent their interests, a trade union may need to have access to the employer's premises to keep in contact with its members (or potential members). The union may also want the employer to deduct trade union subscription directly from the revenue paid to employees, and it may also want to nominate and elect certain employees to represent union interests in the workplace. Another important aspect is that of information: in order to be able to bargain with the employer, the union will need certain types of information.

91. The Government indicates that there are three ways in which a trade union can acquire organizational rights: (i) the union may conclude a collective agreement with the employer in this regard; (ii) a trade union may also obtain organizational rights in respect of an employer's undertaking because it is a member of a bargaining council or a statutory council; and (iii) organizational rights may also be obtained by using the procedure set out in section 21 of the LRA. According to the Government, the NTM had submitted a notice of intention to exercise organizational rights to the company, which was refused. According to the LRA, if a union requests organizational rights from an employer and the employer refuses to grant all or some of these rights (or agreement cannot be reached on the terms on which the rights will be granted), such union may refer a dispute to the CCMA which will first attempt to obtain the settlement of the dispute through conciliation. If this fails, the CCMA will arbitrate the dispute and issue a binding award.

92. The Government announces that, through the Department's intervention in this matter, the NTM and the company have subsequently signed a settlement agreement dated 21 July 2016 (attached to the Government's reply) on the organizational rights. The enterprise has further verified stop order forms submitted by the trade union for deduction of trade union subscriptions and indicated that the granting of organizational rights will further be expedited on the application of establishing a bargaining council that they are currently engaged in. The Government concludes that the complaint to the ILO by the trade union has therefore been overtaken by progressive engagements between the company and the NTM.

C. The Committee's conclusions

93. *The Committee notes that, in the present case, the complainant, the NTM, denounces that the company refuses to grant the NTM certain trade union rights, as well as collective bargaining rights, notwithstanding the fact that it represents the majority of its employees.*

94. *The Committee notes in particular the complainant's allegations that: (i) despite representing 54 per cent of the 13,000 employees (7,058 membership forms received and acknowledged in writing by the company) and thus by far meeting the threshold of 19 per cent set out in the rail company's Bargaining Forum Constitution, the NTM was denied collective bargaining and organizational rights including the right to deduction of union dues, contrary to the LRA; (ii) the numerous efforts made by the NTM to resolve the matter with the company and the Government were to no avail, and the settlement agreement reached by the CCMA through conciliation, under the terms of which the NTM was to be granted organizational rights, was not complied with; (iii) to the contrary, the company colluded with SATAWU, which represents a minority of employees and has an alliance with the ruling party, by continuing to deduct subscription fees in favour of SATAWU disregarding or refusing to process the resignations which NTM members submitted; and (iv) on 3 February 2016, security officials of the company assaulted Mr John Makaleng, an NTM union official, for performing lawful trade union activities next to the enterprise premises, and have not yet been arrested, notwithstanding the fact that Mr Makaleng opened a criminal case.*

95. *Furthermore, the Committee notes that, without contesting the allegations, the Government indicates that, through its intervention in this matter, the NTM and the company have recently signed a new settlement agreement concerning the organizational rights of the NTM. The Committee observes in this regard that, pursuant to the settlement agreement referred to by the Government, which was reached before the CCMA through arbitration and signed on 21 July 2016, the NTM and its members are to be granted the rights to access to the workplace and to deduction of union dues, following submission by the NTM of membership forms, termination forms and proof of termination served on the previous union. The Committee also notes the Government's statement that: (i) the company has further verified stop order forms submitted by the NTM for deduction of trade union subscriptions; (ii) the granting of organizational rights will further be expedited on the application of establishing a bargaining council that the parties are currently engaged in; and (iii) the complaint has therefore been overtaken by progressive engagements between the company and the NTM.*

96. *The Committee recalls that employers, including governmental authorities in the capacity of employers, should recognize, for collective bargaining purposes, the organizations representative of the workers employed by them [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 952]. The Committee further emphasizes that both the government authorities and employers should refrain from any discrimination between trade union organizations, especially as regards recognition of unions who seek to perform legitimate trade union activities. In light of the above, the Committee welcomes the recent positive developments. It trusts that the*

methodology and outcome of the verification process triggered by the CCMA settlement agreement of 21 July 2016 will allow for the resolution of all pending issues in this case. The Committee expects that, should the relevant representativity threshold be met, the NTM will effectively be granted without delay the corresponding full organizational and collective bargaining rights.

97. *Moreover, noting that the Government makes no reference to the alleged assault of an NTM union official on 3 February 2016 by security officials of the company, the Committee expects that the criminal case will conclude rapidly, so as to bring the perpetrators to justice.*

The Committee's recommendations

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

(a) Welcoming the recent positive developments, the Committee trusts that the methodology and outcome of the verification process triggered by the CCMA settlement agreement of 21 July 2016 will allow for the resolution of all pending issues in this case.

(b) The Committee expects that, should the relevant representativity threshold be met, the NTM will effectively be granted without delay the corresponding full organizational and collective bargaining rights at the rail company.

(c) The Committee expects that the criminal case concerning the alleged assault of an NTM union official on 3 February 2016 by security officials of the company, will conclude rapidly, so as to bring the perpetrators to justice.

CASE NO. 3104

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

Complaint against the Government of Algeria presented by the Autonomous National Union of Postal Workers (SNAP)

Allegation: The complainant organization denounces the anti-trade union dismissal of two of its officials, including its president

99. The Committee last examined this case at its March 2016 meeting [see 377th Report, paras 70–118, approved by the Governing Body at its 326th Session].

100. In a communication dated 24 September 2016, the Autonomous National Union of Postal Workers (SNAP) provided additional information.

101. The Government sent its observations in a communication dated 26 April 2016.

102. Algeria has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. Previous examination of the case

103. At its March 2016 meeting, the Committee made the following recommendations [see 377th Report, para. 118]:

(a) The Committee regrets that, despite the time that has elapsed since the complaint was presented in August 2014, the Government has not replied to any of the complainant's allegations, although it was requested to do so several times, including through an urgent appeal. The Committee urgently requests the Government to be more cooperative in the future.

(b) The Committee urges the Government to immediately take all necessary steps to implement the rulings of the court of El Harrach (Algiers) ordering the reinstatement of the two SNAP trade union officials, Mr Mourad Nekache and Mr Tarek Ammar Khodja, and the payment of all salary arrears and the compensation, as per the rulings of the court, and to keep it informed in this regard.

(c) The Committee urges the Government to take all necessary steps to ensure that the competent departments conduct an investigation into Mr Bilal Benyacoub's dismissal, and to indicate the outcome of the investigation and any follow-up action taken. Furthermore, the Committee expects the Government to send information without delay concerning Mr Benyacoub's employment situation.

B. Additional information from the complainant

104. In its communication of 24 September 2016, the Autonomous National Union of Postal Workers (SNAP) denounced the impunity of Algérie Poste (the postal company), which has still not complied with the reinstatement rulings handed down by the courts in favour of the SNAP president Mr Mourad Nekache and the SNAP communications officer Mr Tarek Ammar Khodja following their dismissals in August 2014. The complainant organization underscores the distress this situation has inflicted upon the two trade union leaders, who have exhausted all possible remedies at the national level.

C. The Government's reply

105. In its communication of 26 April 2016, the Government provided information regarding Mr Nekache and Mr Ammar Khodja, and also concerning Mr Bilal Benyacoub, an employee of the company whose employment was also terminated for having allegedly demonstrated solidarity with the SNAP president at the time of the latter's dismissal.

106. Regarding Mr Nekache and Mr Ammar Khodja, the two SNAP trade union leaders, the Government indicates that, upon their request, the labour administration met with them and provided clarification on the procedures for implementation of the court ruling. The Government also undertakes to keep the Committee informed of any action taken further to the notification of the rulings to the employer.

107. Regarding Mr Benyacoub, the Government indicates that he has been reinstated in his job at the Rouaffaa post office in the *wilaya* (district) of Boumerdès, where he continues to work today.

D. The Committee's conclusions

108. *The Committee recalls that this case concerns allegations of the anti-union dismissal by the postal company of two union leaders of SNAP, the trade union active in the postal sector since 2012, and registered by the authorities in December 2015 following the presentation of a complaint to the Committee, and of the dismissal of a third company employee for showing support for one of the leaders in question at the time of the disciplinary proceedings that he was facing.*

109. *Regarding the SNAP president Mr Nekache and the SNAP communications officer Mr Ammar Khodja, who were dismissed in July and August 2014, the Committee previously expressed its concern regarding the allegations of violations of the regulations in force during the disciplinary proceedings that led to the dismissal decisions. The Committee also expressed its concern about the fact that, despite the rulings handed down by the court of El Harrach (Algiers) ordering the reinstatement of the two union officials, the company in question has refused since October 2015 to implement the court decisions of which it was notified by the court officer, enjoying complete impunity since it has not been penalized by the public authorities. Lastly, the Committee indicated that this violation of freedom of association has had an extremely harmful effect on the two trade union officials by leaving them without any income since their dismissals.*

110. *The Committee observes that the Government, in its reply of April 2016, merely indicates that it has informed the two trade union leaders of the procedures for implementing the court ruling and that it will inform the Committee of the outcome of the notification of the ruling to the employer. On the basis of the information received from the complainant organization in September 2016, the Committee understands that the company has still not complied with the court rulings ordering their reinstatement. The Committee is therefore bound to urge the Government to immediately take all necessary steps to ensure that the company implements, without any further delay, the rulings of the court of El Harrach (Algiers) ordering the reinstatement of Mr Nekache and Mr Ammar Khodja, with the payment of all salary arrears and the compensation due, in accordance with the rulings of the court. The Committee expects the Government to inform it without delay of the implementation of its recommendation.*

111. *Regarding Mr Benyacoub, the Committee notes with satisfaction the indication of the Government that this person has been reinstated in his post. Bearing in mind the allegations of dismissals intended to intimidate postal workers who wished to engage in trade union activity within the company, the Committee expects that all the necessary steps will be taken to ensure that SNAP can engage in its trade union activities within the company without obstruction or intimidation of its leaders and members.*

The Committee's recommendations

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

(***a***) ***The Committee urges the Government to immediately take all necessary steps to ensure that the company implements, without any further delay, the rulings of the court of El Harrach (Algiers) ordering the reinstatement of Mr Nekache and Mr Ammar Khodja, with the payment of all salary arrears and the compensation due, in accordance with the rulings of the court. The Committee expects the Government to inform it without delay of the implementation of its recommendation.***

(b) The Committee expects that all the necessary steps will be taken to ensure that the Autonomous National Union of Postal Workers (SNAP) can engage in its trade union activities within the company without obstruction or intimidation of its leaders and members.

CASE NO. 2997

DEFINITIVE REPORT

Complaint against the Government of Argentina presented by
– the Light and Power Workers' Union of Zárate (SLFZ) and
– the Confederation of Workers of Argentina (CTA)

Allegations: The complainant organizations report: anti-union dismissals; suspensions of workers on account of their membership of the Light and Power Workers' Union of Zárate–CTA and their participation in industrial action; the physical assault of a trade unionist; and death threats to a union member

113. 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 114–129, approved by the Governing Body at its 319th Session (October 2013)].

114. The Government sent new observations in communications dated March and September 2014 and October 2015.

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

A. Previous examination of the case

116. In its previous examination of the case in October 2013, the Committee made the following recommendations [see 370th Report, para. 129]:

(a) As regards the alleged dismissal of Mr Christian Altamirano and Mr Roberto Funes on account of their affiliation to SLFZ–CTA, the Committee requests the Government to indicate the outcome of the ongoing legal proceedings.

(b) As regards the alleged suspensions for two or three days of the workers affiliated to the SLFZ–CTA for participating in direct action measures to protest against the dismissal of the workers affiliated to the SLFZ–CTA, in order to examine these allegations in full knowledge of the facts, the Committee requests the Government to indicate without delay the outcome of the investigations carried out by the administrative authority of the province of Buenos Aires and of the decisions adopted in this regard.

(c) As regards the allegation that, on 8 June 2012, the union member, Mr Ricardo Rossi, was physically assaulted (suffering a triple jaw fracture and other injuries) on the company premises and that the union member, Mr Oscar Martínez, who went to his aid received death threats, the Committee deeply regrets these acts of violence and expects that the

criminal proceedings referred to by the Government have resulted in timely investigations to determine responsibilities, prosecute and sanction the guilty parties and prevent the repetition of similar acts. The Committee urges the Government to keep it informed in this regard.

(d) As regards the complainants' allegations that the union member, Mr Rossi, has not received payment of his wages since the day on which he was assaulted (according to the complainants, the court ordered the payment of his wages but the company has not complied with the court order), the Committee urges the Government to ensure, without delay, compliance with the court order for the back payment of the wages owed to Mr Rossi and to keep it informed of any measures adopted in this regard.

(e) As regards the allegations that on 9 August 2012 a dialogue process was initiated for a period of 60 days between the company and the SLFZ–CTA which, among other things, provided for the suspension of the effects of the dismissals, but that the company did not fulfil its commitments, the Committee requests the Government to inform it without delay of the outcome of the investigations carried out by the provincial administrative authority and of the decisions that have been adopted in this regard. The Committee also requests the Government to take the necessary measures to promote dialogue between the parties, with a view to achieving a harmonious industrial relations climate.

B. The Government's reply

117. In communications dated March and September 2014 and October 2015, the Government provided the following additional information.

118. With regard to the allegations of dismissal of Mr Christian Altamirano and Mr Roberto Funes on account of their membership of the Light and Power Workers' Union of Zárate–CTA (SLFZ–CTA), as well as the suspensions for two or three days of all workers belonging to the SLFZ–CTA for participating in direct action measures to protest against the dismissal of the members of their union, the Government reports that a general agreement was reached between the SLFZ–CTA and the electricity company, and that individual agreements were also reached between it and the workers who were members of the trade union, including Mr Altamirano and Mr Martínez. The Government indicates that as a result of these agreements the dispute has been settled.

119. With respect to the allegations of injuries inflicted on Mr Ricardo Rossi and the non-payment of his wages since the day on which he was assaulted, the Government states that this worker had not concluded an agreement with the company but that Criminal Court No. 1 of Campana handed down a conviction against the persons accused of the assault.

C. The Committee's conclusions

120. *The Committee recalls that this case concerns allegations of anti-union dismissals, suspensions of workers on account of their membership of the Light and Power Workers' Union of Zárate–CTA (SLFZ–CTA) and their participation in industrial action, the physical assault of a trade unionist and death threats to a union member.*

121. *With regard to the allegations of dismissal of Mr Altamirano and Mr Funes on account of their membership of the SLFZ–CTA, and suspensions for two or three days of all workers belonging to the SLFZ–CTA for participating in direct action measures to protest against the dismissal of the members of their union, the Committee notes that, according to the Government's report, agreements had been signed between the trade union and the company, and also between the company and the workers belonging to the union, and that as a result of these agreements the dispute had been settled.*

122. *With regard to the allegations of an assault against Mr Rossi (and related allegations of death threats, for providing assistance, against Mr Martinez, a union member with whom the company had subsequently signed an agreement), the Committee notes that, according to the Government, Criminal Court No. 1 of Campana handed down a conviction against the accused. The Committee expects that the judgment will have reviewed the various allegations made.*

123. *With regard to the allegations of non-payment of Mr Rossi's wages since the day on which he was assaulted, the Committee notes that the Government merely indicates that no agreement had been concluded between the company and the trade unionist. The Committee recalls that in its previous examination of the case it had noted that, according to the complainants, the court had ordered the payment of the trade unionist's wages but the company had not complied with the court order. The Committee expects that the Government will take the necessary measures to ensure compliance with the court order for the back payment of wages owed to Mr Rossi.*

The Committee's recommendation

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

> ***The Committee expects that the Government will take the necessary measures to ensure compliance with the court order for the back payment of wages owed to Mr Rossi.***

CASE NO. 3183

INTERIM REPORT

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

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

125. The complaint is contained in a communication from the Confederation of Free Trade Unions of Burundi (CSB) dated 28 December 2015.

126. Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case twice. At its October–November 2016 meeting [see 380th Report, para. 8], 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 this case at its next meeting, even if the requested information or observations had not been received in time. To date, the Government has not sent any observations.

127. Burundi has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

128. In its communication of 28 December 2015, the complainant organization alleges that the Econet Leo SA company (the new company), formerly U-Com Burundi SA (the enterprise): (i) unfairly dismissed a member of the executive committee of the U-Com Burundi Workers' Union (SYTCOM), affiliated to the CSB; (ii) indefinitely suspended the contracts of the members of the Union's executive committee; and (iii) arbitrarily terminated the contracts of numerous company workers.

129. The complainant organization states that following the merger between the Econet Wireless Burundi and U-Com Burundi SA companies, more than 60 employees were dismissed on claimed grounds of economic difficulties. It alleges that the members of the executive committee of SYTCOM, while seeking to defend the interests of workers in the merger, had their contracts indefinitely suspended as of 23 December 2015, without regard to the applicable provisions, namely the internal regulations of the enterprise (sections 57–59), the Labour Code of Burundi (sections 37 and 70), and the interoccupational collective labour agreement of 3 April 1980 (section 24). The individuals who have been suspended are: Mr Alain Christophe Irakiza, Mr Martin Floris Nahimana, Mr Bernard Mdikabandi and Ms Bégnigne Nahimana. According to the CSB, these suspensions follow the unfair dismissal of another member of the SYTCOM executive committee, Mr Alexis Bizimana, in August 2015.

130. The complainant organization also observes that SYTCOM gave notice of strike action in February 2015 to oppose the restructuring process, and that despite the involvement of the Committee on Social Dialogue and the public authorities' recommendations that the employer hold a frank social dialogue and present a clear social plan, the negotiations initiated in March 2015 between the enterprise and SYTCOM were not successful. The CSB also points out that the directors of the new company left the country in the wake of the political crisis that began in Burundi in April 2015.

131. The CSB considers that these dismissals and suspensions are unjustified and result in reality from the union membership of the individuals concerned. In its view, these measures bear witness to the employer's deliberate intention to intimidate the other union members to prevent them from continuing with the task of defending and promoting workers' interests. It emphasizes in this regard that the new employer expressed its intention not to recognize the union as a legitimate body for the representation of workers' interests.

B. The Committee's conclusions

132. *The Committee deeply regrets the fact that, despite the time that has elapsed since the presentation of the complaint, the Government has not provided the requested observations and information in time, even though it has been asked to do so several times, including through an urgent appeal made at its October–November 2016 meeting. Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee is obliged to present a report on the substance of the case without being able to take account of the observations which it had hoped to receive from the Government.*

133. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to ensure respect for trade union rights in law and in practice. While this procedure protects governments against unreasonable accusations, they must*

recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them [see First Report of the Committee, para. 31].

134. *The Committee observes that in the present case the complainant organization's allegations relate to the suspension and dismissal of trade union representatives in the context of the merger of two telecommunications enterprises in Burundi, which gave rise to a staff reduction programme (involving the dismissal of more than 60 individuals, according to the complainant).*

135. *With respect to the social implications of the merger of the two enterprises, the Committee considers that it can examine allegations concerning economic rationalization programmes and restructuring processes, whether or not they imply redundancies, only in so far as they might have given rise to acts of discrimination or interference against trade unions. Furthermore, the Committee requests that, in the cases where new staff reduction programmes are undertaken, negotiations take place between the enterprise concerned and the trade union organizations [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 1082].*

136. *With regard specifically to the allegations concerning the suspension of four trade union representatives simply for carrying out legitimate trade union activities, in relation to whom no lifting of penalties has been reported, the Committee, in the absence of any comment from the Government, observes that the suspensions took place in a climate of high tension between the management of the enterprise and the representatives of SYTCOM, and only a few days after the conciliation process had failed with respect to the request for their dismissal submitted by the new company. Without any further indications, the Committee considers that such measures may seriously undermine the exercise of trade union rights at the enterprise in question. The Committee recalls that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom [see* ***Digest****, op. cit., para. 799]. The Committee therefore requests the Government to expedite an independent inquiry into the allegations concerning the suspension of Mr Alain Christophe Irakiza, Mr Martin Floris Nahimana, Mr Bernard Mdikabandi and Ms Bégnigne Nahimana. If it is established that acts of anti-union discrimination have been committed, the Committee requests the Government to take the necessary measures of redress, including ensuring the reinstatement of the workers concerned without loss of pay. The Committee requests the Government to keep it informed of the measures taken in this regard and their results.*

137. *With respect to the dismissal of Mr Alexis Bizimana, also a trade union representative, in August 2015, the Committee notes that in a communication dated December 2015 the executive chairman of the new company acknowledged that the letter of dismissal had been addressed to the recipient by mistake, the procedures concerning the dismissal of staff representatives not having been exhausted. The Committee notes that the complainant organization has not provided further information on this matter. Accordingly, the Committee requests the Government to provide full information on the situation of Mr Alexis Bizimana and, if necessary, to take the appropriate measures of redress.*

138. *The Committee regrets not having been able to examine information from the enterprise on account of the absence of a reply from the Government. It requests the Government to ask the employers' organizations concerned, if they so desire, to provide information so that it*

can be aware of their version of events and know the views of the enterprise on the pending issues.

The Committee's recommendations

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

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

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

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

CASE NO. 3003

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

Complaints against the Government of Canada presented by the Canadian Labour Congress (CLC) on behalf of
– **the Elementary Teachers' Federation of Ontario (ETFO) and**
– **the Canadian Union of Public Employees (CUPE)**
supported by
– **Education International (EI) and**
– **the Canadian Teachers' Federation (CTF)**

Allegations: The complainant organizations allege that the Government of Ontario infringed the right of teachers and supporting personnel in the public education sector to choose their representatives, engage in free and meaningful collective bargaining and engage in lawful strikes

140. The complaint is contained in a communication dated 8 January 2013 submitted by the Canadian Labour Congress (CLC) on behalf of the Elementary Teachers' Federation of Ontario (ETFO), and a communication dated 9 December 2014 submitted by the Canadian Union of Public Employees (CUPE). The Canadian Teachers' Federation (CTF) and Education International (EI) associated themselves with the complaint on 17 and 25 January 2013, respectively.

141. The Government of Canada transmitted the observations of the Government of the Province of Ontario in communications dated 20 September 2013 and 10 February 2015.

142. Canada has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), nor the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

143. In its communication dated 8 January 2013, the CLC explains that the ETFO is the bargaining agent for approximately 76,000 English-language elementary school teachers, occasional teachers, early childhood educators and education professionals employed in Ontario's public elementary schools. While the bargaining rights for teachers and occasional teachers are with the provincial organization, the ETFO has locals at each district school board and has established bargaining units for other educational employees that it represents.

144. The CLC explains that in Ontario, collective bargaining for teachers is governed by the provisions of the Education Act and the Labour Relations Act, 1995, while other education employees are governed by the Labour Relations Act only. Under the legislation, the district school boards are the employers of ETFO members and each school board negotiates a separate collective agreement with the bargaining agent representing each bargaining unit.

145. The complainant explains that voluntary central negotiations at the provincial level took place for the periods 2004–08 and 2008–12. Through these negotiations, framework agreements were reached between the ETFO and the Ontario Public School Boards' Association (OPSBA). The framework agreements formed the backdrop for local bargaining. Many of the terms contained in the framework agreement were required to be included in the local agreements in order to be eligible for provincial funding; nonetheless, parties were free to refuse to include them. All terms and conditions of employment were concluded through local bargaining, included in local agreements and ratified by both the bargaining agent and the school board employers in order to be legally binding. As a result, there have been local differences in collective agreements and, in the past, some local school boards have indicated their intention not to be bound by agreements reached at the provincial level by the OPSBA. However, the parties have generally followed the provincial template given that additional funds were tied to its acceptance.

146. The CLC further explains that across the Province of Ontario, the last collective agreements for elementary teachers, high-school teachers and support staff expired on 31 August 2012. The CLC indicates that it was not unusual for ETFO locals and school boards to continue negotiating well after the expiry of the collective agreement and that pursuant to the provisions of the Labour Relations Act, where agreements have expired and a new collective agreement is not in place, the terms and conditions of the expired collective agreements remained in force.

147. The CLC alleges that in February 2012, the ETFO and other education sector unions received a notice that the Ministry of Education had unilaterally scheduled separate meetings with each union to discuss the next round of negotiations. At the first provincial meeting, the

Ministry presented the ETFO with a list of non-negotiable "parameters" for inclusion in a new provincial framework agreement (referred to as the Provincial Discussion Table (PDT)). The terms of the parameters included: mandatory two-year collective agreements; 0 per cent salary increases for two years; the replacement of retirement gratuities and the sick leave plans contained in collective agreements with a new short-term sick plan; a review of the teacher salary grids with the intent of restructuring them; and freezing teachers' placements on the salary grid with respect to both experience and qualifications for two years.

148. According to the CLC, the ETFO made it clear to the provincial Government that these parameters were unacceptable and that it sought to broaden the scope of negotiations in order to find alternative methods to obtain the savings. The ETFO further sought to determine: whether the negotiations were to be conducted with the provincial Government, the OPSBA or with individual school boards; whether any agreement entered into either with the provincial Government or the school boards would be legally binding; and the relationship between these provincial negotiations and collective bargaining under the Labour Relations Act, including whether if concessions were agreed to at the provincial level, additional concessions could be requested at the local level. However, having no clear answers to its questions, the ETFO decided that it would not engage in the provincial negotiations, but elected to exercise its right under the Labour Relations Act, the Charter of Rights and Freedoms and international law to bargain locally with each employer with respect to any fiscal parameters which the Government of Ontario might attempt to impose on the parties.

149. According to the CLC, over the next months, the Government of Ontario continued to exert pressure on the ETFO to return to central negotiations, appealing directly to the membership using YouTube and other social media to try to convince the teachers to "come on board" and threatening to impose the terms by legislation if an agreement could not be reached. The ETFO consistently communicated that it would be prepared to enter into discussions with the provincial Government only if there were no preconditions and if the parties could raise and discuss matters of concern to them.

150. The CLC indicates that other education sector unions, such as the Ontario English Catholic Teachers' Association (OECTA), had agreed to negotiate with the provincial Government. On 5 July 2012, the OECTA and the provincial Government announced that they had concluded a Memorandum of Understanding (MoU) with respect to certain issues. According to the CLC, in line with the Government's fiscal parameters outlined above, the MoU had radically altered the existing sick leave arrangements for teachers which had been in place for decades, removed certain benefits for retirees, reduced other leave entitlements, cut funding for elementary teachers' professional development and provided for a freeze in wages for a two-year period. Other provisions addressed, among others, a procedure for filling long-term occasional teacher positions and regular teacher vacancies from an established roster, and proposed changes to the Teacher Pension Plan scheme. Other unions reached similar agreements with the provincial Government. However, despite the Government's efforts to convince teachers' unions to conclude agreements similar to those reached with the OECTA, no such progress was made with the ETFO, the Ontario Secondary School Teachers' Federation (OSSTF) and CUPE.

151. The CLC indicates that on 16 August 2012, the Minister of Education released to the media and to the opposition parties a draft of an Act designed as pre-emptive "back to work" legislation before there was a strike or a real threat thereof at any local school board. The draft legislation was not discussed with the ETFO, nor was it provided with a copy of the legislation. Bill 115 was introduced in the Ontario Legislature on 27 August 2012 for the first reading. The second reading took place on 28 August 2012, followed by the third on 10 September 2012. On 11 September 2012, the Putting the Students First Act (PSFA) was passed by the legislature and received Royal Assent.

152. The complainant alleges that the PSFA established a restraint period during which its provisions apply to school boards, employees of school boards, bargaining agents and collective agreements in the education sector. This restraint period is a two-year period that, for the most employees, started on 1 September 2012. The PSFA allowed the restraint period to be extended by regulation for an additional one year, totalling a possible three-year restraint period. It further set out a mandatory requirement that terms "substantively identical" to the MoU terms agreed to with the OECTA be adopted and included in all the ETFO collective agreements during the restraint period ("the required terms"), unless the Provincial Cabinet altered those terms. As noted above these terms included provisions freezing compensation during the restraint period, eliminating sick leave credits, reducing the number of sick days, requiring up to three unpaid days off in the second year, changing retirement benefits, eliminating or limiting leave days, and cutting funding for elementary teachers' professional development. The PSFA fixed the duration of collective agreements at two years. School boards were also prevented from providing any compensation, at any time, that would make up for compensation that is not paid during the restraint period as a result of the PSFA, and this, regardless of economic changes. The authority given to the Minister and to Cabinet under the PSFA effectively enabled them to control both the process of bargaining and the results of bargaining, including the right to strike. It enabled them to impose collective agreements and their terms on bargaining agents without any limitations, thus precluding the parties from agreeing to, and implementing freely, negotiated terms and conditions of employment through good faith collective bargaining. Furthermore, under the Act, all collective agreements negotiated and ratified locally during the restraint period must be approved by the Minister of Education in order to become operative. The PSFA gave the Minister the power to specify the date on which the approved collective agreement would come into effect, which could be up to three months after it was submitted for approval. By an order of the Cabinet this period could be extended without restriction. During this inoperative time, the terms and conditions that applied before the new collective agreement was negotiated would continue to apply subject to the required terms imposed by the Act during the restraint period.

153. According to the CLC, during the approval process, the Minister could also advise the Cabinet that the agreement was not consistent with the required terms. In this case, the Cabinet had the authority to include "consistent" terms in collective agreements, order any term or condition in a collective agreement to be inoperative, require the parties to negotiate a new collective agreement, or anything else the Cabinet determined to be necessary in the circumstances. The CLC alleges that essentially, this gave the Cabinet the authority to rewrite collective agreements based on the Minister's "opinion" and placed no limitations on the extent of such interventions.

154. The CLC further alleges the PSFA also restricted employee bargaining agents from calling, authorizing or threatening otherwise lawful strikes. While the right to strike was not specifically prohibited, the Cabinet, acting on the basis of the Minister's opinion, could end strikes and prohibit any such future activity. The Cabinet, on the basis of the Minister's opinion, was able to impose collective agreements where it "appeared" that the parties would be unable to reach a collective agreement prior to 31 December. Moreover, according to the CLC, the PSFA limited the jurisdiction and independence of arbitrators and of the Ontario Labour Relations Board (OLRB), as it provided that awards must include the required terms, cannot be inconsistent with those terms and, any arbitration awards that were inconsistent with those terms, were deemed to be inoperative to the extent of the inconsistency. Under the PSFA, arbitrators and the OLRB also lacked jurisdiction to consider whether the Act, or regulation or an order made pursuant to the Act, was constitutionally valid or in conflict with the Ontario Human Rights Code.

155. The complainant considers that through the enactment of the PSFA, the Ontario Government has substantially infringed on essential components of freedom of association and effectively

stripped employees of their right to choose their representatives, prevented free collective bargaining and eliminated a meaningful right to strike without substituting it with a fair and impartial arbitration process. The CLC considers that these measures went well beyond what is acceptable and reasonable during a stabilization period. Furthermore, the CLC alleges that the provincial Government failed to engage in open, meaningful and full consultations, not only before introducing legislation, which altered the existing bargaining arrangements, but also during the legislative process.

156. In its communication dated 9 December 2014, the CUPE submits similar allegations and requests to be associated with the CLC complaint. In addition, it indicates that on 31 December 2012, it concluded a MoU with the Ministry of Education. While it contained some enhancements and changes to the OECTA MoU, the PSFA formed the backdrop of the negotiations. The CUPE explains that without this agreement, the provincial Government would have just imposed the terms of the PSFA and that, therefore, the negotiated MoU was not a freely bargained agreement.

157. The CUPE further indicates that, on 3 January 2013, the Minister of Education announced that the Government would be repealing the PSFA since the latter had outlived its usefulness. On 5 January 2013, the CUPE ratified its MoU with the Ministry of Education and recommended its adoption by its local bargaining units. The CUPE explains that while the MoU was not a freely bargained agreement, had it not been adopted, the collective agreements that were imposed on the unions that had not reached an agreement would have been imposed on the CUPE's bargaining units as well. By 14 January 2013, all of the CUPE's bargaining units ratified local collective agreements that complied with the CUPE MoU. On 21 January 2013, the Government formally announced that it would repeal the PSFA. Although all CUPE locals ratified the MoU, a number of school boards did not. Accordingly, by an Order in Council, on 21 January 2013, collective agreements were imposed on 39 CUPE bargaining units. On 23 January 2013, the repeal of the PSFA took effect. The CUPE points out that notwithstanding its repeal, the effect of the PSFA remained in the form of collective agreements that were imposed or effectively compelled pursuant to its terms.

158. By a communication dated 19 October 2016, the CLC forwards a letter of the ETFO in which the latter explains that although the PSFA was repealed and the challenge in the Ontario Superior Court was successful, the rights and entitlements, which their members enjoyed prior to the imposition of the legislation, are yet to be restored. It adds that many of the entitlements that had been negotiated for decades were removed and that the remedy is yet to be decided and there is no time frame for these discussions to be concluded. It thus expresses its wish to pursue the complaint against the Government.

B. The Government's reply

159. By a communication dated 20 September 2013, the Government of Canada transmitted a reply of the Government of Ontario on the allegations in this case. In its reply, the provincial Government asks the Committee to defer the consideration of this case and points out that: (1) the PSFA has been repealed; (2) it has been actively engaged in detailed consultations with the stakeholders (including trade unions) with a view to proposing a new collective bargaining model for the education sector; (3) the unions that were affected by the PSFA have reached memoranda of understanding with the Government of Ontario amending the terms imposed by the Act; and (4) the Act faced a constitutional challenge before the Ontario Superior Court in which the key issue was whether the Act infringed freedom of association under section 2(d) of the Canadian Charter of Rights and Freedoms.

160. In its communication dated 10 February 2015, the Government informs that the domestic proceedings before the Superior Court have been adjourned on the consent of the parties to

await the outcome of three cases under reserve with the Supreme Court of Canada that, in the view of the parties, were relevant to the domestic proceeding. In light of this adjournment, the Government once again asked the Committee to defer the examination of this case. The Government further informs that consultations with education sector stakeholders (including unions, teacher federations and trustees' associations) were completed, and Bill 122, the School Boards Collective Bargaining Act, 2014, came into force in April 2014. The new legislation established a new legal framework for collective bargaining in Ontario's education sector by creating a two-tier collective bargaining process and clearly defined roles for all parties.

C. The Committee's conclusions

161. *The Committee notes that, in its communication dated 8 January 2013, the CLC alleges that the Government of Ontario infringed the freedom of association rights of teachers and supporting personnel in the public education sector; in particular their right to choose representatives, to engage in free and meaningful collective bargaining and to engage in lawful strikes. The Committee further notes the allegations to the same effect submitted by the CUPE in a communication dated 9 December 2014.*

162. *The Committee notes that the alleged violations refer, in particular, to the following actions of the provincial Government: (1) imposition of parameters within which the collective bargaining in the public education sector should be contained and the manner in which it had been done; (2) the conclusion of the OECTA MoU, which had significantly diminished the existing rights and benefits, and which the provincial Government tried to impose on other unions in the sector; (3) when that failed, the adoption, on 11 September 2012, of the PSFA, which effectively imposed the OECTA MoU on the unions, which had not voluntarily accepted its terms; and (4) failure to consult the unions prior and during the legislative process.*

163. *The Committee notes that the PSFA was repealed on 23 January 2013. It further notes that collective agreements concluded or imposed as a result thereof were left in place.*

164. *It further notes that on 20 April 2016, the Ontario Superior Court considered the events leading to the adoption of the PSFA and concluded that:*

> *[134] … between the fall of 2011 and the passage of the Putting Students First Act, Ontario infringed on the applicants' right, under the Charter of Rights and Freedoms, to meaningful collective bargaining.*
>
> *[135] When reviewed in the context of the Charter and the rights it provides, it becomes apparent that the process engaged in was fundamentally flawed. It could not, by its design, provide meaningful collective bargaining. Ontario, on its own, devised a process. It set the parameters which would allow it to meet fiscal restraints it determined and then set a program which limited the ability of the others parties to take part in a meaningful way.*

165. *The Committee further notes that the Court examined the assertion that the PSFA withdrew the right to strike and that this represented a substantial interference with collective bargaining. The Court concluded that:*

> *[187] … any consideration of the limitation on the right to strike cannot be separated from the impact of the Putting Students First Act, as a whole, on the freedom of association. The legislation required that agreements adhere to the provisions of the OECTA deal. There was no true collective bargaining for the applicants once Ontario declared it a "roadmap" for all remaining agreements. The passage of the Putting Students First Act made clear that such bargaining would not occur: deals had to be "substantially similar to" the terms of the OECTA MOU; they had to be "substantively identical to" it if not entered into by August 31, 2012; and, if not entered into by December 31, 2012, agreements could be and were imposed. The ability*

of Ontario (the Lieutenant Governor in Council) to prohibit a strike did nothing other than close the final door on the ability of the applicants to act against the actions of the government and to use their association to forward their goals for their contracts. If it "appeared" that they were not able to arrive at an arrangement with their respective employers (the school boards) that fulfilled the direction to comply with the OECTA deal or if they had not settled, consistent with that direction, by December 31, 2012, Ontario could remove the only remaining arrow in their collective bargaining quiver, the right to strike. As it turned out, once an agreement was imposed, the Labour Relations Act would take over. With an agreement in place, the prohibition on a strike while a collective agreement remained in place would govern. The fact that no order prohibiting a strike was made does not change this. The breadth of the prohibition order made by the Lieutenant Governor in Council would put in place could extend well beyond an actual work stoppage to "threatening" or "encouraging" a strike. This was an obvious constraint to doing anything in support of a strike…

166. *The Committee notes that the Court concluded that the actions of the Government of Ontario, as alleged in this case, were in breach of section 2(d) of the Charter of Rights and Freedoms (paragraph. 210 of the judgment) and that violation of the freedom of association of the applicants had not been demonstrably justified in accordance with section 1 of the Charter of Rights and Freedoms (paragraph. 271 of the judgment).*

167. *The Committee notes that by its communication dated 19 October 2016, the CLC informs of the EFTO's wish to pursue the complaint, as many of the entitlements that had been negotiated for decades were removed, and that the remedy was yet to be decided and there was no time frame for these discussions to be concluded.*

168. *In this respect, the Committee notes that the question of remedy was discussed, but not decided upon by the Court:*

[2] … At the outset, the parties advised the court of their agreement that, for the time being, the court would be asked to consider only whether there has been a breach of s. 2(d) and, if so, whether it was justified pursuant to the provision of s. 1 of the Charter. The question of remedy, if there is to be any, would be subject to discussion between the parties after a decision has been rendered and, if required, after further submissions to this court.

169. *The Committee notes, in particular, the following observations made by the judge:*

[273] As indicated at the outset of these reasons, I am not, as yet, asked to determine any remedy. Nonetheless, I should like to make the following observations. These applications dealt with a difficult and continuously evolving area of our law. These motions were argued less than a year after the Supreme Court of Canada concluded that the right to meaningful collective bargaining was not derivative but direct and immediate. Everyone involved is searching for the right answers to difficult questions. The fact remains that Ontario was and may still be in a difficult fiscal circumstance. If so, we are all affected. Ontario accepted that it should act. The problem with what took place is with the process, not the end result. It is possible that had the process been one that properly respected the associational rights of the unions, the fiscal and economic impacts of the result would have been the same or similar to those that occurred.

[274] As the case law suggests and as I noted at the outset of these reasons, we are looking to balance the power in the relationship between employers and employees. While the decision in this case has turned on the actions of Ontario, the search for the balance runs in both directions.

[276] The mark of success in finding the proper balance is positive, fair and meaningful collective bargaining. The adversarial and confrontational conduct which governed the process in this case fell short. Both sides contributed. Ontario and the applicants have a continuing and ongoing relationship. At the moment (without having heard any submissions), it is not clear to me what would be accomplished by any substantial or overly aggressive remedy. Could it reward one side to the detriment of the process as a whole? We are all still learning.

[277] I ask counsel to consider these perspectives in whatever discussions they may have.

170. *In the light of the above, the Committee asks the Government to take the necessary steps to ensure that the Government of Ontario engages in dialogue with the complainants with a view to finding an appropriate remedy for the violation of the complainants' and their affiliates' freedom of association rights. It requests the Government to keep it informed of any progress made in this respect.*

171. *Regarding the allegation that the PSFA was adopted without prior consultation with the unions, the Committee notes that it appears to be supported by the evidence submitted by the complainants to the Committee and to the Ontario Superior Court, 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 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 of Ontario 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.*

The Committee's recommendation

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

Encouraged by the developments in this case, the Committee asks the Government to take the necessary steps to ensure that the Government of Ontario:

- ***engages in dialogue with the complainants with a view to finding an appropriate remedy for the violation of the complainants' and their affiliates' freedom of association rights. It requests the Government to keep it informed of any progress made in this respect; and***

- ***in the future, 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.***

CASES NOS 3143 AND 3151

DEFINITIVE REPORT

Complaints against the Government of Canada presented by – the Canadian Labour Congress (CLC) and – Public Services International (PSI) on behalf of the National Joint Council (NJC) bargaining agents

Allegations: In Case No. 3143 the CLC alleges that some amendments to the Public Service Relation Act (PSLRA), contained in the omnibus budget implementation legislation entitled Economic Action Plan 2013 Act, No. 2 (Bill C-4), infringe the right to bargain collectively and the right to strike. In Case No. 3151, the CLC and PSI allege that the omnibus budget implementation legislation entitled Economic Action Plan 2015, No. 1 (Bill C-59) created exemptions to the PSLRA, which infringe the right to bargain collectively

173. The complaint in Case No. 3143 is contained in a communication dated 13 May 2015 submitted by the Canadian Labour Congress (CLC) on behalf of the National Joint Council (NJC) bargaining agents. The complaint in Case No. 3151 is contained in a communication dated 10 September 2015 submitted by the CLC and Public Services International (PSI), also on behalf of the NJC bargaining agents.

174. The Government of Canada transmitted observations on the allegations in both cases in communications dated 31 March and 29 April 2016, and 25 January 2017.

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

176. The Committee examines Cases Nos 3143 and 3151 together as both were brought on behalf of the NJC bargaining agents in respect of the measures taken by the Government to amend the Public Service Labour Relations Act (PSLRA) through the successive omnibus budget implementation legislative acts.

A. The complainants' allegations

177. By a communication dated 13 May 2015, the CLC brings a complaint on behalf of the NJC bargaining agents in respect of the legislative measures taken by the Government to amend the PSLRA through the omnibus budget implementation legislation entitled Economic Action Plan 2013 Act, No. 2 (Bill C-4), as well as related transitional measures, which infringe the right to bargain collectively and the right to strike.

178. The CLC explains that the NJC membership includes 18 public service bargaining agents, the Treasury Board and a number of "separate employers". Its purpose is to facilitate co-development, consultation and information sharing between the Government as employer and public service bargaining agents in the federal public service on issues such as workforce adjustment, safety and health, the bilingual bonus and public service health plans. The following 18 unions and workers' associations belong to the NJC bargaining agents group:

- Association of Canadian Financial Officers
- Association of Justice Counsel
- Canadian Air Traffic Control Association, CATCA Unifor, Local 5454
- Canadian Association of Professional Employees (CAPE)
- Canadian Federal Pilots Association
- Canadian Merchant Service Guild
- Canadian Military Colleges Faculty Association
- Federal Government Dockyard Chargehands Association
- Federal Government Dockyard Trades and Labour Council (East)
- Federal Government Dockyard Trades and Labour Council (West)
- International Brotherhood of Electrical Workers, Local 2228
- Professional Association of Foreign Service Officers
- Professional Institute of the Public Service of Canada (PIPSC)
- Public Service Alliance of Canada (PSAC)
- Research Council Employees' Association
- Unifor, Local 2182
- Unifor, Local 87-M
- Union of Canadian Correctional Officers – CSN

Jointly, the NJC bargaining agents represent approximately 230,000 federal Government workers, occupying diverse positions including Foreign Service, law, translation, health services, computer systems, program and administrative services, correctional services, and border services. Thus, the NJC bargaining agents represent both public servants exercising authority in the name of the State, as well as many other public servants who do not exercise such authority.

179. The complainant further explains that employees in the bargaining units affected by the Bill C-4 amendments to the PSLRA are employed by the Treasury Board of Canada Secretariat in the core federal public service, as well as at the following federal Government agencies and organizations:

- Canada Revenue Agency (CRA)

- Canadian Food Inspection Agency (CFIA)
- Canadian Nuclear Safety Commission (CNSC)
- Canadian Security Intelligence Service (CSIS)
- Communications Security Establishment, DND (CSE)
- National Capital Commission (NCC)
- National Energy Board (NEB)
- National Film Board (NFB)
- National Research Council of Canada (NRCC)
- Office of the Auditor General Canada (OAGC)
- Office of the Superintendent of Financial Institutions (OSFI)
- Parks Canada Agency (PCA)
- Social Sciences and Humanities Research Council (SSHRC)
- Staff of the Non-Public Funds, Canadian Forces (SNPFCF)
- Statistical Survey Operations (SSO)

180. The CLC indicates that Bill C-4 was introduced for the first reading in the federal House of Commons on 22 October 2013. This complex omnibus budget implementation legislation was over 300 pages long and amended approximately 20 different federal statutes, including the PSLRA. The complainant alleges that the amendments to the PSLRA were neither minor nor technical but rather entailed a fundamental overhaul of the statutory labour relations regime applicable to federal public servants, particularly with respect to the dispute resolution process in the event of bargaining impasses and the process for the designation of essential service positions. Bill C-4 also contained transitional provisions applicable to the round of bargaining commenced at the time of the complaint.

181. The CLC alleges that Bill C-4 amendments to the PSLRA were introduced in Parliament without any prior consultation with the unions or workers affected by the changes, nor with the affected administrative tribunals. According to the complainant, the short time frame between when Bill C-4 was introduced (22 October 2013) until when it received Royal Assent (12 December 2013) made it practically impossible for the bargaining agents, or other subject matter experts, to be adequately consulted in good faith or at all, or to have sufficient time to express their views. While a handful of union representatives appeared before the Standing Committee on Finance to express concerns at the amendments to the PSLRA contained in Bill C-4, the total time allotted for their testimony was less than three hours. According to the CLC, even more problematically, the deadline for amendments to the Bill was set at 9 a.m. on the morning of the union representatives' testimony before the Committee, which only commenced at 11 a.m. The CLC considers that in no way such a process can be considered adequate consultation.

182. The complainant indicates that further amendments to the transitional provisions to the PSLRA amendments in Bill C-4 were included in section 309 of Economic Action Plan 2014 Act, No. 1 (Bill C-31), which received Royal Assent on 19 June 2014.

183. The CLC alleges that the Economic Action Plan 2013 Act amended the PSLRA so as to infringe the right to bargain collectively and the right to strike in the federal public service. In particular, the CLC refers to sections 119–125 of the amended PSLRA, which set out a new process for the designation of essential services and essential service positions and allow the employer to unilaterally determine which services are essential and to designate essential service positions at any time. Moreover, the complainant points out that the definition of essential services is not limited to only clear and imminent threats but broadly defines essential services as any service, facility, or activity that "is or will be necessary for the safety or security of the public or a segment of the public". In other words, even the hypothetical possibility that a service may be essential at some point in the distant future is captured by the definition, which as a result, allows services and positions that are not truly essential to be so designated. The CLC further points out that, while section 122 requires the employer to consult with the bargaining agent about the designated positions during the course of a 60-day consultation period, there is no mechanism to independently review or challenge the employer's unilateral designations. The complainant explains that under the prior version of the statute, if the employer and bargaining agent were unable to enter into an essential services agreement, either of them had the option to apply to the Public Service Labour Relations Board (now the Public Service Labour Relations and Employment Board) to determine which services are essential and the type, number and specific positions to be designated as such in an agreement. According to the complainant, the parties effectively used this process in the past.

184. The complainant submits that, as a result of this new essential service designation process, the employer has improperly designated a number of positions as essential in a round of bargaining which commenced in 2014. It refers to the following examples:

- Applied Science and Patent Examination (SP) Group: 78 per cent of all federal Government meteorologist positions in the SP Group were designated essential, including interns whose work must be continually supervised, meteorologists who were engaged in daily public forecasting (as opposed to essential weather forecasting, such as severe weather, maritime or aviation forecasting) and meteorologists engaged in ongoing research and long-term software maintenance. Despite the fact that the bargaining agents challenged the improper designation of these positions in the context of the consultation process, the employer made almost no changes to the designations.

- Border Services (FB) Group, composed of border guards, along with those involved in the collection of duties and taxes and trade compliance: pursuant to a draft essential services agreement that was proposed by the Government in 2013 and governed by the previous legislation, approximately 80 per cent of the FB Group bargaining unit was designated essential, but union members working at the border were only required to perform duties related to safety and security and were not required to collect duties and fees during a strike. However, once Bill C-4 changes came into effect, approximately 88 per cent of positions in the same bargaining unit were unilaterally designated as essential by the employer and required that all duties were to be performed, not just those related to safety and security. Given that neither the positions, nor the services these employees provided changed in any significant manner in the months in between, the complainant submits that there is no justifiable basis for the employer to have designated so many more positions as essential.

- Hundreds of new positions that deal exclusively with monetary trade policies that had never been designated as essential previously were now designated essential.

185. The complainant further points out that, pursuant to section 125(2), an employee who was designated essential must perform all of the duties of their position, not just those duties that are essential. In other words, an employee who only performed essential services duties for

10 per cent of the time, must still perform 100 per cent of their duties. Thus, according to the CLC, the law created an incentive for the employer to sprinkle essential service duties between a number of positions resulting in a higher number of positions being designated essential overall. The CLC submits that section 125(2) further undermined the ability of the remainder of the bargaining unit to mount an effective strike and refers to the following example. The Veterinary Medicine (VM) Group, which is employed by the Canadian Food Inspection Agency, has been designated as 70 per cent essential. Its ability to mount an effective strike with the remaining non-essential portion of the bargaining unit has been grossly undermined by the fact that, pursuant to section 125(2) of the PSLRA, their "essential" colleagues are required to perform non-essential work during the strike.

186. The complainant further alleges that the amendments have resulted in some other non-essential employees being denied the right to strike and forced to use compulsory arbitration in the event of a bargaining impasse, even though they are not performing essential services. The CLC refer to sections 194(1)(f) and (2) and 196(f), which prohibit employees whose positions have been designated as essential from engaging in any form of strike action.

187. According to the complainant, along with essential service designations, the legislative amendments have also changed the process for dispute resolution in the event of a bargaining impasse. While section 103 provides that the process for the resolution of disputes between an employer and the bargaining agent for a bargaining unit is conciliation, section 104 provides two exceptions. Arbitration is the dispute resolution mechanism pursuant to section 104(1), where both the employer and bargaining agent agree, and pursuant to section 104(2), where on the day on which notice to bargain collectively may be given, 80 per cent or more of the positions in the bargaining unit have been designated as essential under section 120.

188. The CLC claims that the combined effect of sections 103–104 and 119–125 is twofold. On the one hand, non-essential workers in bargaining units with over 80 per cent designation are denied the right to strike and forced to accept compulsory arbitration, regardless of whether or not they want to strike and/or believe they can mount an effective strike. On the other hand, in bargaining units where the level of designation is 79 per cent or less, although the non-essential workers are allowed to strike, the essential service workers in the bargaining unit are prohibited from striking pursuant to section 194(2) and are also denied access to independent arbitration to compensate for that prohibition. The CLC considers that the 80 per cent threshold for accessing arbitration is both unduly high and arbitrary as a bargaining unit's ability to mount an effective strike is severely undermined in a situation where the level of essential service designation makes impossible the meaningful exercise of the right to strike and there is no provision for an alternative, effective and independent dispute resolution mechanism.

189. The CLC further alleges that even groups that have been designated as over 80 per cent essential have been denied access to arbitration as a result of transitional provisions in Bill C-4. According to the employer's interpretation of these provisions, any bargaining unit which did not have an essential services agreement in force on 12 December 2013, was on the conciliation/strike route for the current round of bargaining, even if over 80 per cent of the bargaining unit was designated essential and prohibited from striking. One such group caught by the transitional provision was the Ships Officers (SO) Group, which represents captains, engineers, and other officers working on vessels for the Canadian Coast Guard and in non-military positions on certain vessels of the Department of National Defence. For the current round of bargaining, 96 per cent of the bargaining unit has been designated as essential. Given the nature of the services provided by the Coast Guard, the SO group does not dispute the fact that these positions are essential. In fact, it was precisely because such a high percentage of its membership was engaged in providing essential services that the SO group had previously chosen arbitration as the dispute resolution mechanism under

earlier rounds of collective bargaining. Despite this high level of essential service designation, the Government has informed the SO group that they are on the conciliation/strike route, pursuant to the transitional provisions. As a result, in the event of bargaining impasse 96 per cent of the group will be denied the right to strike and also denied access to any arbitration proceedings.

190. The complainant further raises concerns with respect to both the arbitration and conciliation processes themselves. The CLC alleges that for those limited groups of employees who have access to arbitration and are truly essential, the adequacy of the arbitration process as a replacement for the right to strike is vitiated by the fact that the legislation statutorily prescribes and limits the criteria that an arbitration board may consider when making an arbitral award, thereby compromising the independence and impartiality of the arbitration process. The independence and impartiality of the Public Interest Commission (PIC) as part of the conciliation process were similarly undermined by the same statutorily prescribed limits on the criteria that the PIC may consider in its report.

191. In this respect, the CLC indicates that for the limited number of bargaining units that have access to arbitration in the event of a bargaining impasse, section 148 of the PSLRA requires an arbitration board to give preponderance to two factors when making an award, including "Canada's fiscal circumstances relative to its stated budgetary policies", thereby unduly interfering with the independence of the arbitration board. In addition, the board is to make its decision on the basis of whether the award "represents a prudent use of public funds" and is "sufficient to allow the employer to meet its operational needs". Effectively, not only is the arbitration board required to give preponderance to the Government's ability to pay but to the Government's willingness to pay as determined by the Government itself. Section 175 requires the PIC, as part of the conciliation process, to consider the same preponderant factors and make its decision on the same narrow basis. Finally, the CLC submits that sections 158.1 and 179 further interfere with the independence and impartiality of the arbitration and conciliation processes by giving the Chairperson of the Public Service Labour Relations and Employment Board, on his or her own initiative, the authority to direct either the arbitration board or the PIC to review its arbitral award or report if "in his or her opinion" the preponderant factors have "not been properly applied". The complainant submits that the legislative imposition of fiscal limitations and government policy on arbitration boards and PIC compromises the independence and integrity of the arbitral and conciliation processes and fundamentally undermines the confidence of the parties in those processes. NJC bargaining agents have serious concerns with the independence and impartiality of both the conciliation and arbitration procedures, which no longer have the confidence of all parties involved.

192. The CLC informs that, on 24 March 2014, one of the NJC bargaining agents, the PSAC, filed an application in the Ontario Superior Court of Justice alleging that a number of the Bill C-4 amendments to the PSLRA are unconstitutional and violate section 2(d) of the Canadian Charter of Rights and Freedoms, and that this violation is not saved by its section 1. On 14 May 2015, another NJC bargaining agent, the PIPSC, also filed a separate application to challenge the constitutionality of the amendments.

193. By a communication dated 10 September 2015, the CLC and PSI submit a complaint on behalf of the NJC bargaining agents in connection with the legislative measures taken by the Government with the omnibus budget implementation legislation entitled Economic Action Plan 2015 Act, No. 1 (Bill C-59). The complainants allege that this Act restricts the scope of collective bargaining by granting the Government the power to make changes to the existing collective agreements without negotiating with the affected workers' associations. The complainants indicate that sections 253–273 of Act No. 1 create exemptions to the PSLRA, and other instruments, that allow the employer to remove, amend and unilaterally

impose terms and conditions of employment related to sick leave and disability insurance that were formerly freely negotiated through collective bargaining.

194. According to the complainants, in 2013, a year before collective bargaining was set to begin between the employer and each NJC bargaining agent, the Treasury Board made clear its intention to replace existing sick leave benefits with a short-term disability plan and began a public campaign against the existing sick leave benefits by publishing misleading statistics about the rate of sick leave usage in the public service. According to the complainants, the President of the Board claimed that unionization was responsible for "psychological entitlement" which leads to absenteeism. Furthermore, on 9 December 2013, before collective bargaining had begun, the Treasury Board informed potential insurance providers of the Government's intention to procure a short-term disability plan and to re-tender the existing disability insurance plans and related requirements.

195. The complainants inform that, in July 2014, the PSAC and PIPSC filed an unfair labour practices complaint before the Public Service Labour Relations Board alleging that the Treasury Board interfered with the collective bargaining by sending communiqués directly to employees regarding its Workplace Wellness and Productivity Strategy, the language of which left employees in no doubt that a new sick leave regime was a "fait accompli".

196. The complainants allege that when the NJC bargaining agents each began renegotiating their collective agreements, the Treasury Board negotiators made it clear that any renewed collective agreement must include the proposed sick leave reductions and that no compensation would be offered for the removal of benefits. The CLC and PSI further allege that the Treasury Board negotiators were unable to answer many basic questions from the NJC bargaining agents, including questions about the projected costs of the Short-Term Disability Plan (STDP), the number of workers who would manage disability files, and whether the STDP would be managed internally or by a private sector third party. While negotiations were ongoing, the Government announced that the April 2015 federal budget would include 900 million Canadian Dollars (CAD) in savings from reductions in leave benefits. The complainants point out that, prior to the budget announcement, the Government had not informed the bargaining agents of its intention to resort to legislation.

197. The Bill was introduced into the House of Commons on 7 May 2015 and received Royal Assent on 23 June 2015. The complainant organizations explain that the short time frame made it impossible for bargaining agents to be adequately consulted or to have sufficient time to express their views; that there was insufficient time to properly study the usage of sick leave within the public services and to verify the Government's projected cost savings, which had been criticized as wildly inflated; and that while union representatives from three of the 18 NJC bargaining agents were invited to appear before the House of Commons Standing Committee on Finance to express their concerns, the Committee spent less than an hour hearing their testimony.

198. The complainants submit that the impact of Act No. 1 on labour relations between the Government and public servants is neither minor nor technical. The Act entails the removal of important sick leave related terms and conditions of employment from the scoop of collective bargaining. For an indefinite period of time, the employer is authorized to rewrite existing collective agreements to remove or modify negotiated sick leave benefits. The complainants challenge the following provisions of Act No. 1:

- Section 254 allows the Treasury Board to rewrite the sick leave provisions of existing collective agreements without consulting with the relevant bargaining agents.

- Section 254(2)(a) allows the Treasury Board to remove or reduce the sick leave to which employees are entitled under their respective collective agreements.

– Section 254(2)(b) allows the Treasury Board to modify provisions in collective agreements relating to the circumstances under which unused sick leave is carried forward from year to year.

– Section 254(2)(c) allows the Treasury Board to unilaterally remove "banks" of sick leave that had been carried forward from previous years.

– Section 257 allows the Treasury Board to override protections in place with the PSLRA for terms and conditions of employment in force during the bargaining process that are inconsistent with the terms established by the Treasury Board.

– Section 254(1) allows the Treasury Board to set an effective date, and for the four years following the effective date, section 258(1) renders ineffective any arbitral award that is inconsistent with the terms imposed by the Treasury Board.

– Sections 260–266 authorize the Treasury Board to create a new short-term disability programme, which is intended to replace the sick leave benefits that are removed under section 254.

– Section 262 removes the proposed short-term disability programme from the scope of collective bargaining for a period of four years following the effective date. For a period of four years following the "effective date" any terms in negotiated or awarded collective agreements that conflict with the programme imposed by the Treasury Board are rendered ineffective.

199. According to the complainants, if there had been a deadlock in negotiations, the appropriate response would have been to refer the matter to independent arbitration or conciliation rather than to impose new conditions of employment through legislation. Notwithstanding, the complainants' note that the availability of third-party arbitration has been undercut by section 258(1) of the Act which disallows arbitral awards that are inconsistent with the sick leave benefits imposed by the Treasury Board.

200. On 26 June 2015, the CAPE and PIPSC, jointly with 10 other NJC bargaining agents, filed an application before the Ontario Superior Court of Justice alleging that the provisions of Act No. 1 (Bill C-59) relating to sick leave were unconstitutional. On 30 June 2015, the PSAC filed an application before the same court alleging unconstitutionality of the same provisions. On 10 August 2015, the PIPSC and PSAC each filed a motion for an injunction requesting that the Ontario Superior Court of Justice issue an order staying the operation of sections 253–273 of Act No. 1.

201. The complainants indicate that, although the Treasury Board has yet to exercise the power to modify sick leave, the Government has indicated that it will do so if it is unable to achieve concessions through negotiation. The complainants explain that all current collective agreements include language granting employees sick leave credits. Employees who are unable to perform their duties because of illness or injury may be placed on sick leave if they have sufficient sick leave credits. While on sick leave employees receive their full rate of pay. The existing collective agreements grant each full-time employee one and a quarter days of sick leave for each month of employment. In total, employees receive 15 days of sick leave each year. Unused sick leave credits accumulate in a "bank" which is carried forward from year to year. Many public employees accumulate significant "banks" of sick leave, which they rely on when faced with prolonged illnesses, injury and/or medical procedures. These "banks" allow public servants to avoid drawing a reduced salary under employment insurance while waiting the 13 weeks necessary to access the long-term disability programme.

202. According to the CLC and PSI, the Treasury Board proposes to substantially reduce the allocation of sick leave credits and replace the removed benefits with a short-term disability programme. Under the proposal, among others, sick leave credits that have been "banked" over the course of an employee's career will be removed without compensation and sick leave credits will no longer carry forward from year to year; the annual allocation of sick leave credits will be reduced from 15 to six days per year; the sick leave allotment will be supplemented with a new short-term disability programme, which provides employees with no income for the first seven calendar days in which they are unable to fulfil their duties (employees may use their sick leave credits or vacation days during the waiting period in order to receive pay).

B. The Government's reply

203. In its communication dated 31 March 2016, the Government explains that Bill C-4 amends aspects of the collective bargaining and recourse system provided by the PSLRA regime and further amends the dispute resolution process for collective bargaining by removing the choice of dispute resolution method and substituting conciliation, which involves the possibility of the use of strikes as the method by which the parties may resolve impasses. In cases where 80 per cent or more of the positions in the bargaining unit are considered necessary for providing essential services, the dispute resolution mechanism is to be arbitration. Under the amended PSLRA, the employer has the right to determine which service is essential and the number of positions that will be required to provide that service, subject to a consultation process with bargaining agents. In addition, Bill C-4 amends the factors that arbitration boards and PICs must take into account when making awards or reports, respectively.

204. In its communication dated 29 April 2016, the Government explains that division 20 of Part 3 of Bill C-59 contains provisions authorizing the Treasury Board of Canada to establish and modify terms and conditions of employment related to the sick leave of employees on the core public administration. It also authorizes the Treasury Board to establish and modify a short-term disability programme and it requires the Treasury Board to establish a committee to make joint recommendations regarding modifications to that programme. Finally, it authorizes the Treasury Board to modify the existing public services long-term disability programmes in respect of the period during which employees are not entitled to receive benefits. These authorities would only be exercised on the recommendation of the President of the Treasury Board. The Government points out that the President has never made a recommendation under the Bill and the measures outlined in Division 20 have never been implemented.

205. The Government points out that since both Bills received Royal Assent, on 12 December 2013 and 23 June 2015, respectively, a new Government was elected. On 22 March 2016, the Government tabled the federal Budget 2016 "Growing the Middle Class" where it reconfirmed its commitment to respect the collective bargaining process and to negotiate in good faith with public service bargaining agents:

> Demonstrating its commitment to fully respect the collective bargaining process, the Government has already introduced new legislation to repeal the legislative provisions that provide it with the power to make unilateral changes to the disability and sick leave system. It also reversed the previous Government's decision to book savings in respect of changes to the public service disability and sick leave system in advance of the completion of negotiations. The Government will also consult on changes to the Public Service Labour Relations Act introduced through the 2013 Budget Implementation Act.

206. The Government highlights that the above statement in the budget reconfirms the Government's position and informs that, in January 2016, the President of the Treasury

Board stated that the Government intends to engage in consultation with public sector stakeholders to revisit the provisions introduced through Bill C-4. In its communication, the Treasury Board further advised federal public sector unions that it intended to make the repeal of Division 20 of Bill C-59 one of its first orders of business. The Treasury Board also confirmed that, in the meantime, the Government would not exercise the powers contained in that legislation to unilaterally implement a disability and sick leave management system. The Government also indicates that, upon receipt of this correspondence, the PSAC and PIPSC adjourned their challenges to Bill C-4 brought pursuant to section 2(b) (freedom of association) of the Canadian Charter of Rights and Freedoms in the Ontario Superior Court. The unions have undertaken to withdraw this litigation completely upon the coming into force of the repeal legislation.

207. The Government informs that Bill C-5, an Act to repeal Division 20 of Part 3 of the Economic Action Plan 2015 Act, No. 1 was introduced and first read in the House of Commons on 5 February 2016.

208. The Government forwards a copy of a communication from the President of the Treasury Board dated 3 June 2016 addressed to the Head of the NJC bargaining agents:

> The purpose of this letter is to confirm the Government of Canada's intention to table legislation in the fall 2016 session of Parliament, which would repeal all Bill C-4 Division 17 (Economic Action Plan 2013 Act, No. 2) […] changes to provisions of the Public Service Labour Relations Act (PSLRA). This letter serves to confirm the interim measures that will facilitate the current round of collective bargaining.
>
> The Government of Canada will table legislation in the fall to restore the public service labour relations regime that existed prior to the legislative changes introduced in 2013. Some often most contentious changes for bargaining agents were: allowing the employer the ability to designate essential services unilaterally, making conciliation/strike the default conflict resolution process, and prescribing new preponderant factors that Public Interest Commissions (PIC) and arbitration boards must consider when making recommendations or awards.
>
> The following interim measures will be effective for the current round of bargaining and would cease once new legislation is passed.
>
> These interim measures are meant to support a timely resolution of this round of bargaining. While the measures must be permissible under the current legislation, they are meant to reflect, to the extent possible, the spirit Bill C-4 regime.
>
> 1. Choice of Dispute Resolution Method:
>
> All bargaining units within the core public administration and/or separate agencies that are currently on the conciliation/strike route may request to switch to either arbitration under PSLRA s. 104(1) or "binding conciliation" of all matters under PSLRA s. 182. […]
>
> Any bargaining unit within the core public administration and/or a separate agency that is currently on the arbitration route by agreement of the parties (PSLRA s. 104(1)) may request to switch to "binding conciliation" of all matters under PSLRA s. 182. […]
>
> With respect to bargaining units on the arbitration route pursuant to PSLRA s. 104(2), should the parties reach an impasse in negotiations, the employer undertakes not to request arbitration before the legislation is passed on the understanding that the bargaining agent undertakes not to allege that this constitutes an unfair labour practice pursuant to section 106 of the PSLRA.
>
> 2. Preponderant Arbitration/Conciliation Factors:
>
> Bargaining agents within the core public administration and separate agencies may submit to a PIC or arbitration board that the Commission or Board as a truly independent third party, is free to weigh the factors as it sees fit without regard to Preponderance. The employer shall not object to this submission, nor will it argue that any factor is "preponderant".
>
> The employer also undertakes to advise the Commission or Board that Canada's fiscal circumstances relative to its stated budgetary policies are not a material factor. However, the

Government of Canada retains the right to make arguments on the state of the Canadian economy, as well as the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians.

As the "binding conciliation" process under PSLRA s. 182 allows the parties to agree on all aspects of the process, the employer agrees that the factors found in the pre Bill C-4 legislation (i.e. former PSLRA s. 148) shall be used for this process and if any disputes arise with respect to the administration of the "binding conciliation" process either party may apply to the Chair of the PSLREB, or their designate, for a timely resolution of the issue(s).

3. Essential Services:

For the core public administration, the employer shall issue a directive to each department advising that any employee occupying a position designated as essential, shall not be assigned non-essential work in the event of a strike. This directive shall be issued on or before June 30, 2016 and again once any bargaining unit is in a legal strike position.

For bargaining units within the core public administration that remain on the conciliation/strike route, a process will be put into place to review the current list of essential services designations. The process will have reasonable specific time periods determined in consultation with the applicable bargaining agent. The process will allow bargaining agents to dispute positions on the current list. The parties would then negotiate in order to resolve as many disputed positions as possible. The employer will consider the greater use of bundling as appropriate. The parties agree to refer any remaining disputed positions to a neutral third-party to make a final recommendation. The parties agree to accept the recommendations of the neutral third party. If a neutral third party cannot be agreed upon, the parties may apply to the Chair of the PSLREB, or their designate, to appoint a neutral third party with relevant essential services experience.

Separate agencies will be advised to follow the same measures for positions designated as essential within their organizations. The parties agree that the essential service designations will not be binding or precedent setting once the new legislation is passed.

In closing, I want to reiterate that the Government of Canada is committed to restoring fair and balanced labour laws that recognize the important role of unions in protecting the rights of workers.

209. The Government informs that, on 28 November 2016, a legislation repealing Bill C-4, An Act to amend the Public Service Relations Act and other Acts (Bill C-34) was introduced in the House of Commons and was given first reading. The Bill is currently awaiting the second reading. The Government indicates that Bill C-34 amends the PSLRA to restore the procedures for the choice of process of dispute resolution including those involving essential services, arbitration, conciliation and alternative dispute resolution that existed before 13 December 2013. It also amends the Public Sector Equitable Compensation Act to restore the procedures applicable to arbitration and conciliation that existed before 13 December 2013. Finally, it repeals provisions of the Economic Action Plan 2013 Act, No. 2 that are not in force and that amend the PSLRA, the Canadian Human Rights Act, and the Public Service Employment Act and it repeals not in force provisions of the Economic Action Plan 2014 Act, No. 1 that amend those provisions.

210. The Government requests that the complaints continue to be held in abeyance while Bill C-5 and Bill C-34 make their way through the parliamentary process.

C. The Committee's conclusions

211. *The Committee notes that both cases brought on behalf of the NJC bargaining agents involve allegations of restrictions on the right to strike and bargain collectively imposed through the amendments of the PSLRA by the omnibus budget implementation legislation entitled Economic Action Plan 2013 Act, No. 2 (Bill C-4) and the omnibus budget implementation legislation entitled Economic Action Plan 2015, No. 1 (Bill C-59).*

212. *The Committee notes that the CLC submits that the impugned provisions of Bill C-4 amending the PSLRA undermine free collective bargaining and the right to strike by: (1) allowing improper essential service designations; (2) denying certain federal employees the right to strike and instead forcing them to use compulsory arbitration; (3) failing to provide certain essential federal employees with adequate guarantees to compensate for the prohibition on striking; and (4) statutorily prescribing the criteria that an arbitration board or the PIC may consider when making an arbitral award or conciliation report, thereby undermining and calling into question the appearance of impartiality of these bodies.*

213. *The Committee further notes the allegation that through the second statutory act (Bill C-59), the Government allowed the employer to remove, amend and unilaterally impose terms and conditions of employment related to sick leave and disability insurance that were formerly freely negotiated through collective bargaining.*

214. *The Committee notes that the CLC and PSI, complainants in these cases, allege that the Government failed to effectively and adequately consult with workers organizations about Bill C-4 and Bill C-59 despite the fact that both pieces of legislation significantly affected their interests and rights.*

215. *The Committee notes that, in March 2014 and May 2015, the PSAC and PIPSK (NJC bargaining agents) filed separate applications with the Ontario Superior Court of Justice alleging that a number of the Bill C-4 amendments to the PSLRA were unconstitutional and violated section 2(d) of the Canadian Charter of Rights and Freedoms. In June 2015, the CAPE and PIPSC, jointly with ten other NJC bargaining agents, as well as the PSAC filed an application before the same Court alleging that the provisions of Bill C-59 relating to sick leave were unconstitutional.*

216. *The Committee notes the Government's indication that since both Bills received Royal Assent, on 12 December 2013 and 23 June 2015, respectively, a new Government was elected and that on 22 March 2016, the Government tabled the federal Budget 2016 "Growing the Middle Class" where it reconfirmed its commitment to respect the collective bargaining process and to negotiate in good faith with public service bargaining agents. The Government further refers to the January and June 2016 Treasury Board communications reconfirming once again that it intended to engage in consultation with public sector stakeholders to repeal the provisions introduced through Bill C-4 and Bill C-59. The Government further explains that Bill C-5, an Act to repeal Division 20 of Part 3 of the Economic Action Plan 2015 Act, No. 1, was introduced and first read in the House of Commons on 5 February 2016 and that, on 28 November 2016, a legislation repealing Bill C-4, An Act to amend the Public Service Relations Act and other Acts (Bill C-34) was introduced in the House of Commons and was given first reading.*

217. *The Committee notes the Government's indication that the PSAC and PIPSC adjourned their constitutional challenges to Bill C-4 and have undertaken to withdraw this litigation completely upon the coming into force of the repeal legislation. The Committee further understands from the publically available information that, as a result of the Government's clear commitment in relation to Bill C-59, the PIPSC and its co-applicants in the Bill C-59 constitutional challenge and injunction motion have agreed to adjourn the hearing of the injunction motion indefinitely and to place the substantive case relating to the constitutionality of Division 20 of C-59 in abeyance pending such time as the offending legislation has been repealed.*

218. *The Committee notes with interest the above legislative developments regarding Bill C-4 and Bill C-59 and encourages the Government to continue working towards bringing the legislation into conformity with the principles of freedom of association and promotion of*

the full development and utilization of collective bargaining machinery in full consultation with the social partners concerned.

The Committee's recommendation

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

> ***The Committee encourages the Government to continue working towards bringing the legislation into conformity with the principles of freedom of association and promotion of the full development and utilization of collective bargaining machinery in full consultation with the social partners concerned.***

CASE NO. 3191

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

Complaint against the Government of Chile presented by the Confederation of Copper Workers (CTC)

Allegations: The complainant denounces the excessive use of force by police during a strike, resulting in the death of a worker, and also alleges that, during the bargaining process to improve and extend a framework agreement signed in 2007 with a national cooper enterprise and contracting enterprises, numerous anti-union practices occurred in several of these enterprises

220. The complaint is contained in a communication dated 11 December 2015 presented by the Confederation of Copper Workers (CTC). The CTC submitted additional information in a communication of 6 June 2016.

221. The Government sent its observations in a communication of 27 January 2017.

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

A. The complainant's allegations

223. In its communication of 11 December 2015, the Confederation of Copper Workers (CTC) states that the workers belonging to it are in a subordinate and dependent relationship with contracting enterprises undertaking work for the state enterprise, the National Copper Corporation of Chile (CODELCO), (hereinafter "the enterprise") the country's largest state enterprise. Approximately 450 contracting enterprises subcontract around 48,000 workers who perform permanent and temporary duties for the main enterprise.

224. The CTC recalls that in 2007, since it was vital that the enterprise listen and respond to workers' complaints concerning labour relations, workers voted on and approved legal strike action, resulting in the conclusion, on 1 August 2007, of a framework agreement covering the CTC, the enterprise and the contracting enterprises. This branch collective agreement or supra-enterprise agreement, embodies rights and obligations regarding the workers' remuneration and social protection. The CTC indicates that, although the agreement does not specify a date for its renewal, enhancement and improvement, it was widened, clarified and improved during negotiations in 2009, 2011 and 2013, that is to say, within the minimum time periods established in national legislation for the renewal of collective agreements. This is why, in accordance with the time periods fixed by the parties in their own agreements, it was appropriate to hold negotiations in 2015.

225. The CTC states that on 6 July 2015 it submitted the corresponding application for the enforcement, improvement and extension of the framework agreement and that, following the refusal of the enterprise, and its contracting enterprises to begin the collective bargaining process, the CTC called for a legal strike on 21 July 2015 which lasted until 11 August 2015. According to the CTC, the arguments put forward by the enterprise for not negotiating the framework agreement were the following: (i) the time to negotiate the agreement was in 2016 not 2015; (ii) conditions were not ripe for enhancing benefits under the agreement, since Chilean miners were highly unproductive; (iii) the enterprise was in a difficult economic situation owing to internal production conditions and the low price of copper; and (iv) the CTC's only aim in negotiating the agreement was to secure the payment of an end-of-dispute bonus.

226. In this respect, the CTC holds that: (i) the agreement comes up for negotiation every two years, as in 2009, 2011 and 2013; (ii) the accusation regarding low productivity is refuted by the Chilean Copper Commission, which produces objective data showing that Chilean workers are highly productive; (iii) the enterprise is in the red owing to its ineffective resource management (losses running into the millions from advanced sales operations carried out in tax havens by the enterprise; theft of millions of pesos in the El Salvador division, with which senior officials and employees of the enterprise have been charged, and overruns on projects); and (iv) in its bargaining processes the CTC has never concluded any deal on an end-of-conflict bonus. The complainant adds that in 2015 the country was carrying out a labour reform, which the workers had been eagerly awaiting and in which the CTC and other trade unions played a critical role, as a result of which coordinated action was initiated against the trade unions aimed at teaching them a lesson, inasmuch as the enterprise sought to withdraw from the framework agreement.

227. The CTC emphasizes that this is not the first time that the Chilean State has engaged in anti-trade union conduct in connection with the framework agreement. During the negotiation of the agreement in 2007, the State also engaged in anti-union practices which were the subject of a complaint (Case No. 2626). The Government has yet to respond to some of the recommendations related thereto.

228. The CTC takes issue with the fact that in 2015 during the negotiation of the framework agreement and the strike, the Chilean State mounted serious attacks on freedom of association which ultimately prevented the legitimate exercise of the right to strike. First, the CTC states that on 24 July, three days after a legal strike began in the El Salvador division, Mr Nelson Quichillao López, a worker in a contracting enterprise undertaking work for the enterprise was killed by members of the special paramilitary police force (FFEE), who had been on the scene since the night before and who had gone there with the sole objective of repressing, neutralizing and dispersing the legal demonstration of completely unarmed workers. The CTC demanded that the Public Prosecutor's Office and the Chilean judicial authorities issue an official ruling and launch a thorough and transparent

investigation, given that the police operations were wilful and riddled with irregularities, and that the police investigations lacked credibility, legality and impartiality.

229. The CTC contends that the police statement attached to the complaint shows that: (i) the FFEE and the enterprise constantly liaised closely through their security agent; (ii) the decision to intervene was ordered by the Public Prosecutor and the high command of the special paramilitary police force; (iii) the regional governor was informed of the night operations and he, along with the enterprise, arranged buses to transfer the FFEE to the El Salvador division; (iv) most of the workers who had been on duty on the same shift as the worker who was killed and who had participated in the reconstruction of the scene of the crime (organized by the prosecutor of Diego de Almagro, whom the CTC accuses of a lack of diligence and impartiality) were dismissed; and (v) the reconstruction of the crime indisputably revealed the police's responsibility for the murder of Mr Quichillao López by a sergeant who shot him dead.

230. The CTC says that following the murder of Mr Quichillao López and owing to the notable escalation of the conflict, an agreement to set up bargaining committees was signed on 11 August between the CTC and the contracting enterprises in the presence of the enterprise qua principal and facilitator. This agreement set forth the CTC's commitment to suspend the demonstrations and the enterprise's commitment to immediately reinstate the dismissed workers without reprisals or persecution. However, since August 2015, the enterprise and the contracting enterprises have refused to hold a dialogue to resolve the conflict, failed to honour their obligations and engaged in a series of anti-union practices: (i) mass dismissals in the El Teniente health foundation (FUSAT) and in the ISALUD ISAPRE del Cobre Ltd enterprise (two health-care enterprises); (ii) dismissal of eight workers from the AVANT Servicios Integrales SA enterprise (hereinafter, the integral services); (iii) mass dismissals in the Geovita enterprise (hereinafter, a service provider for the enterprise's El Salvador division), affecting workers on the same shift as Mr Quichillao López who had participated in the reconstruction of the scene of the crime in the investigation conducted by the Office of the Public Prosecutor; (iv) similar anti-union practices in the Steel Ingeniería SA enterprise; (v) pressure exerted by the Ecomet SA enterprise (hereinafter, a contracting enterprise) to persuade workers to sign annexes to contracts which would oblige them to return any wages paid in advance in the event of their services being terminated prior to the period covered by these wages; and (vi) early termination by the enterprise of the civil law contract with Zublin Internacional Gmbh Chile Spa (hereinafter, a second contracting enterprise) by the enterprise. The CTC states that all these facts were reported to the Directorate of Labour, through its national director, but the outcome of the proceedings is not yet known.

231. The CTC also maintains that various state organizations colluded with the enterprise and its contracting enterprises and coordinated the following events: (i) the launch of a defamatory campaign directed against the trade union leadership of the San Lorenzo Clinic (hereinafter, the health-care contracting enterprise), with the complicity of the Provincial Labour Inspectorate; (ii) the issuing of a reprimand against the Gardilcic Andina trade union leadership, a process in which the Provincial Labour Inspectorate cooperated with the enterprise in order to use the signatures that the workers had given for a purpose other than the reprimand (an act which was reported to the Directorate of Labour on 12 November and to which, to date, there has not been any response) (the supervisory body, the clinic and the enterprise are alleged to have facilitated the vote for the reprimand); (iii) deductions made by a service provider for the enterprise's El Salvador division, from the wages of striking workers with the sole objective of dissuading them from participating in those strikes (despite the fact that this act was reported, the Chañaral Provincial Labour Inspectorate and the Atacama Regional Labour Directorate refused to open an investigation into anti-union practices and declared the complaint inadmissible); and (iv) the illegal detention of a trade union official from Calama after he had reported illegal activities committed by Cortés

Flores (hereinafter, a transport company), a contracting enterprise undertaking work for the enterprise. His arrest by the police a few blocks away from the enterprise for the crime of making death threats against the enterprise's manager revealed the coordination between the enterprise and the police.

232. The complainant also refers to the following anti-union practices which were recognized as such by the enterprise or the courts: (i) the enterprise, acting in cooperation with the Prosegur, Steel and Compass enterprises denied entry to officials in the Andina division, a practice which was reported and the anti-union nature of which acknowledged by the enterprise; and (ii) various complaints, appeals for protection and actions for the deprivation of rights brought by the enterprise against the CTC and its leaders, actions which were dismissed or declared inadmissible by the courts.

233. According to the CTC, the abovementioned anti-union practices illustrate the bad faith and double standards of the enterprise and its contracting enterprises during the negotiation of the framework agreement, added to which a media campaign was carried out to undermine the workers' rights to freedom of association, collective bargaining and strikes, by leading the public to believe that 2015 was not the prescribed year for negotiating the enforcement, improvement and extension of the framework agreement. With regard to the possible accountability of the state enterprise for the abovementioned anti-union practices, the CTC emphasizes that the State of Chile is the true employer, in the form of the enterprise, which, in turn, sets up contracting and subcontracting enterprises to employ workers and make them available to the state enterprise to fulfil their respective functions. It is a conglomerate, or economic unit, which, in accordance with the provisions in section 3 of the Labour Code, constitutes an enterprise for employment purposes. The enterprise dominates the contracting and subcontracting enterprises and either the State has not carried out the necessary inspections of the enterprise with regard to compliance with Act No. 20123 on subcontracting and personnel supply or, if it has, it has not reported the outcome of the inspection and the penalties to be imposed for labour violations.

234. In a communication dated 6 June 2016, the CTC refers to a number of difficulties which arose in connection with the erection of a public monument in memory of the worker who had been killed during the strike.

235. The CTC also reports the following: (i) the dismissal in February 2016 of 33 workers (32 of whom were trade unionists) from the health-care contracting enterprise, against which legal proceedings, which are still under way, were instituted for anti-union and unfair dismissal; (ii) the alleged refusal to engage in collective bargaining of the Mantenciones y Servicios Salfa SA enterprise (hereinafter, the maintenance service contractor) in the El Teniente division, which raised an objection under section 322 of the existing Labour Code, relating to time limits and a lack of opportunity to enter into the bargaining process. This plea was accepted by the Rancagua Labour Inspectorate; and (iii) the alleged illegal replacement of striking workers by the integral services, which was duly reported to the Directorate of Labour, the supervisory body which, in turn, submitted a complaint of anti-union practices to the Diego de Almagro Labour Court.

B. The Government's reply

236. In its communication dated 27 January 2017, the Government sent its own observations and those of the enterprise. First, and with a view to explaining the situation in which the copper industry finds itself, the Government states that the fall in the price of copper has heavily affected this industry over recent years, generating job losses, the discontinuance of projects and investments, downtime and the early termination of contracts, especially in the mining support service sector, and that this has led to a steady, significant decrease in activity over recent years.

237. Secondly, the Government refers to the legal framework governing collective bargaining in Chile and emphasizes that, for the last four decades, the only binding and obligatory collective bargaining recognized in Chilean legislation has been enterprise-level bargaining. The current Labour Code retains the provisions of Act No. 19069. Collective bargaining affecting more than one enterprise requires the agreement of the parties (section 303(2)). For employers, bargaining with the union is voluntary or optional and they have two options: first, if the employer decides not to bargain, the workers of the enterprise who are members of the inter-enterprise union may submit draft collective agreements in accordance with the general rules (section 334 bis (A)); second, if the employer agrees to bargain collectively, the joint negotiating commission must be involved (section 334 bis (B)). The Government emphasizes that collective bargaining at the supra-enterprise level is essentially voluntary both under the abovementioned current legislation and under Act No. 20940 which will enter into force on 1 April 2017.

238. The Government states that, in light of the above, the workers represented by the CTC have the right to collective bargaining at the enterprise level, whereas collective bargaining at the supra-enterprise level is voluntary. Thus, on 1 August 2007, in very encouraging conditions for the copper industry, the framework agreement was signed between the enterprise, the contracting enterprises and the CTC, following a dispute affecting industrial relations in the sector and, in particular, the operations of the state-owned copper enterprise. As a follow-up to this agreement, in 2009, 2011 and 2013, complementary agreements were concluded between the CTC and the Professional Association of Mining Enterprises and Allied Industries (AGEMA) in which the benefits agreed in the 2007 framework agreement were enhanced. The enterprise played a facilitator and guarantor role in the signing of these complementary agreements. Act No. 20123 on subcontracting and personnel supply specified who could participate in these negotiations. Thus, it was agreed that additional obligations for contracting enterprises should be included in the terms of service provision tender and that inspections in contracting and subcontracting enterprises should be improved by granting greater powers than those required by law. The enterprise participated in the discussions between AGEMA and the CTC only as facilitator and guarantor of the agreements, although, when all is said and done, these processes did not amount to binding branch collective bargaining within the meaning of the provisions of the Labour Code, which means that there is no specific or fixed time frame for their completion. This is not therefore a collective bargaining process at the supra-enterprise level, the obligatory nature of which would extend beyond material conditions and what has been agreed between the parties. Hence these agreements cannot carry the same effects as a statutory collective agreement or contract, notwithstanding commitments to revise and improve the agreement, which in any case require the good will of the parties.

239. The Government states that the dispute among AGEMA, the CTC and the enterprise began in July 2015 when the CTC sent the state-owned copper enterprise, a request to enter into direct bargaining, thereby diverging from the parties' previous practice and the text of the agreements signed in 2007, 2009, 2011 and 2013, in which the bargaining process was carried out between the CTC and the contracting and subcontracting enterprises. In this context, the enterprise, in a letter dated 13 July 2015, informed the CTC that its request should be dealt with and settled directly by the contract workers, their representative trade unions and their respective employer enterprises. The CTC subsequently began to put pressure on the state enterprise by calling a work stoppage which culminated in the blocking of the public road linking the Diego de Almagro area with the El Salvador division camp and in the occupation of those facilities, thus preventing access and jeopardizing industrial safety.

240. The Government states that it was against this backdrop that the Chilean paramilitary police force carried out the operation which began on the night of 23 July and resulted in the death of the worker, Mr Nelson Quichillao López, in the early hours of the next day. It also states

that in order to shed light on the events surrounding his death two investigations are under way which, to date, have not been closed or finalized: one is an internal military police investigation and the other, in which the CTC is a complainant, is being led by the Office of the Public Prosecutor. With a view to further clarifying the facts, it should be noted that the National Human Rights Institute also filed a criminal complaint against those responsible for the death of the worker, Mr Quichillao López.

241. With regard to the complaints concerning the anti-union practices of the Directorate of Labour, the Government emphasizes that this body is deeply committed to freedom of association and that its actions in defence of its principles comply with legal and constitutional standards: (i) in respect of the dismissals which reportedly affected workers from various contracting enterprises, it has not been possible to gather all the available information on the complaints received and the status of judicial and administrative proceedings (with regard to the allegations of mass dismissals in the health-care contracting enterprise, the enterprise states that the decisions taken by the enterprise are not within its corporate control and that, in any case, the dismissals were carried out as part of a restructuring process. The state copper enterprise adds that, at the time of the dismissals, 95 per cent of the workers were trade union members and were registered with the primary trade union affiliated to the CTC (to date these figures still stand)); (ii) regarding the move to reprimand the Gardilcic Andina trade union, 20 per cent of the associates requested the Labour Inspectorate to provide a certifying officer to take part in the process of reprimanding the union leadership. After a public notice of a meeting had been posted, a decision to reprimand the union leadership was adopted by a vote on 11 November 2015 (in which 431 men and 3 women participated). The Government explains that the Labour Inspectorate does not interfere in the validation of the grounds of a reprimand and that, in the event of false accusations, it is the responsibility of the organization itself to annul the reprimand or adopt measures to resolve any conflict arising within the organization. All requests to annul a leadership reprimand are dealt with by the labour courts; (iii) the illegal replacement of striking workers participating in the collective bargaining process of the integral services was recorded by the Chañara Labour Inspectorate and reported to the Directorate of Labour, which, in turn, submitted a complaint of anti-union practices to the Labour Court, which resulted in an agreement approved by the court on 9 March 2016 and the closure of the case on 19 May 2016; and (iv) as for the allegation that the maintenance service contractor in the El Teniente division refused to engage in collective bargaining, it did so under section 322 of the existing Labour Code, that is to say it raised an objection relating to time limits and a lack of opportunity to enter into bargaining, which was accepted by the Rancagua Labour Inspectorate.

242. With regard to the possible effects of the CTC's criticism of the labour reform, the Government understands that the organization has a legitimate right to disagree with the Government's views when the latter introduces legislation on collective bargaining and to promote a complete revision of Chapter IV of the Labour Code.

243. The enterprise denies the allegations that it used direct or indirect psychological pressure or physical force on workers during the bargaining process, and submits that the general accusations levelled against it are not based on specific facts, but on assertions of interference by the State in this regard. The enterprise also denies having committed acts of union interference, reiterating that these, too, are unsubstantiated accusations. With regard to the mass dismissals of the contracting enterprises' workers who were involved in the strike, the enterprise, as the principal in the subcontracting system, states that it does not intervene in the dismissals of the contracting enterprises' employees. Its sole interaction with the contracting enterprises is limited to establishing, in advance, the tendering terms which are ultimately transferred to the resulting civil-law contract, which are also signed by the contracting enterprises, as any further involvement in the management and administration of each enterprise's human resources would be inappropriate. The enterprise states that the

complaint does not contain any factual evidence of collaboration to undermine trade union activity and that, to the contrary, it has acted as a mediator or facilitator of agreements and intervened only when it was possible to promote agreement between the parties which might be linked to matters within its remit as principal, without interfering in trade union or worker organization matters in the processes mentioned above.

244. With respect to the public monument in memory of Mr Nelson Quichillao López, the Government indicates that the situation which arose during the process to authorize its construction stemmed from the actions or decisions of either the Council for National Monuments or the Ministry of National Assets, in which the enterprise played no part. Although the authorization and putting in place of the memorial undermined the legitimate exercise of a right in rem associated with the mining easement owned exclusively by the enterprise, the monument has been built and set up in that location without waiting for the orders which revoked the authorization.

C. The Committee's conclusions

245. *The Committee notes that, in this case, the Confederation of Copper Workers (CTC), which comprises workers in a subordinate and dependent relationship with contracting enterprises of the enterprise, denounces the excessive use of police force during a lawful strike held between 21 July and 11 August 2015, that resulted in the death of a worker, and it also alleges that during negotiations to improve and expand the framework agreement concluded in 2007 between the CTC, the enterprise and the contracting enterprises, various anti-union practices occurred in several of these enterprises.*

246. *The Committee notes that, according to the complainant: (i) on 1 August 2007, a framework agreement was concluded between the CTC, the enterprise and the contracting enterprises (according to the complainant, the enterprise, dominates the contracting enterprises); (ii) this framework is the only supra-enterprise collective instrument that embodies rights and obligations relating to the workers' remuneration and social protection;; (iii) although the framework agreement does not specify a renewal date, it was extended through negotiations in 2009, 2011 and 2013, that is to say within the minimum periods established in the national legislation for the renewal of collective instruments, meaning that negotiations should have been conducted in 2015; and (iv) on 6 July 2015, the CTC submitted an application for the enforcement, improvement and extension of the agreement and, faced with the reluctance of the enterprise and its contracting enterprises to start the negotiation process (they argued that the negotiations should be held in 2016, not 2015, and that the enterprise was facing a difficult economic situation due to internal production conditions and the low price of copper), the CTC launched a lawful strike on 21 July 2015.*

247. *In this regard, the Committee notes the Government's contention that: (i) the drop in the price of copper has significantly affected the copper industry in recent years, leading to job losses and the discontinuance of projects and investments; (ii) Chilean legislation recognizes only one binding and compulsory level of negotiation: the enterprise level (supra-enterprise negotiation is essentially voluntary); (iii) while the framework agreement between the enterprise, the contracting enterprises and the CTC was concluded on 1 August 2007, the complementary agreements negotiated in 2009, 2011 and 2013 were concluded between the CTC and the contracting enterprises which form the Professional Association of Mining Enterprises and Related Industries (AGEMA). The enterprise participated in these negotiations only as a facilitator and guarantor; and (iv) on 6 July 2015, the CTC broached the possibility of direct negotiation with the enterprise, thus breaking with the parties' previous practice. On being faced with this situation, the enterprise responded that this request should be settled directly between the contract workers, their representative trade union organizations and the respective enterprises employing them, at which point the CTC*

began to put pressure on the state enterprise, calling a stoppage that would result in the occupation of facilities and the blocking of a public road.

248. *In relation to the alleged excessive use of police force during a lawful strike held between 21 July and 11 August 2015, that resulted in the death of a worker, the Committee notes that, according to the CTC, the Government and the police report annexed to the complaint, on 23 July, the Chilean paramilitary police force carried out an operation in the El Salvador division, which resulted in the death of the worker Mr Nelson Quichillao López, who died of a gunshot wound in the early hours of the next day. The Committee notes that according to the CTC and the Government, two investigations are being conducted in order to clarify the circumstances surrounding his death: one by the paramilitary police force (which, according to the complainant, lacks credibility, legitimacy and impartiality) and another by the Public Prosecutor's Office, in which the CTC is the complainant. The Committee notes that to date, both investigations are ongoing. It also notes the Government's statement that, with a view to further clarifying the facts, the National Human Rights Institute has filed a criminal complaint against those responsible for the death of the worker Nelson Quichillao López. The Committee recalls that in cases in which the dispersal of public meetings by the police has involved loss of life or serious injury, the Committee has attached special importance to the circumstances being fully investigated immediately through an independent inquiry and to a regular legal procedure being followed to determine the justification for the action taken by the police and to determine responsibilities (see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 49). The Committee deeply regrets the death of the worker Nelson Quichillao López and urges the Government to keep it duly informed of the findings of the investigations which are under way and to ensure that the perpetrators of this crime are brought to justice.*

249. *The Committee notes the complainant organization's submission that, although a protocol for the establishment of a bargaining committee was signed by the CTC and the contracting enterprises, in the presence of the enterprise, on 11 August 2015, the enterprise and the contracting enterprises have since refused to hold a dialogue to resolve the dispute and have engaged in a series of anti-union practices coordinated by and in complicity with various state bodies. In this regard, the Committee notes the Government's emphasis that the Directorate of Labour is deeply committed to freedom of association and that its acts in defence of its principles comply with legal and constitutional provisions. As to the allegation that the integral services enterprise replaced striking workers, the Committee notes the Government's information that this was reported to the Directorate of Labour, which in turn filed a complaint for anti-union practices with the Court of Labour. This resulted in an agreement dated 9 March 2016, which was approved by the court in a judgment closing the case dated 19 May 2016. Moreover, with regard to the allegation that the maintenance services enterprise in the El Teniente division refused to engage in collective bargaining, the Committee notes the Government's statement that it did so in accordance with section 322 of the Labour Code, that is to say it raised an objection relating to time limits and a lack of opportunity to enter into bargaining, which was accepted by the Labour Inspectorate of Rancagua.*

250. *With regard to the other alleged anti-union practices contained in this complaint, the Committee notes that, according to the CTC, complaints have been filed with the Directorate of Labour, or judicial proceedings have been initiated, but to date their outcome remains unknown. In this regard, and in relation to the alleged anti-union dismissals in particular, the Committee notes the Government's statement that it has been unable to collect all the available information on the complaints received and the status of the judicial proceedings.*

251. *The Committee therefore requests the Government to keep it informed of the outcome of these procedures, in particular with regard to: (i) the lawsuit filed in relation to the dismissal*

in February 2016 of 33 workers from a health-care contracting enterprise in the El Salvador division (32 of whom were union members); (ii) the status of the complaint filed with the Directorate of Labour in relation to the reprimand of the officers of the Gardilcic Andina Union; (iii) the decision in which the Chañaral Provincial Labour Inspectorate and the Atacama Regional Directorate of Labour declared inadmissible the complaint arising from the deductions applied by a service provider in the enterprise's El Salvador division to workers who participated in the strike; and (iv) the status of the complaint filed on 14 October 2015 with the Directorate of Labour in relation to anti-union practices in various contracting enterprises. The Committee also requests the Government to provide information on the arrest of a Calama trade union leader who was arrested for making death threats against an enterprise manager, according to the CTC after he had reported the illegal activities of a transport company, a contractor undertaking work for the enterprise.

252. *On the other hand, in relation to the allegations of dismissals in the following enterprises: (i) two health-care enterprises; (ii) the integral services enterprise (the Committee notes that, according to the enterprise, the dismissals were the result of the latter's restructuring); and (iii) the enterprise providing services in the El Salvador division which allegedly dismissed workers who were on the same shift as the worker Nelson Quichillao López, and who reportedly participated in the reconstruction of the crime during the inquiry conducted by the Public Prosecutor's Office, the Committee observes that, although the complainant provides the name of the enterprises in which anti-union dismissals allegedly took place, the Committee does not have specific information on the number or identity of the workers who were dismissed in each enterprise, on whether they were trade union members or on whether they participated in trade union activities. The Committee invites the complainant to provide the Government with further information on the dismissals and their possible anti-union motivation and it requests the Government to keep it informed of the status of any complaints filed in this connection with the Directorate of Labour and on any other administrative or judicial proceedings that have been initiated in this regard.*

253. *The Committee notes that the allegations considered in this case relate to events following the deadlock reached in negotiations between the CTC, the enterprise and the contracting enterprises concerning the revision of the framework agreement of 2007. The Committee also notes that, although a negotiating committee was set up on 11 August 2015, collective bargaining between the parties was fruitless. The Committee invites the Government to promote voluntary dialogue and collective bargaining between the parties concerned with a view to achieving harmonious working relations.*

The Committee's recommendations

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

(a) The Committee deeply regrets the death of the worker Nelson Quichillao López and urges the Government to keep it duly informed of the findings of the investigations which are under way and to ensure that the perpetrators of this crime are brought to justice.

(b) The Committee requests the Government to keep it informed of: (i) the lawsuit filed in relation to the dismissal in February 2016 of 33 workers of the health-care contracting enterprise in the El Salvador division (32 of whom were union members); (ii) the status of the complaint filed with the Directorate of Labour in relation to the reprimand of the leaders of the Gardilcic Andina Union; (iii) the decision in which the Chañaral Provincial Labour Inspectorate and the Atacama Regional Directorate of Labour

declared inadmissible the complaint related to the deductions applied by an enterprise providing services in the El Salvador division to the workers who had participated in the strike; and (iv) the status of the complaint filed on 14 October 2015 with the Directorate of Labour in relation to anti-union practices in various contracting enterprises. The Committee also requests the Government to provide information on the arrest of a Calama trade union leader who was arrested for making death threats against the enterprise manager, according to the CTC, after he had reported the illegal activities of the transport company, a contractor undertaking work for the state enterprise.

(c) In relation to the alleged dismissals in the remaining enterprises, the Committee invites the complainant to provide the Government with further information on the dismissals and their possible anti-union motivation and requests the Government to keep it informed of the status of the complaints filed with the Directorate of Labour and of any other administrative or judicial proceedings that have been initiated in this regard.

(d) The Committee invites the Government to promote voluntary dialogue and collective bargaining between the parties concerned with a view to achieving harmonious working relations.

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

CASE NO. 3061

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

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

Allegations: The complainant alleges, first, that a number of companies do not recognize their workers' right to join and be represented by SINALTRAINAL during collective bargaining and, secondly, that the leaders and members of that organization are being targeted by numerous acts of retaliation, including the filing of criminal complaints and anti-union dismissals

255. The complaint is contained in communications of 2 December 2013, 22 June 2014 and 18 June 2015, presented by the National Union of Agri-Food Industry Workers (SINALTRAINAL).

256. The Government sent its observations in communications of 12 September 2014, 18 December 2014, 26 October 2015 and 16 May 2016.

257. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

258. In a communication of 2 December 2013, the complainant denounces, first, several violations of trade union and collective bargaining rights by the company Transportadora Colombia SA TCC (hereinafter "the transport company"). In this connection, the complainant contends, in particular, that: (i) on 6 March 2013 SINALTRAINAL submitted a list of demands to the transport company; (ii) in accordance with current legislation, the union, on being faced with the transport company's refusal to enter into talks, lodged a complaint with the Ministry of Labour asking it to order the company to enter into talks; and (iii) to date, the Ministry has not taken a stance and there has been no negotiation regarding the list of demands.

259. The trade union organization also alleges that: (i) the transport company dismissed Mr Rafael Rozo on 21 March 2013 in an attempt to prevent other workers from joining the union – the case is still pending before the courts; (ii) the transport company breached labour law by refusing to deduct union dues payable to SINALTRAINAL; (iii) in order to exert pressure on SINALTRAINAL members, the transport company refused to discontinue the deduction of union dues payable to the National Union of Freight and Passenger Transport Workers (SINTRACAP), despite the fact that resignations from that trade union had been duly notified; (iv) Mr Alexander Escalante Ortiz's participation in the hearing held at the Ministry of Labour on 6 June 2013 concerning the transport company's refusal to bargain collectively was deemed by the company to be absence from work; (v) the company removed SINALTRAINAL's placards concerning the collective dispute; (vi) on 14 January 2014, the transport company submitted a request for labour arbitration (ordinary procedure) seeking to have SINALTRAINAL's by-laws, legal personality and membership declared unlawful; and (vii) on 25 April 2014, the Second Civil Court in the Facatativá Circuit recognized the legality of SINALTRAINAL's by-laws, but declared the transport company workers' membership of the trade union to be unlawful. A ruling on this case is awaited from a court of second instance.

260. The complainant further denounces several violations of trade union and collective bargaining rights committed by the Cauca Valley Family Compensation Fund, COMFAMILIAR ANDI (COMFANDI, hereinafter "the Fund"). In this connection, the complainant specifically holds that: (i) on 22 October 2012, SINALTRAINAL presented the Fund with a list of demands which the Fund rejected on 29 October 2013; (ii) in accordance with current legislation, the union, on being faced with the Fund's refusal to enter into talks, lodged a complaint with the Ministry of Labour asking the latter to order the Fund to enter into talks and to fine it; (iii) by decisions of 10 September 2013 and 24 October 2013, the Ministry of Labour refused to order the Fund to enter into negotiations or to impose a fine on it. The Ministry argued that, since the Fund had initiated judicial proceedings, it was incumbent upon the courts to rule on the case; (iv) the Fund submitted a request for labour arbitration (ordinary procedure) seeking to have SINALTRAINAL's legal personality rescinded on the grounds that it had admitted the Fund's employees as members and that that membership had been declared unlawful; and (v) the Fund refused to deduct union dues payable to SINALTRAINAL, for which it was punished by a Ministry of Labour decision of 14 June 2011.

261. The organization also alleges that, by way of retaliation and in order to dissuade any more of its employees from joining SINALTRAINAL, the Fund dismissed the following workers: (i) Mr Gustavo Serna Labrada was dismissed on 26 June 2009 after 37 years' service – this being the same date on which the employer was notified that the worker had joined the trade

union; (ii) Mr Walter Antonio Ramírez Tobar, a member of the SINALTRAINAL Complaints Committee – a fact of which the company was notified on 9 December 2009 – was dismissed on 14 December 2009 after spurning an offer of financial reward for the signature of a document terminating his employment contract by mutual agreement. Since he held trade union immunity, his reinstatement was ordered by courts of first and second instance (the case was heard by the Cali High Court on 29 February 2012), but the decision was not implemented; (iii) Mr Oscar Mezu Lasso was dismissed on 14 December 2009, five days after the company had been notified that he had joined SINALTRAINAL and three days after he had refused to resign (the worker's lawsuit seeking judicial protection was unsuccessful); (iv) Mr Wilson Fernández Victoria was forced to resign in exchange for compensation on 11 December 2009, two days after the company had been notified that he had joined SINALTRAINAL; (v) Ms Claudia Perdomo, a member of the SINALTRAINAL Complaints Committee, was dismissed on 18 January 2011 although she held trade union immunity – in view of the uncertain outcome of judicial proceedings, the worker accepted the company's out-of-court financial settlement; (vi) Ms Martha Guaza was dismissed on 18 May 2010, three weeks after the company had been notified that she was a member of the SINALTRAINAL Complaints Committee – the Fund succeeded in persuading the worker to drop her lawsuit in exchange for a purported settlement agreement; (vii) Mr Javier Hidalgo Concha was dismissed on 31 October 2012, less than one month after he had been appointed a member of the committee negotiating the list of demands presented by SINALTRAINAL – the courts of first and second instance ordered the worker's reinstatement; (viii) Mr Luis Eduardo Castillo was dismissed on 31 October 2012, nine days after the company had been notified that he was a member of the committee negotiating the trade union's list of demands – the court of second instance, the Cali Criminal Court, ordered the worker's reinstatement and called on the company to desist from anti-union dismissals; and (ix) Mr Jesús Henry Calvache was dismissed on 18 January 2012, two months after he had joined SINALTRAINAL – a ruling is awaited from a court of first instance.

262. In two communications of 22 June 2014, the complainant denounces the use of the judiciary by various companies as a strategy for outlawing SINALTRAINAL and thereby obstructing the exercise of freedom of association. After again referring to the lawsuits brought by the two companies mentioned in its first communication of 2 December 2013, the complainant briefly states that: (i) Industria Nacional de Gaseosas SA, a bottling company (hereinafter, the beverage company) submitted a request for labour arbitration (ordinary procedure) seeking to have the Villavicencio branch of SINALTRAINAL declared illegal. This case is on the docket of the 32nd Court of the Bogotá DC circuit; and (ii) the companies Dromayor del Llano SA and Dromayor Bogotá SAS (hereinafter, the medical distribution companies) asked the courts to revoke the union registration of the Villavicencio branch of SINALTRAINAL. This request was rejected by the courts of first and second instance in decisions of 27 September and 22 November 2012.

263. The complainant further alleges that: (i) the company FL Colombia SA (hereinafter, the first service provider) which provides services for multinational companies in the agri-food sector, also submitted a request for labour arbitration (ordinary procedure) in which it sought to have SINALTRAINAL's by-laws and the company workers' membership of the trade union declared unlawful; (ii) this application to the courts was made after the company had rejected the list of demands which the trade union had submitted to it on 27 May 2013 and after a complaint had been lodged by the trade union with the labour administration on 11 June 2013 asking the latter to order the company to negotiate; and (iii) the company's anti-union campaign culminated in workers cancelling their trade union membership, as a result of which the company withdrew its complaint of 12 February 2014 and the Ministry of Labour did not issue a decision on the trade union's complaint.

264. In addition, the complainant maintains that, on 27 March 2012, SINALTRAINAL submitted a list of demands to the company Proservis Temporales SAS (hereinafter "the temporary

service provider") which provides bottling plants with services and that: (i) having met with a negative reply from the company, on 23 April 2012 the trade union lodged a complaint with the labour administration in which it asked the latter to order the company to negotiate; (ii) the Ministry of Labour did not protect the workers' rights and the company based its refusal on the assertion that its workers could not join SINALTRAINAL; (iii) thereafter all the company's employees working in Bucaramanga and Barrancabermeja who were members of SINALTRAINAL were dismissed; and (iv) on 13 September 2012, the Ministry of Labour notified SINALTRAINAL that the company had lodged a complaint against the trade union accusing it of breaching the provisions of labour law.

265. The complainant also contends that the company Eficacia SA (hereinafter, the second service provider) which provides services for bottling plants: (i) applied to the courts to have SINALTRAINAL's by-laws and the company workers' membership of the trade union declared unlawful; (ii) the lawsuit came after the trade union had submitted a list of demands to the company; (iii) the company refused to discuss the list; and (iv) on 4 June 2014, it dismissed Ms Nora Ayde Velásquez Guzmán, a worker belonging to the trade union, who had received serious threats of physical assault prior to her dismissal.

266. Furthermore, the complainant alleges that the company Amcor Rigid Plastics de Colombia SA (hereinafter, the plastics company) which operates a bottling plant in Medellín, applied to the courts to have SINALTRAINAL's by-laws and the company workers' membership of the trade union declared unlawful after the trade union had presented the company with a list of demands which it refused to discuss.

267. The complainant also contends that the company Sodexo SA (hereinafter, the third service provider) a company providing services for bottling plants, has refused to negotiate with SINALTRAINAL since 2010. It was not until January 2014 that an arbitration tribunal issued an arbitral award against which an appeal has been filed with the Supreme Court. The complainant adds that, throughout that period of time, the company promoted its own collective agreement signed with non-union workers and managed to ensure that the tribunal's arbitral award was based on the few rights contained in that agreement and not on SINALTRAINAL's list of demands. It also states that the company dismissed, in a discriminatory manner, the workers Luis Manuel Martínez Sotelo, Blanca Elena Bustos, Mariola Molina González, Agripina Pérez Pérez, Mario Augusto Pinto Jiménez and Carmen Cotera Monerroza and that the courts refused to order their reinstatement in decisions of 6 August and 22 September 2010.

268. Moreover the complainant holds that: (i) the company Distraves SAS (hereinafter "the poultry company") brought criminal proceedings against SINALTRAINAL and a number of workers for the allegedly fraudulent registration of workers as members of the trade union; (ii) the complaint was filed after the company had refused to discuss the list of demands submitted by the trade union on 31 July 2013, which was also the date on which a number of company workers joined the trade union; (iii) as from that date, the company unleashed a systematic campaign of harassment directed against trade union members; (iv) as part of this campaign, Leonardo Plata Mendoza, Estewinson Pico Calderón, Alberto Sánchez Castro and Jiovanny Sánchez Buitrago were dismissed without a valid reason on 7 August 2013; and (v) on 12 August 2013, Norberto Rueda Barragán, a member of the committee negotiating the list of demands, was also dismissed.

269. The complainant alleges that the administrative authorities to which SINALTRAINAL had turned in order to denounce the aforementioned acts of anti-union discrimination endorsed those practices, but without requiring the union to pay the penalties or compensation which some judicial authorities had ordered in decisions devoid of any legal validity and which completely failed to protect freedom of association. The complainant adds that, although Colombian legislation makes provision for some remedies for breaches of freedom of

association, the process of obtaining the remedies is expensive, slow and ineffective and, what is more, the authorities implement these remedies only in part in an opaque manner.

270. The complainant also adds that bringing criminal charges against SINALTRAINAL leaders constitutes an anti-union strategy which has been deployed for many years by bottling plants in Colombia and which is still continuing. In this connection, the complainant makes particular mention of: (i) criminal charges filed by a bottling plant in Medellín against the SINALTRAINAL leaders Helconides Londoño Restrepo, Duban Antinio Mejia, Jhon Jairo Tamayo Nieto, Juan David Florez Contreras, Carlos Alsonso Yepes Gil, Rafael Aderlis Castro and Jaime Alonso Cañas Montoya for allegedly illegal acts committed at a rally on 21 August 2013, and another complaint lodged with the Ministry of Labour alleging abuse of the right of freedom of association on grounds of alleged damage to the company's business premises on that date; (ii) criminal charges against the trade union for the publication, in September 2013, of a text satirizing the multinational's acts of anti-union harassment; (iii) the criminal charges brought against the SINALTRAINAL leaders Luis Fernando Miranda Velázquez, Fabian Adolfo Ortiz Burbano, Alirio Nuñez García, Lizarso Serrano Hernández, Orlando Enrique Ciacedo Orozco, Miguel Enrique Pua Orellano, Paulo Cesar Valencia Guerrero, Cristóbal Ramón Gómez López, Enrique José Arévalo De Oro, Luis Carlos Cerpa Jinete, Carlos Alberto Prado Trujillo and Limberto Antonio Carranza Vanegas; and (iv) the pressure and fear generated among workers belonging to SINALTRAINAL by the latter wave of criminal charges, which obliged the trade union to accept conciliation at a hearing on 25 July 2013 in order to put an end to the proceedings.

271. The complainant then briefly refers to the criminal charges brought by the company Drummond Limited against workers belonging to SINALTRAINAL for damage allegedly caused by a protest held on 18 and 19 June 2013 at the entrance to a mine in the town of El Paso in the Department of César.

272. By a communication of 18 March 2015, the complainant submitted further allegations regarding the abovementioned poultry company. The complainant specifically states that: (i) on 17 February 2015, a group of SINALTRAINAL members went to the company's premises to ask for a negotiated settlement of the list of demands which the trade union had submitted to the company; (ii) the company, as planned at a meeting held on 28 January 2015, encouraged non-unionized employees to leave their workstations and to stage a violent counter-protest, even going so far as to form a group of workers wielding clubs and machetes; (iii) Mr Javier Correa Suárez, the President of SINALTRAINAL, Mr Juan Carlos Galvis, legal adviser to the trade union's National Executive Board (both of whom benefit from precautionary measures granted by the Inter-American Commission on Human Rights) and Mr Nelson Pérez Tirado, convenor of the Bucaramanga branch of the trade union, received verbal death threats; (iv) Javier Fernández Ortiz Franco and Oscar Palomino, company workers belonging to SINALTRAINAL, were physically assaulted; (v) the situation forced SINALTRAINAL members to call the police who managed to rescue Mr Fernández Ortiz Franco, who had been prevented from leaving the building; (vi) Mr Fernández Ortiz Franco was hospitalized for more than two weeks in a psychiatric hospital as a result of these events; (vii) SINALTRAINAL lodged a complaint with the Prosecutor's Office on 18 February 2015, in which it referred to two communications of 10 November 2014 and 4 February 2015 requesting the Ombudsperson to issue early warnings in respect of SINALTRAINAL members in the company; and (viii) on 18 February 2015, representatives of the trade union and the company met the mediator of the Committee for the Handling of Conflicts referred to the ILO (CETCOIT) and agreed to hold a meeting in an attempt to improve worker–employer relations, but to date the company has not found a possible date for the meeting. The complainant adds that the abovementioned acts were premeditated by the company's management to goad SINALTRAINAL members, since it had made it clear that it was bent on breaking up the trade union organization by dismissing its members.

B. The Government's reply

273. In a communication of 12 September 2014, the Government submitted its observations regarding the allegations concerning the transport company in which it forwarded, first, the company's reply stating that: (i) the fact that some company workers have joined SINALTRAINAL results in the existence of two industrial trade unions in the company, the National Union of Freight and Passenger Transport Workers (SINTRACAP) and SINALTRAINAL; (ii) this doubling of trade unions is reflected in the simultaneous membership of some workers in both unions and, above all, in the parallel promotion of two lists of demands; (iii) the parallel existence of two negotiating processes in one company is contrary to the principle of unity of agreement introduced by Decree No. 089 of 2014; (iv) the company initiated legal action seeking the setting aside of the revised SINALTRAINAL by-laws and, consequently, to have the company workers' membership of the trade union declared unlawful, since the company does not form part of the food industry; (v) notwithstanding the foregoing, the company did not refuse to discuss the list of demands presented by SINALTRAINAL, as is demonstrated by the agreement signed on 28 January 2014, which ushered in the direct settlement phase; (vi) a decision of a first instance court of 25 April 2014, which accepted the company's arguments, found that the transport company workers' membership of SINALTRAINAL was unlawful. The Bogotá High Court's decision on the trade union's appeal is awaited; and (vii) the trade union dispute between SINTRACAP and SINALTRAINAL, in which the company has taken care not to interfere in any way, underscores the need fully to apply Decree No. 089 of 2014 in order to ensure that the principle of unity of negotiation and of agreement is applied in practice.

274. The Government then provides its own observations, in which it maintains that: (i) the complaint filed by SINALTRAINAL on 14 March 2014 against the transport company for its failure to deduct union dues is under consideration; (ii) the complaint filed by SINALTRAINAL on 4 April 2013 concerning the transport company's refusal to negotiate was settled on 6 April 2014 through a decision which found that, in accordance with the law, the parties had held negotiations on the list of demands and, in the process, various documents had been signed relating to the course taken by and the methodology of the talks; (iii) since it has not been possible to arrive at a collective agreement, by law the next step is either to go to an arbitration tribunal or to stage a strike; (iv) as a result of Decree No. 089 of 2014, which was recently approved in order to facilitate and rationalize collective bargaining processes when several trade unions are involved, SINALTRAINAL and SINTRACAP will have to learn to coexist within the transport company; and (v) a decision is awaited on the appeal against the first court's decision that the transport company workers' membership of SINALTRAINAL was unlawful as the company did not belong to the food sector.

275. In the Government's communication of 26 October 2015, the transport company adds that the decision of the court of first instance that its workers' membership of SINATRAINAL was unlawful became final through a ruling of the High Court of Labour of Cundinamarca in January 2015. The company contends that, pending the high court ruling, it met all its obligations towards SINALTRAINAL and that relations between the company and the union have now ended.

276. In a communication of 18 December 2014, the Government states that, following a meeting on 10 November 2014 at the Ministry of Labour, the complainant agreed to participate in CETCOIT meetings with the various companies mentioned in this complaint.

277. In a communication of 26 October 2015, the Government first forwards the replies received from various companies mentioned by the complainant in this complaint. In this connection the Fund states that on 26 April 2013 it filed a special petition with the Eighth Labour Court of the Bogotá Circuit requesting it to find that the Fund workers' membership of

SINALTRAINAL was unlawful because the Fund did not belong to the agri-food sector. The Fund adds that it is at present deducting union dues from all workers belonging to SINALTRAINAL. The Fund then supplies information on the situation of various workers who, according to the union, had had their employment contracts terminated as an anti-union measure. In this connection, the Fund states that: (i) it reached a conciliation agreement with Mr Gustavo Serna Labrada, which ended the ordinary labour arbitration proceedings; (ii) after the courts had ordered the reinstatement of Mr Walter Antonio Ramírez Tobar, the Fund and the worker decided to end the employment relationship through a conciliation agreement approved by a labour inspector; (iii) Mr Oscar Mezu Lasso was dismissed on 11 December 2009 and the courts of both first and second instance refused to grant the worker the judicial protection for which he had applied; (iv) Mr Wilson Fernández Victoria resigned from his post on 14 December 2009 in return for a severance package, although he had not claimed one; (v) Ms Claudia Perdomo signed a conciliation agreement with the Fund which ended the employment relationship; (vi) Ms Martha Guaza signed a conciliation agreement with the Fund which ended the employment relationship; (vii) Mr Javier Hidalgo Concha was reinstated by a judicial protection order, but he retired on 15 October 2014; (viii) Mr Luis Eduardo Castillo is still working for the Fund; and (ix) Mr Jesús Henry Calvache was dismissed for a valid reason on 18 January 2013 and his application to the courts for reinstatement was refused by the courts of first and second instance.

278. The Government then provides the reply of the beverage company which contends that: (i) it has signed a collective agreement with six trade union organizations including SINALTRAINAL; (ii) it maintains an open dialogue with the shop stewards of all the trade union organizations present in the company and it provides economic support for the 18 registered executive subcommittees, more than half of which are part of SINALTRAINAL; (iii) the legal proceedings to have the Villavicencio branch of SINALTRAINAL declared unlawful are based on the finding that most of its members do not work in the agri-food sector; (iv) as for the criminal complaint filed by the company in response to a text published by SINALTRAINAL in September 2013, a conciliation agreement closing the case was signed on 12 February 2015 in the presence of the Attorney General; (v) the complaint filed by the company with the Ministry of Labour on account of the material damage caused by a SINALTRAINAL rally in Medellín on 21 August 2013 is under consideration; (vi) an investigation is being held in relation to the criminal complaint filed by the company against various SINALTRAINAL leaders in connection with the aforementioned rally in August 2013; (vii) the other criminal proceedings mentioned by the complainant in fact gave rise to the signing of a conciliation agreement in July 2013. The company says that the other acts denounced by the complainant have already been examined in the context of Case No. 2595.

279. The Government next provides the third service provider's reply. The company considers, primarily, that its workers may not join SINALTRAINAL because it does not belong to the agri-food industry, although it does supply that industry with the services it requests as an independent contractor. However, in order to comply with the orders of the Ministry of Labour, the company embarked on talks regarding the list of demands presented by SINALTRAINAL. As no agreement could be reached, an arbitration tribunal was set up which issued a ruling which was challenged by the trade union before the Labour Chamber of the Supreme Court. The latter's decision is awaited. Lastly, the company denies the accusations that it dismissed various workers in 2010 as anti-union action and it emphasizes that the courts rejected the appeals for protection which had been lodged in that respect.

280. The Government then forwards the reply of the first service provider which states that, since it is a haulage company, it is not sufficient for SINALTRAINAL to widen its by-laws to enable company workers to join SINALTRAINAL, which is a trade union in the agri-food sector. The company adds that, with the trade union's consent, it withdrew its request that the court declare such membership to be unlawful and that since the very small number of

workers belonging to SINALTRAINAL had freely decided to resign from the trade union, there was no longer any reason for the company to bargain collectively with the union.

281. The Government then supplies the reply of the temporary service provider which states that, since it is a temporary service provider and not an agri-food company, two of its workers' membership of SINALTRAINAL is unlawful, which is the reason why the company has refused to discuss the list of demands presented by the trade union.

282. Similarly, the second service provider holds that, as it is a business process outsourcing company and not an agri-food company, it was unlawful for one of its workers to join SINALTRAINAL. The company adds that it initiated legal action in that respect and that the labour court found that the union membership of Ms Nora Ayde Velásquez was null and void. This was the reason why the company refused to discuss the list of demands presented by the trade union in 2013.

283. The plastics company likewise maintains that, since it is a company making plastic bottles and containers, and not an agri-food company, it was not lawful for two of its workers to join SINALTRAINAL and it is not therefore obliged to deduct union dues or discuss the list of demands presented by that trade union. Notwithstanding the foregoing, the company did not refuse to receive SINALTRAINAL representatives and it thus honoured its legal obligations. This is the reason why the Ministry of Labour closed the case brought by the trade union, in which it alleged that the company had refused to bargain collectively.

284. The Government then submits its own observations on the complainant's allegations. First, it forwards information supplied by various regional labour directorates indicating that: (i) proceedings against the Fund concerning the termination of employment contracts as a measure against the trade union were closed on 23 February 2015 on the grounds that that termination was unrelated to the workers' trade union activities; (ii) the decision to close the case gave rise to an appeal from the trade union to have it reviewed; (iii) a decision of 9 May 2014 ordered the opening of disciplinary proceedings against the poultry company for refusing to negotiate; (iv) the complaint filed by SINALTRAINAL on 2 March 2015 for alleged acts undermining freedom of association is in the preliminary investigation phase; and (v) no administrative complaint has been received against one of the medical distribution companies.

285. Secondly, the Government states that the common features of the individual cases concerning companies mentioned in the complaint are the alleged refusal of those companies to negotiate with SINALTRAINAL and the legal action taken by them to have their workers' membership of SINALTRAINAL declared unlawful. The Government states in this respect that: (i) in accordance with the classification laid down in section 356 of the Labour Code, SINALTRAINAL is an industrial trade union. This is the reason why its members must work for companies belonging to the agri-food industry; (ii) although the Colombian legal order recognizes workers' right to organize without interference from the employer or the State, trade unions must respect the law and democratic principles and they may not accept members engaging in activities other than those set forth in their by-laws; and (iii) the legal action taken by the abovementioned companies is therefore legitimate and does not violate the freedom of association. These companies consider that the acceptance by an industrial trade union of members working in companies which do not engage in the same economic activity is contrary to labour law. The purpose of the aforementioned legal action is to settle this controversy.

286. The Government also contends, that despite the ongoing legal action to ascertain the lawfulness of company workers' membership of the trade union, the abovementioned companies have not violated the right to collective bargaining. In this connection, the Government holds that: (i) the Fund dealt with the list of demands presented by

SINALTRAINAL and is awaiting the convening of an arbitration tribunal; this being the reason why the Ministry of Labour refrained from punishing the company in an initial decision of 10 September 2013 and in its decision on the trade union's appeal for review; (ii) the transport company engaged in a direct settlement procedure with SINALTRAINAL until the court decision that the workers' membership of the trade union was unlawful became final, which ended the relationship between the company and the trade union; (iii) the beverage company has signed a collective agreement with SINALTRAINAL; (iv) the third service provider dealt with the list of demands presented by SINALTRAINAL and is now awaiting a decision on the trade union's appeal seeking the setting aside of the arbitral award; (v) although the first service provider initially refused to negotiate on the grounds that its workers could not join SINALTRAINAL, the Ministry of Labour discontinued its examination of the case, because the workers resigned voluntarily from the trade union; (vi) on 17 September 2014, the Ministry of Labour ordered the closure of the complaint lodged by SINALTRAINAL against the plastics company concerning the refusal to hold talks during the direct settlement stage; (vii) the second service provider initiated judicial proceedings at the end of which the court found that the fact that one company worker was a member of SINALTRAINAL had no effect with regard to collective bargaining.

287. The Government concludes its communication by stating that the authorities are paying attention to the complaints lodged by SINALTRAINAL and are adopting a stance on them. However, in the cases covered by this complaint there have been no violations of collective bargaining.

288. By a communication of 16 May 2016, the Government provides its observations on the allegations concerning the poultry company and first forwards the company's reply contending that: (i) the alleged systematic campaign to destroy SINALTRAINAL's presence in the company is non-existent, quite simply because only five out of a total of over 1,000 company workers initially joined this trade union, which never had more than 12 members in the firm; (ii) most workers are not members of any trade union and are satisfied with benefits under the collective agreement which has been in force for more than 12 years and which was revised in December 2014; (iii) there have been no dismissals of SINALTRAINAL members because they were union members. The company dismissed Leonardo Plata Mendoza, Estewinson Pico Calderón, Alberto Sánchez Castro and Jiovanny Sánchez Buitrago before it was aware of their membership of SINALTRAINAL and the legal action taken by those workers to obtain reinstatement was to no avail, thus absolving the company; (iv) the complainant's allegations regarding the events of 17 February 2015 are also incorrect, since participants in the union rally, most of them from outside the company, made insulting remarks about the company; (v) the complainant is also wrong in asserting that the company encouraged its workers to organize a spontaneous counter-protest; (vi) the allegations concerning verbal and physical attacks on various SINALTRAINAL leaders and members are also incorrect; (vii) the company never refused to discuss SINALTRAINAL's list of demands – it was the trade union which left the negotiating table; and (viii) as it has proved impossible to sign an agreement, the company is waiting for the trade union to inform it of any decision it might take to request the convening of an arbitration tribunal.

289. The Government then supplies its own observations on the complainant's allegations concerning the poultry company. The Government contends that: (i) the complainant furnishes no proof of the alleged anti-union dismissals and does not say whether they were challenged before the national authorities; (ii) the complainant supplies no evidence to show that resignations from SINALTRAINAL were brought about by pressure from the company; (iii) contrary to the complainant's allegation, the company did not violate the right of collective bargaining. Since discussions between the company and the trade union failed to produce consent to sign a collective agreement, they can move on to the next stages

prescribed by legislation in this case; and (iv) in this context, the complaint filed by the trade union with the Ministry of Labour concerning a refusal to negotiate received the due attention of the Ministry, as a result of which the parties were brought closer together and the direct settlement stage was recommenced.

C. The Committee's conclusions

290. *The Committee notes that, in the present case, the complainant alleges, first, that several companies do not recognize their workers' right to join and be represented by SINALTRAINAL during collective bargaining and that, secondly, the leaders and members of that organization are being targeted by numerous acts of retaliation, including the filing of criminal complaints and anti-union dismissals.*

291. *With reference to the alleged refusal of some companies to allow their workers to join SINALTRAINAL, the Committee takes note of the fact that the complainant states that, in breach of the rights recognized in Conventions Nos 87 and 98, the transport company, the Fund, the plastics company, the temporary service provider, and the first and second service providers asked the courts to cancel SINALTRAINAL's revised by-laws and to declare their respective workers' membership of the trade union to be unlawful. The Committee likewise takes note of the fact that the complainant adds that some of the aforementioned companies refuse to deduct SINALTRAINAL members' union dues. In addition, the Committee notes that the abovementioned companies and the Government contend that: (i) the abovementioned lawsuits are based on the finding that, under section 356 of the Labour Code, SINALTRAINAL is a trade union of the agri-food industry, whereas the activities of the plaintiffs lie outside that sector; (ii) the trade union's new by-laws are inconsistent with the category established in the Labour Code, insofar as SINALTRAINAL purports to cover a multiplicity of branches of activity; (iii) the aforementioned lawsuits do not constitute an act denying freedom of association – their aim is rather to give effect to labour law; (iv) pending the outcome of current judicial proceedings, the companies are deducting SINALTRAINAL members' union dues; and (v) decisions of courts of first instance (2014) and of second instance (January 2015) resting on section 356 of the Labour Code declared the transport company workers' membership of SINALTRAINAL to be unlawful because that company was not part of the agri-food industry.*

292. *From the information supplied in respect of the first allegation by the complainant, the companies in question and the Government, the Committee observes that the SINALTRAINAL amended its by-laws in 2011 with a view to widening its scope. The Committee notes that, after stating in article 1 of the trade union's by-laws that SINALTRAINAL is a first-level industrial trade union, the amended version of article 2 broadens its scope, since it includes therein all complimentary activities or those related to the agri-food sector and explicitly mentions activities going beyond food production, such as the transport of food or water, restaurants and hotels, the supply of steam and water, the collection, purification and distribution of water, sewage and refuse disposal, sanitation, the manufacture of fibres, fabrics and textiles, the manufacture of knitwear and crocheted articles, garments, the preparation and dyeing of hides, the manufacture of leather articles, footwear and the like, etc.*

293. *The Committee also notes that section 356 of the Labour Code classifies (first-level) workers' unions as follows: (a) company unions if they consist of persons of various professions, trades or specialities who provide their services in one and the same company, establishment or institution; (b) industrial or sectoral unions if they consist of individuals who provide their services in various companies in the same industry or sector of economic activity; (c) occupational trade unions if they consist of individuals engaging in the same profession, trade or speciality; and (d) trade unions covering several trades only in cases where workers are not sufficiently numerous to organize in one of the other three categories.*

The Committee notes in this respect that, in Ruling C180/16, the Constitutional Court found that section 356 of the Labour Code did not infringe on the body of constitutional rules with respect to freedom of association.

294. *The Committee further notes that: (i) the judicial dispute over the lawfulness of SINALTRAINAL membership is set against a background of negotiation at the company, and not the industrial level; (ii) the complainant does not say how many members are concerned by the lawsuits, while some of the companies involved in this case mention a very small number of members; and (iii) the Committee has not been informed of the existence of an official classification of sectors of activity for the purposes of workers' collective representation and collective bargaining (the annexes supplied by one of the companies refer only to the classification of industries and sectors of activities for the purposes of assessing occupational hazards).*

295. *Lastly, the Committee notes that it has already considered a similar nexus of issues in respect of SINALTRAINAL in the context of Case No. 2595 and that, on that occasion: (i) it considered, first, that employees of temporary service providers who work in the agri-food sector should be entitled to become members of SINALTRAINAL if they so wish; and (ii) secondly, it requested the Ministry of Labour to examine the right of workers of the Acueducto Metropolitano de Bucaramanga to join SINALTRAINAL (Report No. 354, June 2009, paragraphs 584–585).*

296. *In this connection, the Committee notes that, in the present case, some companies which take issue with SINALTRAINAL's ability to accept its workers as members and to negotiate on their behalf are temporary service providers and service providers and that some of their employees do in fact work in companies in the agri-food sector. The Committee therefore again points out that, although the workers in those companies have no direct employment relationship with companies in the agri-food sector, when they do work in that sector, they may wish to become members of a trade union organization which represents the interests of workers in that sector. Moreover, the trade union organization that represents these workers should, as a corollary of the right of association, have the right to present lists of demands and to bargain collectively with companies in the sector on their behalf [see 349th Report of the Committee, Case No. 2556, para. 754, and 354th Report of the Committee, Case No. 2595, para. 584]. The Committee, noting with interest that the labour administration ordered one of these companies to discuss the list of demands submitted by SINALTRAINAL, trusts that full recognition will be given to the right of all employees of temporary service providers or service providers who work in the agri-food industry, if they so choose, to join SINALTRAINAL and, if SINALTRAINAL shows that it is sufficiently representative in the enterprise, to be represented by that organization during collective bargaining. The Committee requests the Government to keep it informed in this regard.*

297. *With reference to the SINALTRAINAL membership of workers who do not work in the agri-food sector and whose companies allege that, since the trade union's new by-laws purport to cover diverse sectors of activity, they do not comply with the trade union classification established in section 356 of the Labour Code, the Committee invites the Government and the most representative social partners to analyse the consequences and impact of implementing section 356 of the Labour Code on workers' effective access to freedom of association and on enhancing collective labour relations in the country. The Committee requests the Government to keep it informed in this regard. Noting also that decisions are awaited in most of the judicial proceedings initiated by various companies in connection with SINALTRAINAL's by-laws, the Committee requests the Government to keep it informed of the outcome of these proceedings.*

298. *With respect to the alleged denial by some of the abovementioned companies of SINALTRAINAL's right to bargain collectively and the lack of action by the labour*

administration, the Committee takes note of the fact that the complainant alleges that: (i) the complaints that the admission of workers to SINALTRAINAL was unlawful were filed with courts immediately after the trade union had presented its respective lists of demands to the companies; (ii) the administrative complaints lodged by the trade union with the Ministry of Labour produced no effect, because they were either closed or rejected. The Committee also notes the concurring statements of the companies and the Government that: (i) in most cases, although the capacity of SINALTRAINAL to represent their workers is being challenged in court, the companies did not refuse to discuss the list of demands with the trade union, but the parties were unable to agree on signing a collective agreement – this being the reason why the trade union turned or is turning to an arbitration tribunal; and (ii) in other cases, negotiations ended since the links with SINALTRAINAL had disappeared because either the few members of SINALTRAINAL had resigned from the trade union or the courts had found that such membership was unlawful. The Committee likewise takes note of the Government's statement regarding the importance of applying Decree No. 089 of 2014, the purpose of which is to facilitate and rationalize collective bargaining processes in situations involving several trade unions.

299. *Although it notes the Government's submissions regarding the discussion of the lists of demands presented by SINALTRAINAL, the Committee recalls that it is important that both employers and trade unions bargain in good faith and make every effort to reach an agreement; moreover, genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 935]. Noting that the complainant's allegations and the replies of some of the companies concerned show that the discussion of SINALTRAINAL's lists of demands took place against a tense background that was hardly conducive to the holding of fruitful negotiations, the Committee requests the Government to take whatever steps it can to encourage the companies and the complainant to improve the climate of dialogue and mutual respect. In this connection, the Committee recalls the meeting between the Ministry of Labour and the complainant on 10 November 2014, which led to the complainant agreeing to take part in CETCOIT meetings with the various companies mentioned in this complaint. The Committee requests the Government to keep it informed in this regard. The Committee, also noting that, in some of the companies concerned, various trade union organizations appear to have taken part alongside one another in the negotiations and to have presented parallel lists of demands, trusts that the implementation of Decree No. 089 of 2014, which seeks to facilitate and rationalize collective bargaining when several trade unions are involved, will help to expedite negotiations between SINALTRAINAL and the abovementioned companies in the future.*

300. *With reference to the complainant's accusation that some bottling companies in Colombia are deploying an anti-union strategy, which consists in filing numerous criminal complaints against SINALTRAINAL leaders in order to intimidate them, the Committee takes note of the fact that the beverage company states that two of the three criminal complaints filed against SINALTRAINAL leaders which are mentioned in the complaint led to the signature of conciliation agreements (one in July 2013, the other in February 2015) which resulted in the closure of criminal proceedings, while the complaint following the acts committed at a rally in 2013 is being investigated. While it takes note of this information, the Committee recalls that it already examined a similar situation in the context of Case No. 2595 and that it requested the Government to take whatever steps it could to encourage the company and the complainant to improve the climate for dialogue in the company's various works, so that each side can carry out its functions properly and put aside hostilities, threats, insults and all other forms of violence. As this situation persists, it remains only for the Committee to reiterate its previous recommendation and, as stated above, once again to invite the companies concerned and the complainant to make the best possible use of existing opportunities for dialogue at the national level, in particular in the context of the CETCOIT.*

301. *With reference to the complainant's allegations concerning the premeditated assault of various SINALTRAINAL leaders and members on 17 February 2015 by the non-unionized workers of the poultry company, the Committee takes note of the company's energetic denials and its statement that the trade union's members engaged in insulting behaviour towards the company. As the complainant says that it has filed a criminal complaint in connection with the alleged acts, the Committee asks the Government to keep it informed of the handling of this case. The Committee also takes note of the fact that the company and the trade union met under the auspices of the CETCOIT on 18 February 2015 and that they signed an agreement in which they undertook to hold a series of meetings in an attempt to settle their differences out of court. Noting that the complainant contends that the company has not shown any interest in holding the planned meetings, the Committee encourages both parties to pursue the path of dialogue commenced before the CETCOIT.*

302. *As for the allegations of numerous anti-union dismissals in some of the abovementioned companies, the Committee notes, first, that it has not received any comments on the alleged anti-union dismissal of Mr Rafael Rozo on 21 March 2013 by the transport company or on that of Ms Nora Ayde Velásquez, on 4 June 2014, by a service provider. The Committee therefore requests the Government to supply information on these cases.*

303. *With reference to the alleged anti-union dismissals by the third service provider of six company workers belonging to SINALTRAINAL who brought lawsuits in an attempt to obtain their reinstatement, the Committee notes that these lawsuits were rejected by courts of first and second instance in 2010. Furthermore, the Committee takes note of the fact that the complainant does not provide the names of the workers allegedly dismissed. In the absence of this information, the Committee will not pursue the examination of this allegation.*

304. *With reference to the alleged nine anti-union dismissals of SINALTRAINAL leaders and members by the abovementioned Fund between 2009 and 2012 a few days after they became members and were appointed trade union leaders, the Committee notes, first, that the company contends that: (i) one of these workers remained in the Fund's employ; (ii) three workers were not dismissed but terminated their employment relationship with the company by mutual agreement; (iii) a conciliation agreement ending judicial proceedings was signed with one of the workers; (iv) the courts rejected the application for reinstatement filed by two workers; (v) one worker, whose reinstatement was ordered by the court, retired on 15 October 2014; and (vi) another worker whose reinstatement was ordered by the court signed a conciliation agreement ending his employment relationship with the company. Secondly, the Committee notes that the Government states that the complaint filed by the trade union regarding the anti-union nature of the dismissals was closed on 23 February 2015 on the grounds that the dismissals were unrelated to the workers' trade union activities. At the same time, the Committee observes that the rulings handed down by the complainant show that the two abovementioned court orders of reinstatement were based on the finding that the dismissals constituted anti-union measures and, more specifically, the second instance ruling of the 22nd Criminal Court in the Cali Circuit of 30 January 2013, ordering the reinstatement of Javier Hidalgo Concha, called upon the company to desist from committing anti-union acts and established that other workers belonging to SINALTRAINAL had been dismissed during the same period a few days after the dismissal considered by the court.*

305. *With reference to the alleged anti-union dismissal of various workers by the abovementioned poultry company, the Committee takes note of the fact that, in its reply, the company holds that Leonardo Plata Mendoza, Estewinson Pico Calderón, Alberto Sánchez Castro and Jiovanny Sánchez Buitrago were dismissed before the company knew that they were members of the trade union and that Norberto Rueda Barragán was dismissed for the valid reason that he had not honoured his obligations under the company's rules and regulations.*

At the same time, the Committee sees that the rulings handed down in respect of the complainant show that: (i) Norberto Rueda Barragán, a member of the committee negotiating the list of demands, was reinstated by rulings of courts of first and second instance (of 29 November 2013 and 31 January 2014, respectively), which found that his dismissal constituted an anti-union measure and which called on the company to desist from anti-union acts; (ii) the court of first instance hearing the application for protection decided on 7 October 2013 that the anti-trade union nature of the dismissal of Leonardo Plata Mendoza, Alberto Sánchez Castro and Jiovanny Sánchez Buitrago was proven. However, on 19 November 2013 the court of second instance overturned that ruling and declared the application for legal protection inadmissible because there were doubts surrounding the anti-union reasons behind the dismissals, which should be clarified in proceedings before an ordinary labour court, and found that the possible violation of freedom of association and loss of employment did not constitute imminent, irreparable injury such as to justify action for the protection of a constitutional right.

306. *In addition to each of the complaints of anti-union dismissal, the Committee also noted the complainant's general allegations regarding the alleged slowness, inefficiency and fragmentation of national mechanisms affording protection against anti-union discrimination. The Committee observes that such allegations are frequent in the numerous complaints recently filed with the Committee by Colombian trade union organizations and that, on various occasions, the Committee has requested the Government to take the necessary measures to expedite the resolution of complaints of anti-union discrimination (see Case No. 2946, 374th Report, March 2015, paragraph 251, and Case No. 2960, 374th Report, March 2015, paragraph 267).*

307. *In light of the foregoing and taking account of the fact that the Government is responsible for preventing all acts of anti-union discrimination and 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 invites the Government, in consultation with the most representative social partners, to embark upon a joint examination of national mechanisms affording protection against anti-union discrimination with a view to taking such measures as may prove necessary to guarantee adequate protection in this respect. The Committee requests the Government to keep it informed in this regard and reminds it that it may request ILO technical assistance, if it so wishes.*

The Committee's recommendations

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

(a) The Committee trusts that full recognition will be given to the right of all employees of temporary service providers or service providers who work in the agri-food industry, if they so choose, to join SINALTRAINAL and, if SINALTRAINAL shows that it is sufficiently representative in the enterprise, to be represented by this organization during collective bargaining processes. The Committee requests the Government to keep it informed in this regard.

(b) The Committee invites the Government and the most representative social partners to analyse the conditions and impact of implementing section 356 of the Labour Code on the effective access to workers to freedom of association and the enhancement of collective labour relations in the country. The Committee requests the Government to keep it informed in this regard.

(c) The Committee requests the Government to keep it informed of the outcome of judicial proceedings regarding the lawfulness of SINALTRAINAL's by-laws and various companies' workers' membership of this trade union.

(d) The Committee requests the Government to keep it informed of the handling of the various criminal complaints related to this case and filed either by companies or by the complainant.

(e) The Committee requests the Government to take whatever measures it can to encourage the companies and the complainant to improve the climate of dialogue and mutual respect and invites the companies concerned and the complainant to make the best possible use of existing opportunities for dialogue at the national level, in particular in the context of the CETCOIT.

(f) The Committee requests the Government to supply information on the alleged anti-union dismissals of Mr Rafael Rozo and Ms Nora Ayde Velásquez.

(g) The Committee invites the Government, in consultation with the most representative social partners, to embark upon a joint examination of national mechanisms affording protection against anti-union discrimination with a view to taking such measures as may prove necessary to guarantee adequate protection in this respect. The Committee requests the Government to keep it informed in this regard and reminds it that it may request ILO technical assistance, if it so wishes.

CASE NO. 3092

DEFINITIVE REPORT

Complaint against the Government of Colombia presented by the Union of Banking Sector Workers (ADEBAN)

Allegations: The complainant organization denounces the anti-union nature of the dismissal of a member and former leader of the Union of Banking Sector Workers (ADEBAN)

309. The complaint is contained in a communication presented by the General Confederation of Labour (CGT) dated 5 June 2014.

310. The Government sent its observations in communications dated 6 February and 20 October 2015.

311. Colombia has ratified the Freedom of Association and Protection of the Rights 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, 1947 (No. 154).

A. The complainant's allegations

312. In its communication dated 5 June 2014, the complainant organization denounces the anti-union nature of the dismissal of a member and former leader of the Union of Banking Sector Workers (ADEBAN) by the CORPBANCA S A enterprise (hereinafter, the bank). According to the complainant, Ms González Díaz was dismissed without justification further to being a member of the ADEBAN executive committee and immediately after the expiry of the six-month period which protects former trade union officers, according to the provisions of section 405 et seq. of the Colombian Labour Code. The complainant alleges that the aim of the dismissal of Ms González Díaz was to weaken the trade union and to discourage those who wish to hold union office in the future.

313. The complainant organization indicates that Ms González Díaz brought an action before the ordinary courts to be reinstated on grounds of trade union immunity, in which she stated the following: (i) Ms González Díaz began working for the bank as a consultant on 16 June 2008; (ii) in March 2013 she became a member of the trade union and on 10 April of the same year was appointed secretary of its executive committee; (iii) on 13 September 2013, a new executive committee was elected, on 16 September the bank was notified of the decision in writing, and on 19 September the Ministry of Labour was notified; (iv) the Ministry informed the bank of the new composition of the executive committee on 26 September 2013, which marked the start of the six-month period of trade union immunity; and (v) the bank terminated the contract of employment on 19 March 2014, when Ms González Díaz still enjoyed trade union immunity.

B. The Government's reply

314. In its communications dated 6 February and 20 October 2015, the Government transmitted the observations of CORPBANCA S A and its own observations, according to which: (i) on 28 July 2014, the Fifteenth Labour Court of Bogotá rejected the action brought by Ms González Díaz to be reinstated on grounds of trade union immunity with the argument that on the date of termination of employment the claimant was not protected by union immunity, since the six-month time period, which protects former trade union officers, that had already elapsed; (ii) that ruling was upheld at second instance by the Labour Chamber of the High Court of Bogotá on 25 August 2014, making the first instance ruling final; (iii) while Colombian law allows employment contracts to be terminated by the employer unilaterally and without justification subject to the award of compensation, in the case of Ms González Díaz the decision to dismiss her was not taken arbitrarily but rather as part of a restructuring process which the bank was obliged to undertake as the result of a merger with another bank. The restructuring process led to ten justified dismissals, 43 unjustified dismissals, 28 cases of termination of employment by mutual consent and 239 resignations; (iv) the area where Ms González Díaz worked went from having 12 staff in 2013 to ten staff in 2014 and those that continued to work in that area were assigned new posts and tasks; (v) at no point was it proven that Ms González Díaz's contract of employment had been terminated because of membership of the trade union or membership of the union executive committee; (vi) more than 14 trade unions coexist at the enterprise, which also has a collective labour agreement signed by the National Union of Banking Employees–Colombian Association of Banking Employees (UNEB–ACEB) and ADEBAN, covering 1,742 employees (53 per cent of all employees at the bank), in force from 1 September 2013 until 31 August 2015.

315. In its communication of 20 October 2015, the Government attaches the certificate from the Chamber of Commerce which verified the merger of the two enterprises, through Public Act No. 1527 dated 1 June 2014. The Government also attaches a copy of the second instance ruling handed down by the Labour Chamber of the High Court of Bogota on 25 August 2014, which shows that: (i) Ms González Díaz's immunity would have ended on 16 March

2014, namely six months after the enterprise was notified that a new executive committee had been appointed, and therefore the enterprise was not obliged to seek judicial authorization to terminate the employment contract on 19 March 2014; (ii) according to ruling C-4468 of the Constitutional Court, the changes in composition of an executive committee taking effect from when the trade union notifies the labour inspectorate and the employer in writing, and as both notifications are not carried out simultaneously, it is considered that immunity begins from the time of the first notification, which in the present case was the notification to the employer on 16 September 2013; and (iii) the first instance ruling of the Fifteenth Labour Court of Bogotá on 28 July 2014, which absolves the enterprise, is therefore upheld.

C. The Committee's conclusions

316. *The Committee observes that in the present case the complainant organization denounces the anti-union nature of the dismissal of a member and former leader of the Union of Banking Sector Workers (ADEBAN) by the bank. According to the complainant, Ms González Díaz was dismissed immediately after the expiry of the six-month period which protects former trade union officers, according to section 405 et seq. of the Colombian Labour Code. The Committee notes the complainant's allegation that the aim of the dismissal was to weaken the trade union and to discourage those who wish to hold union office in the future.*

317. *The Committee also notes the complainant organization's indication that Ms González Díaz brought an action to be reinstated on the basis of trade union immunity, alleging that the bank terminated her employment contract when she still enjoyed statutory protection, as six months had not elapsed since she had ceased to be the secretary of the ADEBAN executive committee. In that regard, the Committee notes that the bank and the Government state that: (i) on 28 July 2014, the Fifteenth Labour Court of Bogotá rejected the action brought by Ms González Díaz to be reinstated on grounds of trade union immunity with the argument that on the date of termination of employment the claimant was not protected by union immunity, since the six-month period which protects former trade union officers had already elapsed; (ii) that ruling was upheld at second instance by the Labour Chamber of the High Court of Bogotá on 25 August 2014, making the first instance ruling final; (iii) while Colombian law allows employment contracts to be terminated by the employer unilaterally and without justification subject to the award of compensation, in the case of Ms González Díaz, the decision to dismiss her was not taken arbitrarily but rather as part of a restructuring process undertaken as the result of a merger with another bank. The restructuring process led to ten justified dismissals, 43 unjustified dismissals, 28 cases of termination of employment by mutual consent and 239 resignations; (iv) the area where Ms González Díaz worked went from employing 12 staff in 2013 to ten staff in 2014 and those that continued to work in that area were assigned new posts and tasks; (v) Ms González Díaz has been awarded the relevant compensation for unjustified dismissal; (vi) more than 14 trade union organizations coexist in the bank, which also has a collective labour agreement signed with the National Union of Banking Employees–Colombian Association of Banking Employees (UNEB–ACEB) and ADEBAN, covering 1,742 employees (53 per cent of all employees at the bank), in force from 1 September 2013 until 31 August 2015; and (vii) the complainant organization has not proved that the employment contract was terminated because of membership of the trade union or membership of the union executive committee.*

318. *From the information provided by the complainant organization and the Government, the Committee observes firstly that Ms González Díaz was dismissed a few days after the expiry of the period of protection (trade union immunity), which lasted six months after the end of her term of union office, and that the legal action brought by Ms González Díaz to be reinstated, claiming that the protection period had not yet elapsed on the day she was*

dismissed, was rejected by the courts. The Committee stresses that the said legal judicial action focused exclusively on determining when the trade union immunity was valid and when it expired and for that reason, in accordance with the action brought, the reasons for the dismissal were not examined by the court.

319. *In this regard, the Committee notes the complainant organization's allegation that the dismissal of Ms González Díaz is of an anti-union nature in that its aim was to weaken the trade union and discourage future candidates for union office. For its part, the bank states that the dismissal of Ms González Díaz was unrelated to the employee's trade union activities, given that it resulted from restructuring due to the merger with another bank, a process which led to job losses. On that matter, the Committee notes the information from the bank, according to which the area where Ms González Díaz worked went from having 12 staff in 2013 to ten staff in 2014 and those that continued to work in that area were assigned new posts and tasks. The Committee also notes that the letter of dismissal attached by the complainant indicates that Ms González Díaz was dismissed without good reason (unjustified dismissal) and that no mention was made in that letter of the enterprise's restructuring process.*

320. *Although it appears from the matters described above that there are sufficient grounds to justify a thorough examination by the labour inspectorate or the courts of the reasons for the dismissal of Ms González Díaz, the Committee does not have sufficient information to determine whether she was dismissed on anti-union grounds. Under these circumstances, the Committee will not pursue its examination of this case.*

The Committee's recommendation

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

CASE NO. 3047

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

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

Allegations: The complainant organizations allege a "no-union" corporate policy in the context of misused subcontracting and precarious employment relations; anti-union practices involving harassment, intimidation, pressure to withdraw from trade unions and dismissals of union leaders; resistance to collective bargaining and non-compliance with concluded agreements; and the Government's inaction to address these allegations

322. The complaint is contained in a communication from the Korean Metal Workers' Union (KMWU) dated 5 December 2013. The KMWU, the Korean Confederation of Trade Unions (KCTU), IndustriALL Global Union (IndustriALL) and the International Trade Union Confederation (ITUC) provide additional information in a communication dated 25 September 2015.

323. The Government sent its observations in communications dated 15 September 2014, 4 March 2015 and 23 January 2017.

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

A. The complainants' allegations

325. In its communication dated 5 December 2013, the KMWU alleges: (i) a "no-union corporate policy" within the Samsung Group (the corporation), in the context of misused subcontracting and precarious employment relations; (ii) anti-union practices involving harassment, intimidation, pressure to withdraw from trade unions and dismissals of union leaders, including through the severing of allegedly doubtful subcontracting arrangements, at Samsung Electronics Service (a subsidiary company of the corporation); and (iii) resistance to collective bargaining and non-compliance with concluded agreements. The KMWU also denounces the Government's inaction to address these allegations against the biggest IT corporation in the world, which does not lack resources to fight unions.

326. The KMWU indicates that workers at the corporation face systematic surveillance, intimidation, dismissals, and wage and social victimization when they try to exercise their right to form and participate in trade unions, in direct contravention of ILO Conventions Nos 87 and 98. According to the complainant, the key reason for this is a systematic corporate "no-union" management policy that has existed at the highest levels since the corporation was founded 70 years ago and which runs counter to employer respect for workers' rights to form trade unions and participate in trade union activities. A key method in denying workers the right to exercise freedom of association is the employment of outsourced, contract workers with precarious employment relations.

327. By way of example, the complainants state that: a factory of the corporation's branch in Indonesia (SEIN) in Bekasi, West Java, employed 2,800 workers, out of which only 1,200 were regular permanent employees, 800 workers were outsourced and 800 were contract workers at the time that the precarious workers formed a union and joined the Federation of Indonesian Metal Workers (FSPMI) in October 2012; in November 2012, the SEIN dismissed the union leaders and activists by terminating subcontracting contracts and intimidated other workers by deploying armed thugs, who allegedly raided cars and motorcycles as directed by management; and although in-plant outsourcing of labour in manufacturing is contrary to Indonesian law and protests were held calling on the Korean Government to take action to punish Korean corporations that violate Indonesian laws, to urge the corporation to reinstate the dismissed workers and to stop using hired thugs, the Government failed to take any steps towards the reinstatement of the dismissed workers and the union was "busted".

328. The complainants also state that in October 2013, a member of the Korean National Assembly ascertained that, in order to implement the union-free management policy, the corporation prepared a 115-page document entitled the "S Group Labour Management Strategy". The document allegedly details the corporate group's strategy to destroy unions and was used to train Chief Executive Officers (CEOs) and labour management officials of

the group's affiliates, ordering them to carry out the policy in breach of laws safeguarding workers' rights.

329. In explanation of the structure of operations at the subsidiary company in the Republic of Korea, the complainants indicate that: (i) the subsidiary company carries out repair and after-service of corporate products and its shares are 99.33 per cent owned by the corporation; (ii) the subsidiary company functions in 98 service centres in the country in which work is carried out by directly employed permanent workers and subcontracted workers; (iii) service centres are mainly operated through service subcontractors – "Great Partner Agency" (GPA) subcontractors – responsible for sales, call centres, receptionists, internal service and field service repair persons, etc.; (iv) there are 117 GPA subcontractors and seven directly operated service centres; (v) most of the CEOs of the subcontractors are former executives or employees from the corporation; and (vi) the subsidiary company, in fact, provides direct direction and supervision of the workers nominally employed by the subcontractors. These subcontractors lack independence and act as proxy employers for the subsidiary company, as demonstrated by the following factors: subcontractors do not possess technology, licences or patents for the corporation's products; training of their employees is carried out by the subsidiary company; electrical and electronic parts necessary for their tasks are directly provided and audited by the subsidiary company; the system through which workers receive work orders and instructions and report outcomes is a smartphone application developed and administered by the corporate group and only works on corporation smartphones; workers' wages and incentives are paid according to criteria set by the subsidiary company and are also paid out by it; and subcontractors provide the subsidiary company with its core technology and skilled workforce – their contracts with the subsidiary company only allow them to perform warranty and after-service for corporation products and they do not have an independent existence or activities separate from the corporation. The complainants, therefore, allege that this situation leads to a de facto employment contract between the subsidiary company and subcontractors' workers caused by illegal dispatch of agency workers or disguised subcontracting and that even though the subsidiary company is the employer who controls wages and working conditions, it is engaged in union-busting and hides behind the subcontractors to ignore the workers' calls for improvement of working conditions and collective bargaining.

330. The complainant organizations further allege anti-union practices and repression of union members at the subsidiary company, involving harassment, intimidation, pressure to withdraw from trade unions and dismissals of union leaders, including through the severing of allegedly doubtful subcontracting arrangements. In particular, the complainants indicate that the subsidiary company has forced low wages, long working hours and poor, at times hazardous, working conditions on workers of the service centres, who were unable to claim benefits to which they were entitled and faced abusive language from the subsidiary company's and subcontractors' managers on a daily basis. In these conditions, Mr We Young-Il, working in the Dongrae service centre in Busan City, wanted to establish a labour-management consultative council but found that the subsidiary company had already registered a consultative council with the local labour office in the form of a "Great Work Place" committee (GWP). The complainants consider that the use of an English title and acronym, rather than the commonly used Korean term "Labour Management Consultative Council" made the institution less accessible to workers and indicate that in January 2012, when Mr We Young-Il sought advice from his GWP worker representative as to whether his working conditions breached minimum standards, the representative was unfamiliar with the Labour Code and defended the employer. In June 2012, Mr We Young-Il was elected Chair of the GWP at the Dongrae service centre, which he tried to make more accessible and democratic for workers in order to address their demands and managed to obtain the hugely popular right of workers to have every second Saturday off. As a result, GWP worker representatives from Pohang and Kumi contacted Mr We Young-Il for advice, which led to demands for better working conditions being made at other service centres. The

complainants allege that, in response, the subsidiary company began harassing Mr We Young-Il: he was threatened that he would be singled out for an audit; he was ordered to climb local mountains for "mountainside re-education" on Sundays and early weekday mornings, without compensation; and, claiming that they wanted to verify if he had stolen any company materials, but without a warrant or reasonable grounds for suspicion, the subsidiary company arbitrarily searched Mr We Young-Il's personal car. As the targeted audit found no irregularities, Mr We Young-Il could not be dismissed and earned even more respect from workers after this experience.

331. The complainants state that when Mr We Young-Il requested a union officer from the KMWU to come to his workplace to perform basic trade union education, it was the first time that a trade unionist had been invited to address workers at any service centre of the subsidiary company. Realizing that there were moves to form a trade union, the Chairman of the subsidiary company's southern region branch group personally visited the Dongrae service centre and the subsidiary company decided that employees "contaminated" by trade union education should be "quarantined" into one centre, and instructed the new subcontractor to hold onto the workers so that they did not end up spreading trade unionism throughout other service centres. The complainants state that at the end of May or beginning of June 2013, the subsidiary company terminated the GPA contract with the Dongrae service centre field services and transferred the contract, with all the subcontractor's employees except Mr We Young-Il and one other person, to the subcontractor handling internal services at the same centre. The complainants thus allege that the subsidiary company effectively dismissed Mr We Young-Il by terminating the GPA contract, and prevented his reinstatement by shutting down the subcontractor that had nominally employed him. As the messages concerning formation of a trade union and Mr We Young-Il's dismissals spread on various chat boards, the management searched workers' personal belongings and erased messages concerning these topics that had been left on chat boards.

332. The complainants further state that the unionization effort became well known and Mr We Young-Il was elected as Chair of the KMWU Samsung Electronics Service Workers' Local (KMWU Workers' Local) at its founding assembly on 14 July 2013. Within a month of its establishment, over 1,000 workers from service centres around the country joined the union, but the subsidiary company began putting pressure on workers to withdraw from the union: through the subcontractors' management the subsidiary company held morning assembly meetings and one-on-one meetings at which workers were threatened and instructed to withdraw their membership; they were required to make written apologies for passing out, in their own time, leaflets informing workers of a union rally; they were threatened with disciplinary action for publicizing union activities; one worker, who had defected from North Korea, was threatened by the management to be deported if he joined the union; the subsidiary company began singling out workers actively participating in the union with targeted audits and, after finding them guilty of minor infractions, some dating back several years, it threatened to lodge civil and criminal cases unless they withdrew from the union and issued disciplinary dismissals of union activists (although audits are normally carried out after the peak season in October to verify stock levels, these targeted audits against union members were carried out as soon as the trade union was established, although it was the peak season, to find something for which they could be subjected to disciplinary punishment). The complainants indicate that within three months the company's persistent harassment and union-busting actions had pushed union members into "immense economic and mental distress". On 31 October 2013, Mr Choi Jong-beom, a 32-year-old union member, committed suicide, leaving a message that the complainants indicate reads "the whole time I worked at Samsung SVC was so hard for me. I haven't been able to enjoy life being so hungry, and everyone's struggling so hard that just bearing witness to this is also painful. Though I can't be like Jeon Tae-il, still I have made my choice. Please, I hope it helps". The union explains that Mr Jeon Tae-il was a worker who set himself on fire and ran through the streets shouting "uphold the Labour Standards Act" and who is considered to

have given his life so that the labour movement would be able to exist in the Republic of Korea.

333. The complainants further allege that when the KMWU requested the subsidiary company to engage in collective bargaining in July 2013, the subsidiary company avoided the request for around four months, claiming that it required the union membership list before entering into collective bargaining, although, according to the complainants, such a request has no legal basis. In addition, the subsidiary company did not comply with the legal requirement to post a notice indicating that a request for collective bargaining had been made. As a result, the KMWU filed a request to the Labour Relations Commission (LRC) for a Corrective Order, which further delayed the negotiations by another month, and even after the KMWU was recognized as the workers' bargaining agent, the management of the subcontractors delayed negotiations for a variety of reasons so that the first meeting was held almost two months later. The complainants state that, in what appeared to be a coordinated move based on orders from the subsidiary company, the management of 35 subcontractors authorized the Korean Employers' Federation (KEF) to bargain on their behalf and stopped coming to meetings. The complainants state that the KEF continued to delay collective bargaining on the real issues so that, at the date of the complaint, collective bargaining was still stalled. They believe that the Ministry of Employment and Labour (MOEL) should have issued an administrative order to address such avoidance of bargaining.

334. In a communication dated 25 September 2014, the KMWU, the KCTU, IndustriAll and the ITUC reply to the observations from the KEF and provide additional information concerning the allegations of disguised subcontracting, anti-union practices and resistance to collective bargaining and non-compliance with collective agreements.

335. As regards the allegations of disguised subcontracting, the complainants state that the KMWU has not withdrawn this allegation and even sustained a lawsuit in this regard (Seoul Central District Court, 2013Gahap53613). On the contrary, the complainants consider that the subsidiary company has a sophisticated subcontracting arrangement which constitutes an illegal use of agency workers disguised as subcontracting. They refute all of the KEF's statements on this issue for the following main reasons: the subsidiary company issues direct work instructions to the subcontractors on various areas of management, including via an application developed by the subsidiary company, which are then transferred to the workers and go far beyond an ordinary notification system – these instructions negate the subcontractors as independent business entities and serve as evidence for disguised subcontracting; the subcontractors do not have their own equipment, are not financed on their own and almost all revenues are generated from transactions with the corporation or the subsidiary company; the CEOs of subcontractors are largely former managers of the subsidiary company; supervisors from the subsidiary company attend meetings at service centres and issue direct instructions; work distribution is done through an application and only the subsidiary company can adjust a minimum work-hour transferrable to a service engineer; subcontractors' field service workers and engineers employed directly by the subsidiary company both work in the same jurisdiction and share jobs interchangeably; the subsidiary company picks those workers who are to attend training, determines their programme depending on its needs, identifies low performers and orders them to take additional training courses; the subsidiary company designs and determines the wage system for subcontractors' workers and pays all social insurance contributions and severance pay instead of the subcontractors; services are provided in line with the repair service manuals developed by the subsidiary company and engineers were ordered not only to service and repair products but also to promote the sales of the subsidiary company's products; subcontracted workers report on their work through an online system supervised by the subsidiary company, which also ordered all offices and branches to hold weekly meetings to verify performance results; and the subsidiary company evaluates the performance of its regional branches and offices based on performance indices of service centre workers.

336. In consideration of the above factors, the complainants believe that the subsidiary company meets the criteria of employer and the subcontractor companies are a legal fiction meant to avoid the subsidiary company's responsibility to the workers. They also state that the fact that the KMWU negotiated with subcontractors, who are on employment agreements with members of the KMWU Workers' Local, and concluded a collective bargaining agreement with the KEF, does not negate the illegality of disguising agency work arrangements as subcontracting by the subsidiary company. The complainants further make reference to the Employment Relationship Recommendation, 2006 (No. 198), which reflects a tripartite effort to address some of the most common forms of precarious work, Article 13 of which provides clear guidance on the elements of the employment relationship.

337. With regard to the allegations of anti-union practices, the complainants indicate that a document entitled "Plans to stabilize organization" was found at the Ulsan service centre. The document was produced by the subcontractor covering the centre and shared with the subsidiary company's regional branch. According to the complainants, the document refers to a process of "greening", understood as the process of forcing a union member to withdraw from the union and de-unionizing all workers at the workplace. In particular, the complainants allege that: (i) the document contains different "greening" strategies for field and internal service workers – for internal workers who are less likely to be unionized, it is recommended to win them over by providing these union members with benefits, while for field workers, who are more likely to be loyal to the union, the document recommends dismissing the leaders and buying off ordinary members; (ii) the document details the methods and the persons in charge of winning over union members, measures which include the persuasion of members' families and offering of a higher pay rate to those in bad financial situations; (iii) the subcontractor showed commitment to "greening" by stating in the document that it would take all-out measures to "green" the entire workforce at any price; (iv) the document was implemented in practice, as is demonstrated by the kidnapping of one key member of the internal service – he was told to get into a car, was driven to an island situated tens of kilometres from Ulsan, the managers confiscated his mobile phone, confined him in a room and told him that he could not escape the island unless he withdrew from the union; and (v) a manager at the centre admitted in a conversation with a union member that the document was created by order of the primary contractor (subsidiary company) and reports on the document were provided to it. The complainants indicate that the KMWU is in the process of securing the manager's confession, and various media reported on this case.

338. The complainants also allege that special audits exclusively targeting union members continue across the country (the document found at the Ulsan centre suggests that the audit materials of union members were managed separately) and that many union members were dismissed or withdrew from trade unions. Allegations are further made of unfair labour practices consisting of influencing union members to withdraw from trade unions, interfering with the operation of unions and unfavourable treatment of union members. The complainants state that the managers of at least four centres were convicted for unfair labour practices related to collective labour relations: at the Yangsan centre, managers referred to union members as "communists" or "a revolution organization" and at the Yeongdeungpo, Yangcheon and East Incheon centres, managers were found guilty of checking if an employee had joined the union and if not, telling him or her not to join it, hindering union members from attending a union inauguration conference and putting pressure or force on union members to withdraw from the union. The complainants also state that, since the initial complaint was submitted to the Committee, eight unionized centres (Haeundae, Asan, Icheon, Suncheon, Jinju, Masan, West Suwon and Ulsan) were closed down and reopened, almost all personal and physical assets of the closed centres were transferred to new centres so that the substance of business remained intact and only the titles and nominal CEOs were changed and all employees, other than union members, were rehired by the successors. According to the complainants, these close-downs were fake, aimed at busting trade unions, and led in almost all centres to deteriorating working conditions and disaffiliation of a

number of union members. The complainants indicate that union repression led to the suicide of Yeom Ho-seok and that members of the KMWU Workers' Local continue to suffer from repressive measures conducted by the subsidiary company.

339. In relation to the allegation of neglect of duty of collective bargaining and violation of collective bargaining agreements, the complainants reiterate that collective bargaining was delayed due to the employers' avoidance of negotiations – it took almost one year to conclude the collective bargaining initiated in July 2013, and supplementary agreements in each region were concluded later than October 2014. Addressing the KEF's statement that the unions repeatedly refused to provide subcontractors with the list of members to verify if any employee acted in the employer's interests, the complainants state that, in line with section 10 of the Trade Union and Labour Relations Adjustment Act (TULRAA), any person who intends to establish a trade union shall submit its bylaws to the MOEL, as well as a report indicating basic union information, which does not, however, include a list of union members but only their number. In addition, under section 14-2(2) of the Enforcement Decree of the TULRAA, when a trade union requests an employer to bargain collectively, it shall do so in writing, stating the matters prescribed by the Ordinance of the MOEL, such as the name of the union and the number of members at the date of the request and, according to the Enforcement Rules of the TULRAA, the necessary information includes the title of the trade union, location of the main office and number of union members at the date of request. According to the complainants, this means that the persons who act in the interests of employers are not assigned to check the list of union members, instead the Ministry verifies if the union's bylaws allow representatives of employers' interests to join the trade union or not. As a result, it is sufficient for the KMWU to submit the number of union members to the subcontractors when it requests them to bargain collectively and not the list of union members. The complainants further reiterate that the subcontractors violated section 14-3(1) of the Enforcement Decree of the TULRAA as they did not publicly announce the name of the trade union which requested them to negotiate and that, under section 81(3) of the TULRAA, refusal or delay of collective bargaining without any justifiable reason is considered as unfair labour practice. They add that the CEOs of the Yangcheon and Yeongdeungpo centres were convicted for delaying collective bargaining.

340. The complainants also allege that subcontractors and the subsidiary company are not observing an agreement of mutual withdrawal of accusation and complaints against each other. They explain that since labour disputes were prolonged for a year, both parties filed a number of complaints and accusations against each other but in late 2014 agreed on mutual withdrawal of accusations, complaints and other legal actions and to not file additional complaints or accusations for the same issues. While the KMWU cancelled all legal actions against them, the subcontractors and the subsidiary company failed to observe the agreement. In particular, the owners of the Yeongdeungpo and Yangcheon centres refused to withdraw accusations and the former submitted an additional complaint on an issue which falls within the category of mutual withdrawal.

341. Furthermore, it is alleged that a large number of subcontractors failed to observe the framework collective bargaining agreement concluded between the KMWU and the KEF on 28 June 2014 and collective bargaining agreements and wage agreements with individual subcontractors concluded in November 2014. As a result, the KMWU submitted complaints against 32 service centres across the country for violation of collective bargaining agreements and failure to address back pay. While none of the cases saw final conclusions, several centres were given administrative orders for correction. The complainants further point to the passive attitude of the MOEL, stating that some labour inspectors of the Ministry, who have the status of special juridical police officer, recommended to apply to regional labour commissions concerning cases of back pay in order to obtain administrative interpretation of the relevant legal provisions, instead of taking immediate action and thus only delayed the solving of the confrontational labour relations.

B. The Government's reply

342. In communications dated 15 September 2014, 4 March 2015 and 23 January 2017 (received on 23 February 2017 and containing further up-dated information), the Government provides its observations, as well as those of the KEF.

343. The Government states that the allegations in this case are made against the labour-management relations of the corporate group and infringements of labour rights at the corporation's subsidiary. In relation to the corporation's labour-management relations in an Indonesian factory, the Government indicates that when a domestic enterprise operates abroad and hires local workers, the business is subject to local laws and regulations rather than the laws and regulations of the Republic of Korea. For this reason, if the employment contracts in the corporation's branch in Indonesia are considered to violate Indonesian law, measures should be taken in accordance with national laws, regulations and procedures. Concerning labour-management relations at the subsidiary in the Republic of Korea, the Government indicates that, on 25 October 2013, the local trade union of the KMWU's Gyeonggi branch, the KCTU and seven organizations, accused the President of the subsidiary company and 14 management members of affiliate companies of unfair labour practices with respect to the "S Group Labour Management Strategy". The Government states that an investigation is currently under way by the prosecution and that, if it turns out that Korean laws were violated, the Government will take action pursuant to relevant laws.

344. With regard to the allegations of disguised subcontracting, the Government points out that in June 2013, the New Politics Alliance for Democracy and MINBYUN-Lawyers for a Democratic Society demanded a special labour inspection regarding their suspicion of illegal subcontracting by the subsidiary company. The MOEL undertook occasional inspections in 14 workplaces, including the subsidiary company's headquarters, from 24 June to 30 August 2013. The inspections showed that the subcontractors had independence and autonomy and it did not appear that the contractor severely infringed upon the subcontractors' rights to command and direct their employees, making the subcontractors' autonomous command and direction rights nominal. The subsidiary company's subcontracting of product repair work could, therefore, not be seen as illegal dispatch of workers. The Government adds that according to the inspection results, employees generally agree to work overtime but where subcontractors were found to have forced their employees to work for more than the prescribed overtime or failed to pay holiday work or unused annual leave, the Government ordered six subcontractors to pay overtime to 1,280 workers. The Government further indicates that regardless of the inspection results, 1,337 employees of 65 subcontractors sued the subsidiary company for confirmation of their employee status (486 employees in July 2013, 518 in September 2013 and 333 in December 2014) and that at the first trial in January 2017, the Seoul Central District Court dismissed the plaintiffs' claims for the following reasons: the subsidiary company does not command and supervise specific or individual jobs at the worksites; each subcontractor had its own wages, employment rules and job grade systems which determine wages, work hours, holidays, fringe benefits, disciplinary action and personal matters; and the subsidiary company's involvement in hiring, financial support for training and performance incentives, the opening of the in-house Olympiad, job training, assessment and supply of computer systems are part of consortium programmes or win–win cooperation efforts between a large company and small and medium-sized enterprises aimed at keeping service quality consistent across the nation. Consequently, the subcontractors' employees could not be seen as having implicit employment contracts with the subsidiary company or working as dispatched workers hired by the subcontractors to follow the subsidiary company's commands and directions.

345. In relation to the allegations of dismissal of Mr We Young-Il, the Government indicates that under section 28 of the Labour Standards Act an employee may, in the case of unfair dismissal or unfair labour practice by his or her employer, file a request for remedy with the

LRC. As Mr We Young-Il has not filed such a request, the Government states that there is no way to ascertain the facts and details of his dismissal.

346. As regards the allegations of fake close-downs of service centres aimed at busting trade unions, the Government states that in accordance with section 81 of the TULRAA, any worker who has been dismissed or faced disadvantages simply because he or she tried to organize a trade union or engaged in other justifiable acts considered to be union activities may seek and receive a remedy from the LRC. However, since there have been no complaints or charges made against the closure of service centres or the resulting termination of employment, there is no way to verify the existence of union-busting activities by the subcontractors. The Government adds that workers from the eight closed service centres, including union members, who wanted to work for the newly opened centres, were rehired after completing the recruiting process and thus refutes the allegation that successor subcontractors refused to hire union members.

347. Concerning the allegations of pressure on workers to leave their trade unions, the Government states that since 26 June 2013, the KMWU has made accusations against the presidents of the subsidiary company and its subcontractors for unfair labour practices regarding these alleged acts and that for any violation of the law confirmed by an investigation, the Government took action in accordance with the law. In particular, the Government indicates that in the case of the Yeongdeungpo service centre, union members applied for a remedy to the LRC against unfair labour practices in the form of transfers and suspensions but even though the LRC acknowledged the unfair transfers and suspensions (cases Seoul2014BuHae3588 and BuNo163 combined and Seoul2014BuHae1752 and BuNo62 combined), it dismissed the argument of unfair labour practices due to lack of evidence and the existence of a legitimate cause. In relation to the Ulsan service centre, the Government states that: (i) in May 2015, unfair labour practices against unionists were reported to the Ulsan District Prosecutor's Office and included the establishment of "Plans to stabilize the Organization" and pressure on union members to withdraw from the union; (ii) the Ulsan District MOEL Office conducted an investigation and found that managers of the centre took a leader and other union members to an island and induced them to withdraw from the union, promising benefits in return, such as better treatment and autonomous management rights for workers; (iii) the Ulsan MOEL Office sent the investigation results to the Prosecutors' Office for indictment but after reviewing its opinions, the Prosecutors' Office decided not to seek an indictment due to lack of evidence; and (iv) the Ulsan MOEL Office did not seek indictments for other allegations, such as the inducement of certain workers, including through individual meetings, to withdraw from the union and inspections targeting certain core union members since it could not find enough evidence to prove them.

348. As regards the allegations of refusal to bargain collectively, the Government states that the KMWU filed charges of neglect or refusal to bargain collectively against the CEOs of the subsidiary company and the subcontractors and that for any violation of the law confirmed by an investigation, the MOEL has taken action in accordance with relevant laws. The Government adds that, meanwhile, on 28 June 2014, the KMWU Workers' Local and the subcontractors concluded an agreement on issues of mutual interest between labour and management, including guaranteed union activities, written collective bargaining agreements and a standard collective agreement, which provides for common conditions applicable to all subcontractors. According to the Government, labour and management have been bargaining smoothly for follow-up agreements on matters such as welfare benefits and prescribed overtime, in compliance with the standard agreement and confirmed the details of the concluded collective agreements in November 2014.

349. With regard to the allegations of non-compliance with concluded agreements, the Government states that between December 2014 and March 2015, subcontractors' unions and the KMWU filed 38 complaints against the subcontractors' violations of collective

agreements. Since the investigations found that the overdue pay issue raised by the unions stemmed from their differing interpretation of the wording of the collective agreements, the MOEL regional office concluded its internal investigation into most of the cases by advising both workers and management to seek help from the LRC, in line with section 34.1 of the TULRAA, in interpreting potentially problematic collective agreement provisions. The Government indicates that in an effort to address any controversy over the interpretation of the collective agreements, workers and management at each subcontractor formed a "wage system improvement committee" and in July 2015 started discussing the redesigning of the wage systems. The Government further states that some of the cases involving violations of the law were sent to the Prosecutors' Office for indictment, while in other cases, the management was ordered to correct their violations.

350. Referring to the measures taken to address the allegations in this case, the Government concludes by saying that the allegation that it has not fulfilled its responsibility to oversee the corporation's labour relations is unfounded.

351. Regarding the allegations of disguised subcontracting, the KEF position transmitted by the Government states that the KMWU has withdrawn this allegation by virtue of its engagement in negotiations with the subcontractors and states that all factors which according to the complainants amount to disguised subcontracting are, in fact, essential and minimal measures for carrying out an outsourced contract. The KEF indicates in particular that: (i) all subcontractors are completely independent and self-financed firms with separate business registrations and operate at their own discretion; (ii) the subsidiary company provided employee training and education programmes for subcontractors' workers, as it was commissioned to do so, but also to other small and medium-sized enterprises, as an official government training programme; (iii) subcontractors rent electrical and electronic parts from the subsidiary company because such rental items are too expensive to be owned by small subcontractors and inspection of such rentals by the subsidiary is a normal exercise of legitimate ownership; (iv) subcontractor staff receive the necessary information concerning repair service from the subsidiary company through an online network system and such notifications aim at better scheduling of repair service and are not direct instructions from the subsidiary company (MOEL guidelines stipulate that giving instructions through an online network cannot be seen as a form of disguised subcontracting); (v) it is natural for contractors to set specific criteria for commission payments and, after a close labour inspection, the Government concluded that contracts between the subsidiary company and the subcontractors are legitimate; and (vi) if the minimum level of cooperation between the primary contractor and its subcontractors was characterized as direct instructions, it would be impossible for enterprises to make use of an outside workforce, whereas both subcontracting and outsourcing are widely accepted as universal methods of manufacturing in many high-tech companies. The KEF also refutes all additional arguments provided by the complainants in relation to false subcontracting, reiterates some of its previous arguments and adds that: the subsidiary company has the right to evaluate performance of heads of regional offices and branches based on performance indices of service centre workers, as these are related to the outcome of repair services; meetings between the subsidiary company and the subcontractors are reasonable in order to achieve goals under the contract and do not prove disguised subcontracting; communications between the subsidiary company and the subcontractors are not work orders but rather information sharing for contracting work; all web portals and online systems established by the subsidiary company are used to provide quick and accurate services or to share and provide technical information and do not constitute instructions; repair service manuals and warranty manuals are offered by the subsidiary company to provide consistent quality service and do not constitute direct orders; the attendance of the subsidiary company's heads in toolbox meetings are exceptional and should not be generalized; service engineers were ordered to promote sales of the subsidiary company's product only on one occasion about ten years ago and such occurrence is, therefore, exceptional; work distribution is done by the

subcontractors; the subsidiary company's engineers have different tasks than the engineers employed by the subcontractors and it is strictly forbidden to transfer a work order from one type of engineer to another; service engineers report their repair work in an online system simply to inform about progress; the subcontractors have their own repair and office equipment, borrow only expensive tools or equipment not easily found on the market and some of them operate other businesses in addition to contract works with the subsidiary; schedules for peak seasons are designed through consultations between the subsidiary and the subcontractors; although the subsidiary once supported a part of occupational safety and health programmes for small subcontractors, it was a win–win cooperation and not disguised subcontracting; staff education programmes are operated under the approval of the MOEL in line with domestic law and no additional training programmes are scheduled for underperforming workers; and the subsidiary company only makes commission payments to the subcontractors based on their contracted work performance, it does not determine the payment method or the amount of wages and each subcontractor has a different wage system. The KEF adds that in January 2017, the Seoul Central District Court ruled that the subcontracting between the subsidiary and the subcontractors was legitimate, affirming the legal status of 1,300 subcontractors' service workers. The KEF considers that the ruling has the following significance: it indicates that the right of work orders of the primary contractor, training, education, distribution of repair service manuals, workforce plan for peak seasons and the use of the subsidiary's logo are deemed necessary to accomplish the purpose of subcontracting and to provide consistent quality services; if subcontractors are independent business entities and carry out labour management in accordance with their own regulations, work orders of the primary contractor are only a request to implement subcontracting; and even if there are some interventions from the primary contractor, it cannot be deemed as work orders and direction from the primary contractor if they are not verified.

352. Concerning the allegations of union busting in the Ulsan service centre and targeted audits against union members, the KEF states that this argument is unilaterally made up by the KMWU as there has been no case before the judicial authorities where the subsidiary company was found guilty of union-busting attempts or of targeted audits against union members. It further indicates that the eight service centres were closed down voluntarily due to deteriorating business situations, poor health conditions of the CEOs and other issues and this occurred despite the subsidiary company's attempts to dissuade them from doing so. Once a centre is closed, the subsidiary company begins a selection process through bidding in order to find a successor, which cannot be considered as trade union busting.

353. In relation to the allegations of resistance to collective bargaining, the KEF indicates that the KMWU sent the subcontractors a request for collective bargaining on behalf of the subcontractors' unions in July 2013 but failed to provide all the necessary information, in particular the list of union members, so that the subcontractors could verify the employees' membership status before negotiations. The KEF explains that the subcontractors needed to verify the membership list in order to confirm that no members were employees acting in the employers' interests (executives, directors, secretaries and other employees in charge of management, accounting and human resources), as pursuant to section 2.4.1 of the TULRAA, the organization would not be regarded as a trade union if an employer or other persons who always act in their employer's interests are allowed to join the organization. In addition, according to the MOEL *Guide to Enterprise-level Multiple Trade Unions in the Republic of Korea*, a supra-enterprise level trade union is eligible to bargain but must prove that its members are lawful employees of the employer by, for instance, attaching its membership list to the request. Since the unions repeatedly refused to submit the necessary information, the subcontractors postponed notification of the receipt of the request and the delay in collective bargaining was thus caused by the union's uncooperative attitude.

354. The KEF further states that the TULRAA provides for institutional devices to protect trade unions during the course of collective bargaining whereby a trade union may file a request

to the LRC to take remedial action if an employer does not notify the receipt of a bargaining request. It indicates in this regard that the subcontractors' unions filed such requests and after the LRC reviewed their membership list and ordered the subcontractors to notify the receipt of a bargaining request, the subcontractors immediately posted a notice that their trade unions had requested collective bargaining. The KEF also states that a heavy workload due to the peak season meant that it was not proper timing to start negotiations and it was, therefore, suggested to adjust the negotiating schedule, but the unions kept insisting on holding negotiations twice a week and unexpectedly refused to work on Saturdays during the peak season which seriously disturbed the business. It also explains that, since most of the subcontractors are small or medium-sized firms, they do not have enough capabilities to conduct collective bargaining with the KMWU and, therefore, delegated the bargaining rights to the KEF. While in the beginning, the negotiations did not proceed smoothly, the subcontractors' unions and the KEF finally signed a wage and collective bargaining agreement. As of 1 September 2014, only four out of 46 subcontractors have not yet signed this agreement, but plan to hold meetings to adhere to it. According to the KEF, the unions and the subcontractors respect the obligations resulting from collective agreements and are making joint efforts to stop the long-held practice of conflicts and confrontation and to build cooperative relations, which is also demonstrated by the fact that in June 2014 they agreed to withdraw all legal disputes including mutual accusations, lawsuits or complaints against each other. The KEF states that, contrary to what the complainants claim, in the case of the Yeongdeungpo and the Yangcheon centres, both parties (employers and trade unions) refused to withdraw the mutual accusations and that out of 34 complaints submitted against the subcontractors for late wage payment, 28 ruled that the subcontractors were not guilty while six are currently under investigation by the MOEL. The KEF adds that between April and August 2016, seven regional representatives of the subcontractors and the KMWU participated in negotiations and reached and signed a wage and collective agreement in September 2016, which increases the basic pay of workers and grants additional overtime and other benefits to workers.

C. The Committee's conclusions

355. *The Committee observes that this case concerns allegations of a no-union corporate policy within the corporation, in the context of misused subcontracting and precarious employment relations; anti-union discrimination at a subsidiary company of the corporation and its subcontractors, involving harassment and intimidation of union members, pressure to withdraw from trade unions and anti-union termination of employment; and resistance to collective bargaining and non-compliance with collective agreements.*

356. *The Committee firstly notes the complainants' general allegation that the Government has not fulfilled its responsibility to oversee the corporation's labour relations, as well as the Government's opposition to this statement. The Committee notes, in particular, the Government's indication that labour inspections took place to assess the allegations of illegality of subcontracting, that investigations were undertaken into allegations of pressure and harassment of trade unionists and avoidance of collective bargaining, and that investigations in relation to the allegations concerning the "S Group Labour Management Strategy" are currently under way. The Committee takes due note of these indications and examines them in detail hereunder.*

357. *With regard to the allegations of anti-union dismissals and intimidation in the factory of the corporation's branch in Indonesia, the Committee duly notes the Government's information that when a Korean business operates in a foreign jurisdiction employing local workers, it is subject to local law, and will not pursue its examination of this allegation with respect to the Government of the Republic of Korea.*

358. *Regarding the "S Group Labour Management Strategy", the Committee notes the complainants' allegations that this document details the corporation's anti-union strategy and was used as a training guide for management and labour-management officials across the corporate group and its affiliates, as well as the Government's indication that, following accusations by a number of organizations against the President of the subsidiary company and management members of affiliated companies regarding the strategy, an investigation is currently under way by the prosecution and, if the law is found to have been violated, action will be taken in accordance with the law. Recalling that the right of workers to establish and join organizations of their own choosing in full freedom cannot be said to exist unless such freedom is fully established and respected in law and in fact [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 309] and emphasizing the seriousness of the allegations, the Committee requests the Government to keep it informed of the outcome of the prosecution's investigation without delay and trusts that the Government will take the necessary measures to ensure full respect of workers' rights to form and join labour organizations of their own choosing.*

359. *With regard to the alleged use by the subsidiary company of false subcontracting relationships, the Committee notes, on the one hand, the complainants' detailed list of indicators, which they allege, demonstrate the lack of autonomy of the subcontractors and point to false or disguised subcontracting by the subsidiary company meant to avoid its responsibility to the workers, and on the other hand, the Government's indication that the MOEL undertook a series of inspections, upon which basis it did not appear that the subsidiary company had infringed the subcontractors' rights to command and direct their employees and it was found that there was no illegal dispatch or improper use of subcontracting arrangements. The Committee further observes that the KEF refutes the allegation of disguised subcontracting, stating that any link between the subsidiary company and the subcontractors should be seen as essential and minimum measures for carrying out an outsourcing contract, and provides a detailed explanation of its position. The Committee also notes that while the KEF assumes that the KMWU withdrew this specific allegation, the complainants oppose this statement and provide an extensive list of arguments to support their position. Finally, the Committee notes the Government's and the KEF's indication that the Seoul Central District Court confirmed their position in January 2017, when it dismissed a claim by 1,337 employees of the subcontractors who sued the subsidiary company to confirm their employee status and stated that the plaintiffs could not be seen as having implicit employment contracts with the subsidiary company or working as dispatched workers hired to follow the subsidiary company's commands and directions. The Committee takes due note of this information and considers that while it is not competent to reach a conclusion as to whether a particular situation constitutes "illegal dispatch" under Korean law, it is within its competence to examine alleged obstacles to the effective exercise of the right to organize and collective bargaining by all workers. In this respect, the Committee observes that the complaints highlight the obstacles placed by this subcontracting arrangement on the workers' organizational and bargaining rights at the subsidiary company due to the denial of a direct employment relationship. Emphasizing that all workers, without distinction whatsoever, whether they are employed on a permanent basis, for a fixed term or as contract employees, should have the right to establish and join organizations of their own choosing [see* ***Digest****, op. cit., para. 255], the Committee requests the Government, taking due consideration of the various obstacles to freedom of association alleged in this case, to provide information on the steps it has taken to develop, in consultation with the social partners, appropriate mechanisms to strengthen the protection of subcontracted workers' rights to freedom of association and collective bargaining. The Committee further invites the complainants to keep it informed of any decisions taken by the national authorities, including as to any appeal made to the courts regarding relevant legislation.*

360. *With regard to the alleged intimidation and dismissal of Mr We Young-Il for anti-union motives by the subsidiary company and its subcontractors, the Committee notes the complainants' indication that, following Mr We Young-Il's engagement in trade union activities and his election as President of the KMWU Workers' Local, the subsidiary company threatened him with an audit, searched his car, ordered him to be re-educated and terminated its contract with the subcontractor nominally employing Mr We Young-Il and shut it down. The Committee notes with concern the allegation that all employees of the subcontractor except Mr We Young-Il and one other worker were re-employed by another subcontractor within the same company service centre, thus leading to an effective dismissal of Mr We Young-Il. The Committee notes that the Government indicates that since Mr We Young-Il has not filed a request for a remedy for unfair dismissal under Article 28 of the Labour Standards Act, the Government was unable to ascertain the facts and details of the dismissal. The Committee further notes the discrepancies between the complainants', the Government's and the KEF's views in relation to the closure and reopening of eight unionized centres. While the complainants allege that these unionized centres were closed down and reopened with all employees other than union members being rehired by the successors and that such fake close-downs and union-busting activities led in almost all service centres to deterioration of working conditions and the disaffiliation of a number of union members, the KEF indicates that the eight service centres were closed down voluntarily and the Government adds that all of the workers of the eight closed centres, including union members, who wanted to work for the newly opened centres, were hired after completing the recruiting process and that the existence of union-busting activities cannot be verified since no complaints or charges were made against the close-down of service centres or the resulting termination of employment. Emphasizing that anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions [see* ***Digest****, op. cit., para. 769] and that subcontracting, accompanied by dismissals of union leaders, can constitute a violation of the principle that no one should be prejudiced in his or her employment on the grounds of union membership or activities [see* ***Digest****, op. cit., para. 790], the Committee requests the Government to carry out an independent investigation, preferably judicial in nature, into the allegations that Mr We Young-Il's employment was terminated and he was not rehired by another subcontractor carrying out all the same tasks due to his union activity, and, if it is found that such acts were related to his trade union activity, to take the necessary measures to ensure his engagement in the successor subcontractor or, if not possible for objective and compelling reasons, the payment to him of adequate compensation which would represent a sufficiently dissuasive sanction for such an anti-union act. The Committee invites the complainants to submit to the Government further necessary information in relation to the allegations of fake close-downs of service centres resulting in the termination of employment of workers for anti-union motives, so that the Government can undertake a thorough and independent investigation into these allegations and, if they are found to be true, take appropriate steps. The Committee requests the Government to keep it informed of the outcome of the independent investigations undertaken and any further developments in this regard.*

361. *Concerning the complainants' allegations of harassment and repression of trade union members following the establishment of the KMWU Workers' Local and other trade unions at the service centres, the Committee notes that these allegations refer to one-on-one meetings with the management, unfavourable treatment of union members, intimidation, pressure on workers' family members, buying off ordinary union members, verbal abuse, threats of disciplinary action for union activities and instructions to provide apologies for such activities, special audits exclusively targeting union members, interference in the operation of unions, disciplinary dismissals and other punishment, all aimed at union-busting and obtaining workers' withdrawal from trade unions. The Committee observes that apart from pointing to a general practice of anti-union acts throughout the service centres, the complainants also allege repression of workers in the Yangsan,*

Yeongdeungpo, Yangcheon and East Incheon centres, where managers were convicted for unfair labour practices, and the Ulsan service centre, where the alleged process of "greening" the workplace, understood as union-busting and the de-unionizing of all workers, led, among other forms of repression, to one key trade union member being kidnapped and held at a faraway island, while being pressured to withdraw from the union. The Committee notes with deep concern that it is alleged that as a result of union-busting and repression, union members suffered economic and mental distress leading, in the case of Mr Choi and Mr Yeom, to suicide and that such repressive measures continue across the country. The Committee also notes the Government's general indication that allegations of unfair labour practices were investigated and measures taken to address any violation of the law but observes that the Government does not, with the exception of two cases, provide details as to its findings in relation to the numerous allegations of anti-union acts highlighted by the complainants. Further noting the Government's statement that a MOEL investigation was undertaken into the specific allegations of anti-union activities at the Ulsan service centre, the Committee regrets that although the investigation confirmed the kidnapping and harassment of several unionists, the Prosecutor's Office did not deem it sufficient to initiate criminal proceedings into the matter, and that the Government does not provide details as to its findings regarding the other allegations of anti-union practices at the Ulsan service centre (pressure on workers to disaffiliate, including through individual meetings, and targeted audits). The Committee also notes the KEF's indication that there has been no case before the judicial authorities where the subsidiary company was found guilty of union-busting attempts or of targeted audits against union members and the Government's statement that the claim of workers from the Yeongdeungpo centre for remedy against unfair labour practices was dismissed by the LRC.

362. *In view of the seriousness of the allegations, the Committee finds it appropriate to underscore that coercing trade union members into leaving a trade union constitutes a serious violation of the principle that workers must be free to join the organization of their own choice and that adequate protection is available to ensure respect for this right. The Committee wishes to emphasize 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. Acts of harassment and intimidation carried out against workers by reason of trade union membership or legitimate trade union activities, while not necessarily prejudicing workers in their employment, may discourage them from joining organizations of their own choosing, thereby violating their right to organize [see **Digest**, op. cit., paras 44 and 786]. In light of these principles, the Committee trusts that, should there be any remaining allegations of intimidation, repression, threats or other anti-union practices against trade union members which have not yet been addressed, the Government will ensure that they are fully investigated, and, if found to be true, appropriate steps are taken, including the imposition of sufficiently dissuasive sanctions and the granting of compensation to the workers concerned, to ensure that there is no recurrence of such serious anti-union actions in the future. The Committee invites the complainants to submit to the Government further necessary information regarding any pending allegations of anti-union acts so that the Government may undertake an independent investigation with all the available information. The Committee requests the Government to keep it informed of the outcome of all independent investigations conducted and any further developments in this regard.*

363. *Concerning the allegations of excessive delays and avoidance of collective bargaining by the subsidiary company and the subcontractors, the Committee notes that while the complainants allege that collective bargaining was postponed on several occasions due to the subcontractors' and the KEF's avoidance of negotiations, as well as their refusal to publicly announce that a request for negotiation had been formed until they were ordered to do so by the LRC, the KEF states that the delay in negotiations was caused by the union's*

uncooperative attitude and its refusal to provide a list of union members to the subcontractors, which, however, according to the complainants, is not a prerequisite for collective bargaining. The Committee welcomes the Government's indication that after the KMWU filed accusations and charges against the CEOs of the subsidiary company and the subcontractors regarding their neglect or refusal to participate in collective bargaining, an investigation was undertaken and appropriate action was taken for any violation of the law and observes the additional information submitted by the complainants, according to which the CEOs of two service centres were effectively convicted for delaying collective bargaining.

364. *The Committee further notes with interest the information provided by the Government, the KEF and the complainants, that the KMWU concluded a framework collective bargaining agreement with the KEF, as well as collective bargaining agreements with the subcontractors on issues of mutual interest, including guaranteed union activities. However, the Committee notes the complainants' indication that a large number of subcontractors failed to observe the collective agreements concluded, some of whom were also given administrative orders for correction, and that despite having agreed to withdraw all legal disputes including mutual accusations, lawsuits and complaints against each other, some subcontractors and the subsidiary company failed to observe the agreement by refusing to withdraw accusations and submitting new ones. The Committee further notes the KEF's statement that the unions also refused to withdraw the mutual accusations in two cases and that the majority of complaints submitted against the subcontractors for late wage payment were ruled in their favour, as well as the Government's indication that for issues of interpretation of collective agreements, workers and management were advised to seek help from the LRC, while cases involving violations of the law were either sent to the Prosecutors' Office for indictment or the management was ordered to correct their violations. The Committee recalls that mutual respect for the commitment undertaken in collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground and that failure to implement a collective agreement, even on a temporary basis, violates the right to bargain collectively, as well as the principle of bargaining in good faith [see* ***Digest****, op. cit., paras 940 and 943]. In this regard, the Committee notes with interest the Government's and the KEF's indication that the parties have been bargaining smoothly for follow-up agreements on matters such as welfare benefits and prescribed overtime in compliance with the standard agreement, that a new wage and collective agreement was signed in September 2016 and that the subcontractors and the unions are making joint efforts to stop the long-held practice of conflicts and confrontations and to build cooperative relationships. In light of this information, the Committee trusts that any remaining allegations of failure to observe concluded collective agreements will be fully addressed by the appropriate national mechanisms.*

The Committee's recommendations

365. ***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 prosecution's investigation on the "S Group Labour Management Strategy" without delay and trusts that the Government will take the necessary measures to ensure full respect of workers' rights to form and join labour organizations of their own choosing.

(b) The Committee requests the Government, taking due consideration of the various obstacles to freedom of association alleged in this case, to provide

information on the steps it has taken to develop, in consultation with the social partners, appropriate mechanisms to strengthen the protection of subcontracted workers' rights to freedom of association and collective bargaining. The Committee further invites the complainants to keep it informed of any decisions taken by the national authorities, including as to any appeal made to the courts regarding relevant legislation.

(c) The Committee requests the Government to carry out an independent investigation, preferably judicial in nature, into the allegations that Mr We Young-Il's employment was terminated and he was not rehired by another subcontractor carrying out all the same tasks due to his union activity, and, if it is found that such acts were related to his trade union activity, to take the necessary measures to ensure his engagement in the successor subcontractor or, if not possible for objective and compelling reasons, the payment to him of adequate compensation which would represent a sufficiently dissuasive sanction for such an anti-union act. The Committee invites the complainants to submit to the Government further necessary information in relation to the allegations of fake close-downs of service centres resulting in the termination of employment of workers for anti-union motives, so that the Government can undertake a thorough and independent investigation into these allegations and, if they are found to be true, take appropriate steps. The Committee requests the Government to keep it informed of the outcome of the independent investigations undertaken and any further developments in this regard.

(d) In light of its preceding conclusions, the Committee trusts that, should there be any remaining allegations of intimidation, repression, threats or other anti-union practices against trade union members which have not yet been addressed, the Government will ensure that they are fully investigated and, if found to be true, appropriate steps are taken, including the imposition of sufficiently dissuasive sanctions and the granting of compensation to the workers concerned, to ensure that there is no recurrence of such serious anti-union actions in the future. The Committee invites the complainants to submit to the Government further necessary information regarding any pending allegations of anti-union acts, so that the Government may undertake an independent investigation with all available information and, if they are found to be true, take appropriate steps. The Committee requests the Government to keep it informed of the outcome of the independent investigations conducted and any further developments in this regard.

(e) The Committee trusts that any remaining allegations of failure to observe concluded collective agreements will be fully addressed by the appropriate national mechanisms.

CASE NO. 3068

DEFINITIVE REPORT

Complaint against the Government of Dominican Republic presented by
– the Union of Freight Handling Workers of the firm Terminal Granelera del Caribe SA (TEGRA) and
– the Jarabacoa Poultry and Livestock Corporation (Pollo Cibao)

Allegations: Pressure to give up trade union membership, suppression of a peaceful trade union march, legal action brought by the enterprises to have the complainant union's registration annulled, refusal of the firms to bargain collectively and other anti-union acts

366. The Committee last examined this case at its October 2015 meeting and presented an interim report to the Governing Body [see 376th Report, paras 352–364, approved by the Governing Body at its 325th Session (October 2015)].

367. The Government sent new observations in communications dated 13 July and 24 November 2015, 14 January and 1 and 3 June 2016, and 3 January and 15 February 2017.

368. The Dominican Republic 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

369. In its previous examination of the case in October 2015, the Committee made the following recommendations [see 376th Report, para. 364]:

(a) While emphasizing the seriousness of the alleged facts, the Committee does not as yet have specific and detailed information concerning the different allegations or the proof that the present case – as indicated by the Government – has been settled by the courts. The Committee urges the Government to resend the communication dated 24 October 2014, referred to in the Government's reply but not received by the Office.

(b) The Committee urges the Government to obtain, through the national employers' organization concerned, the observations of the firms TEGRA and Pollo Cibao on the allegations and to communicate those observations without delay.

(c) Pending receipt of said information, the Committee urges the Government to ensure the full exercise of trade union rights in the above firms.

B. The Government's reply

370. In communications dated 13 July and 24 November 2015, 14 January and 1 and 3 June 2016, and 3 January and 15 February 2017, the Government provides the following additional information.

371. With regard to recommendation (a) from its previous examination of the case (referring to a communication dated 24 October 2014 in which the Government indicated that the case had

been settled by the courts), the Government clarifies that the evidence was sent in a communication dated 20 March 2015 and contained information from the National Confederation of Trade Union Unity (CNUS) that had already been sent to the Committee. In the communication, the CNUS indicates that Case No. 3068 relating to the Poultry and Livestock Corporation (Pollo Cibao) (hereinafter, the poultry enterprise) was settled by the national courts. In this regard, the Government points out that the court decisions referred to by the CNUS concern a request for authorization to dismiss a leader of the Pollo Cibao Poultry and Livestock Corporation Workers' Union (SITRACAGPC), which was filed by the corporation and resulted in Decision No. 4/2011 of 27 November 2012 of the Labour Court of the Judicial District of Santo Domingo, which authorized the dismissal after establishing that the grounds for the dismissal were misconduct, not union activity. (The Government adds that this Decision was appealed, but that the appeal was declared inadmissible in Judgment No. 372 of 26 June 2013 of the Third Labour Chamber of the Supreme Court of Justice.)

372. As to the allegation that the firms brought legal action to have the trade union's registration annulled, the Government provides an extract from Judgment No. 128/2015 of 7 October 2015, which denied the action to annul the union registration of the complainant organization due to the total absence of evidence.

373. With regard to the allegation that union members have been pressured to give up their union membership under threat of dismissal, the Government indicates that there is no evidence of any pressure placed on the union members or officials by the firms in question. The Government says that this statement is based on its monitoring of labour-related complaints and information that is disseminated through the country's various forms of media, as well as on the enforcement of labour standards by the labour inspectorate.

374. With respect to the allegation that union leaders and members have been denied entry to ship unloading facilities, the Government emphasizes that, because it is an island, the Dominican Republic has many docks and dockworker unions and that these unions and their federations have concluded a large number of collective agreements with the port firms, regulating relations between them (for example, according to the Government, trade unions may carry out the checks of their members). Furthermore, the Government indicates that, in the light of the country's geographical location, access to dock loading and unloading zones is a matter of national security and therefore surveillance measures are in place which, under no circumstances, can be considered bans or restrictions on access for workers.

375. As to the alleged failure to pay wages to union members protected by union immunity, the Government reports that there is no evidence of this type of violation either.

376. With regard to the allegation of a violent suppression of a peaceful march on 5 March 2014, the Government indicates that neither the Ministry of Labour nor state security agencies have any record of this event.

377. On the other hand, in a general manner, the Government reports that the labour inspectorate detected "some practices that it considered contrary to freedom of association" in the poultry enterprise (without specifying whether they relate to the allegations contained in the complaint or providing any supporting documentation). The Government indicates that infringement reports were subsequently issued and sent to the Public Prosecutor's Office and that the corresponding penalty would be imposed by the national courts.

378. The Government adds that it met with representatives of the poultry enterprise, who said that they were respectful of the establishment of trade unions and of the relevant provisions set forth in the Labour Code, stressing that they are open to dialogue aimed at addressing any issues raised by any of the firm's unions, within the limits of the law. As to collective

bargaining with the poultry enterprise, the Government reports that the Ministry of Labour has organized several meetings in an effort to reconcile the parties, who have reached satisfactory agreements, although they have not concluded a collective agreement.

379. Moreover, the Committee notes that in its communication dated 3 June 2016, the Government reported that it envisaged the establishment, by the end of June 2016, of a Dispute Settlement Board and therefore requested the Committee to allow the Board to hear the case before re-examining it. In response to a request from the Committee for information on the status of this case before the new national Board, in communications dated 3 January and 15 February 2017, the Government provides a report from the Director of Mediation of the Ministry of Labour, indicating that: (i) in the light of a request dated 22 August 2012 of the then applicant trade union, the Directorate of Mediation and Arbitration summoned the parties to a hearing on Thursday, 6 September 2012; (ii) on 6 September 2016, the parties appeared before the Directorate of Mediation and Arbitration, and the firm's representative requested that the mediation be postponed, claiming that he was unaware of the documents that had been submitted by the union and requesting that the next meeting take place on 4 October 2016; (iii) the firm did not reappear and its absence was recorded; and (iv) since then, the union has not applied to either the General Directorate of Labour or the Directorate of Mediation and Arbitration.

C. The Committee's conclusions

380. *The Committee recalls that this case concerns allegations of pressure to give up trade union membership, suppression of a peaceful trade union march, legal action brought by the firms to have the complainant union's registration annulled, refusal of the firms to bargain collectively and other anti-union acts. The Committee notes that in early June 2016, the Government requested that a national Dispute Settlement Board (which was to be established at the end of that month) be allowed to hear the case before it was re-examined by the Committee. Having requested the Government to provide information on any developments in this regard, the Committee observes that the Government's reply does not indicate whether the complaint has been heard by this Dispute Settlement Board. (The reply only provides information on the legal action to annul the union's registration and on the latest mediation attempts within the Ministry, due to a request for mediation submitted by the complainant union in 2012.)*

381. *The Committee notes that, based on the information provided by the Government, the court decisions to which the Government referred in its initial reply to the complaint in order to show that the case had been settled (with reference to a communication from a national union confederation which stated that the complaint had been settled by the courts) concern the dismissal of a leader of a different union from the complainant organization. The Committee notes that these judicial decisions do not relate to or prove the examination or any settlement of the allegations contained in this complaint.*

382. *As to the allegation that the firms brought legal action to have the trade union's registration annulled, the Committee notes that, according to the Government, the action to annul the union registration of the complainant organization was denied in a judgment dated 7 October 2015.*

383. *With regard to the allegation that union members have been pressured to give up their union membership under threat of dismissal, the Committee notes the Government's indication that it has no proof of such pressure. The Committee observes the Government's indication that this statement is based on its monitoring of labour-related complaints and information. In this respect, the Committee observes that, while the Government refers in a general manner to the functions of the labour inspectorate by stating that the allegations of pressure have not been substantiated, the Government does not indicate whether an inspection was*

conducted to investigate this allegation. The Committee further observes that the Government also fails to indicate whether other allegations of anti-union discrimination have been investigated (such as the allegation that union leaders and members have been denied entry to ship unloading facilities or the allegation that union members protected by union immunity have not been paid wages). Moreover, the Committee observes that the Government refers, in a general manner in relation to the poultry enterprise, to the conduct of inspections and the detection of "some practices that it considered contrary to freedom of association" and that infringement reports were subsequently issued and sent to the Public Prosecutor's Office so that the corresponding penalty would be imposed by the national courts. Noting that the Government does not specify the nature of the detected infringements (or whether they relate to the allegations contained in the complaint), the Committee expects that the Government will ensure that the necessary investigations are carried out to ascertain whether pressure has been exerted on union members to renounce their membership under threat of losing their jobs and, if such anti-union actions have taken place, that corresponding penalties will be imposed and the appropriate compensation will be awarded.

384. *With respect to the allegations that the firms refuse to engage in collective bargaining, the Committee welcomes the Government's efforts to organize meetings with the poultry enterprise in an attempt to reconcile the parties (as a result of which, satisfactory agreements are said to have been reached, although a collective agreement has not been concluded). The Committee encourages the Government to continue to promote collective bargaining between the complainant union and the enterprises concerned.*

The Committee's recommendations

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

(a) The Committee expects that the Government will ensure that the necessary investigations are carried out to ascertain whether pressure has been exerted on union members to renounce their membership under threat of losing their jobs and, if such anti-union actions have taken place, that corresponding penalties will be imposed and the appropriate compensation will be awarded.

(b) The Committee encourages the Government to continue promoting collective bargaining between the complainant union and the enterprises concerned.

CASE NO. 2923

INTERIM REPORT

Complaint against the Government of El Salvador presented by
– the Union of Municipal Workers of Santa Ana (SITRAMSA) and
– the Autonomous Confederation of Salvadorian Workers (CATS)

Allegation: Murder of a trade union leader

386. The Committee last examined this case at its March 2016 meeting, when it presented an interim report to the Governing Body [see 377th Report, paras 299–313, approved by the Governing Body at its 326th Session (March 2016)].

387. The Government sent new observations in a communication dated 31 October 2016.

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

A. Previous examination of the case

389. In its previous examination of the case in March 2016, the Committee made the following recommendations [see 377th Report, para. 313]:

- The Committee, deeply deploring and condemning the murder of union leader Mr Victoriano Abel Vega, firmly urges the Government to provide information on the criminal proceedings initiated, and trusts that tangible progress will be made in the near future that will lead to clarification of the facts, identification of the guilty parties and the imposition of commensurate punishment in accordance with the law, with a view to preventing such types of criminal offences. The Committee firmly urges the Government and all the competent authorities to take without delay all possible steps in accordance with the law to identify the perpetrators of this murder and to ensure that the alleged anti-union motives behind it are investigated in greater depth.

- Accordingly, as the complainant organizations have linked the murder of the trade union leader to his union activities, and in particular to his advocacy for the establishment of a union in the municipal services of San Sebastián, the Committee urges the Government to refer the allegations relating to the dismissal of the union's founding members to the competent authorities and, to this end, invites the complainant organizations to provide further information relating to the allegations and to any complaints filed in connection with them. The Committee requests the Government to keep it informed in this regard.

- Lastly, the Committee once again draws the Governing Body's attention to the extremely serious and urgent nature of this case.

B. The Government's reply

390. In its communication of 31 October 2016, the Government reiterates its strong commitment to shedding light on the murder of Mr Victoriano Abel Vega. In this respect, the Government states that the investigation was referred to the Special Unit against Organized Crime of the National Civil Police to clarify the facts and identify those responsible. The Government indicates that the Ministry of Labour and Social Welfare also requested the establishment of a special committee to conclude the investigation into the case but that the Office of the Public Prosecutor considered it inappropriate since the investigation had been assigned to a special unit of the Public Prosecution Service.

391. With regard to the conduct of the investigations, the Government indicates that in March 2016 the new Public Prosecutor reported that the possibility of a link between Mr Abel Vega's trade union activities and his murder had been included in the lines of investigation but that, to date, the only new detail uncovered was that one of the firearms used to commit the crimes was connected with gangs.

392. In addition, the Government states that it has continued its work to facilitate the progress of the investigation, highlighting the referral of communications and bilateral meetings between the parties concerned to gather information on progress made and report on the

international implications of the case in relation to the Committee's conclusions, and to those of the Committee of Experts on the Application of Conventions and Recommendations and of the Committee on the Application of Standards. In this regard, the Government indicates that the Ministry of Labour and Social Welfare met once again with the Public Prosecutor in August 2016, that both reaffirmed the desirability of concluding the investigation and resolving the case as soon as possible and that in September 2016 the Minister made a request to the Public Prosecutor for a new hearing. The Government reaffirms its commitment to shedding light on the crime so that it does not go unpunished and states that it will continue to take the necessary steps to help the competent bodies to expedite the investigation process.

C. The Committee's conclusions

393. *The Committee recalls that the allegations in the present case refer to the murder, on 16 January 2010 in the city of Santa Ana, of Mr Victoriano Abel Vega (general secretary of the Union of Municipal Workers of Santa Ana (SITRAMSA)). He died from multiple gunshot wounds received as he was leaving the City Sanitation Services office, where he had gone to submit a letter requesting leave to attend a union meeting of the Autonomous Confederation of Salvadorian Workers (CATS). The complainant organizations highlighted the fact that, upon leaving the office, Mr Victoriano Abel Vega, who had already received death threats for his union activities, was killed by five persons who had been lying in wait for him and who then fled in a waiting vehicle.*

394. *In its last examination of the case, the Committee noted the Government's statement to the effect that, despite the various steps taken, it had not been possible to identify the perpetrators, that the investigation remained open and that the Public Prosecutor had expressed the wish that the investigation be expedited. The Committee notes the Government's latest observations, according to which: (i) meetings and communication with the competent bodies, in particular with the Public Prosecutor, have continued in order to expedite the investigation, in which the desirability of resolving the case as soon as possible has been reaffirmed; and (ii) despite the various steps taken, it has not yet been possible to identify the perpetrators but the investigation remains open in a special unit of the Public Prosecution Service, and the possibility of a link between Mr Victoriano Abel Vega's trade union activities and his murder has been included in the lines of investigation.*

395. *While duly noting the actions indicated by the Government and its commitment to shedding light on the crime so that it does not go unpunished, the Committee deeply deplores the murder of union leader Mr Victoriano Abel Vega and deeply regrets that, although it took place on 16 January 2010, more than seven years later the authorities have still not identified the perpetrators of this heinous murder or any accomplices. Noting once again that, despite the steps taken, it seems that no tangible progress has been made regarding the investigation, the Committee once again urges the Government and all the competent authorities to take all possible steps to identify the perpetrators of the murder without delay and to ensure that the alleged anti-union motives behind it also keep on being investigated in depth.*

396. *The Committee highlights once again the seriousness of the allegations, deeply deplores and condemns once again the murder of the trade union leader and again reiterates the recommendation made at its June 2014 meeting requesting the Government to keep it informed of developments relating to the criminal proceedings initiated, and trusts that tangible progress will be made in the near future regarding clarification of the facts, identification of the guilty parties and the imposition of commensurate punishment in accordance with the law, with a view to preventing such types of criminal offences.*

397. *As regards the allegations of dismissal of the union's founding members, the Committee notes with regret that the Government has not responded to the Committee's recommendation to refer the investigation into the allegations to the competent authorities and observes that the complainant organizations have not provided additional information on the matter either. The Committee recalls that no person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 771]. The Committee reiterates its previous recommendation and requests the Government and the complainant organizations to keep it informed of any pending issues in this regard.*

The Committee's recommendations

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

(a) The Committee, deeply deploring and condemning the murder of trade union leader Mr Victoriano Abel Vega, once again firmly urges the Government to keep it informed of developments relating to the criminal proceedings initiated, and trusts that tangible progress will be made without delay regarding clarification of the facts, identification of the guilty parties and the imposition of commensurate punishment in accordance with the law, with a view to preventing such types of criminal offences. The Committee once again urges the Government and all the competent authorities to take all possible steps in accordance with the law to identify the perpetrators of this murder without delay and to ensure that the alleged anti-union motives behind it also keep on being investigated in depth.

(b) The Committee once again requests the Government and the complainant organizations to keep it informed of any pending issues relating to the allegations of dismissal of the union's founding members, including referring the allegations to the competent authorities.

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

CASE NO. 3007

DEFINITIVE REPORT

Complaint against the Government of El Salvador presented by
– the Trade Union of Workers of the Salvadorian Social Security Institute (STISSS) and
– the Union of Doctors of the Salvadorian Social Security Institute (SIMETRISSS)

Allegations: Obstacles to trade union activities, refusal of facilities for union representatives and obstacles to engagement by the SIMETRISSS in collective bargaining; favouritism, failure to transfer union dues and refusal to grant trade union leave in the context of a STISSS internal dispute, as well as disciplinary proceedings against its leaders

399. 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 208–230, approved by the Governing Body at its 321st Session (June 2014)].

400. The Government sent its observations in communications dated 6 November 2014, 28 October 2015 and 31 October 2016.

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

A. Previous examination of the case

402. In its previous examination of the case in June 2014, the Committee made the following recommendations [see 372nd Report, para. 230]:

(a) The Committee regrets the lack of response from the Government, even though it made an urgent appeal at its March 2014 meeting, and requests the Government to be more cooperative in the future, responding to all the pending issues in this case and including information from the ISSS.

Allegations concerning the SIMETRISSS

(b) The Committee stresses the importance for the authorities, together with the complainant union, to address the issues and problems raised in the complaint and, in this regard, requests the Government to take measures to promote dialogue between the ISSS and the complainant in order to find shared solutions to the doctors' wage problems and to the problems related to trade union facilities, taking into account the principles and considerations outlined above and the principles of Convention No. 135 (which El Salvador has ratified) and Recommendation No. 143 concerning workers' representatives. The Committee requests the Government to keep it informed in this regard.

(c) While it takes note of the allegations presented by the complainant union regarding: (1) the instructions that the ISSS Deputy Director for Health circulated among the directors and

managers of local medical centres, in a memorandum in 2013, which, according to the allegations, seriously restricts trade union rights (preventing contact between the trade union representatives and the media; not allowing time in administrative meetings for the trade union representatives to present problems related to trade union activities; and creating the obligation to inform superiors of meetings between trade union officials and members, and of trade union activities); and (2) the instructions given by a hospital director, on 11 April 2013, to threaten doctors participating in activities organized by the trade union with sanctions. The Committee urges the Government to send its observations on these allegations without delay.

Allegations concerning the STISSS

(d) While it observes that the complaint presented by the STISSS concerns allegations of acts of favouritism by the ISSS authorities in the context of a dispute between factions within the executive board, the Committee urges the Government to send its observations on these allegations without delay, so as to enable it to examine the complaint in full knowledge of the facts.

B. The Government's reply

403. In its communications dated 6 November 2014, 28 October 2015 and 31 October 2016, the Government responds to the complainant organizations' allegations.

Allegations concerning the STISSS

404. As to the alleged interference in the form of favouritism by the authorities in the context of a dispute between factions within the executive board, the Government reports that in late 2011, an internal dispute arose in the STISSS, which divided the executive committee into factions following the election of its members on 16 December 2011 (two groups emerged, with six officers, including the general secretary, who signed the complaint, on one side, and five officers on the other). The division become more apparent when, in late February, the group led by the general secretary stopped inviting the other group to board meetings and began taking decisions by majority vote. As the dispute escalated, the members of each group resorted to using violence and the national civil police were forced to intervene. Finally, on 27 March 2012, the board members from the minority faction were unable to enter the trade union premises, as members of the other group took steps to prevent them from exercising the trade union duties for which they had been elected.

405. The Government adds that, as a result of the dispute, each group organized and held its own general assembly in an attempt to resolve the situation by disqualifying and expelling the opposing officers. As a result, each group submitted to the Ministry of Labour and Social Welfare its own request to establish a new executive board. Faced with the submission of differing requests, on 12 July 2012, the National Department of Labour Organizations: (i) decided that the submitted requests were receivable and considered the decisions of each group in relation to the dismissal proceedings to be accepted (so that both groups were mutually excluded from the executive board); (ii) unable to register more than one new executive board, established that the STISSS had no official leadership and therefore suggested that a single executive board be elected at a general assembly; (iii) reiterated that the labour rights established in the collective agreement were retained and stated that all union members should continue to pay union dues, which would be transferred to the union in due course through a holding account overseen by the Ministry of Finance; and (iv) maintained the right of the parties to contest legally the validity of the respective general assemblies.

406. The Government reports that when the General Labour Inspectorate investigated the alleged violations of union officers' trade union rights in the form of denied trade union leave, it was unable to verify the alleged discrimination due to the circumstances within the union: given

the absence of an executive board, it could not be said that the union officers had been denied leave. The Government nevertheless indicates that while the STISSS might have lacked an executive committee, the rights established in the collective agreement were protected, and it was decided that the local trade union representatives should still be granted trade union leave so that they could address the various individual labour disputes that might arise in each centre.

407. Moreover, with regard to the alleged withholding of union dues, the Government indicates that, owing to the absence of an executive board, in accordance with the aforementioned decision of 12 July 2012, union dues continued to be collected, but were deposited in a special holding account overseen by the Ministry of Finance, since a new executive board had not taken office.

408. The Government reports that the lack of official leadership came to an end when a new executive board was elected at a general assembly held on 16 December 2012. The Government specifies that the elected general secretary and treasurer received from the Salvadorian Social Security Institute (ISSS) a sum of money corresponding to the collected union dues (for the months of July through to December 2012). In her certificate of acceptance, the general secretary of the STISSS stated that she had duly received a cheque for the appropriate sum, declaring the ISSS free of all liability, and therefore agreed to order the withdrawal of the complaint against the Director-General of the ISSS for alleged misappropriation.

409. With regard to the allegations of disciplinary proceedings, the Government points out that trade union immunity, which is enshrined in the country's Constitution, must not be confused with so-called trade union impunity. The Government indicates that the disciplinary proceedings are merely the result of inappropriate actions taken by the persons in question. In particular, the procedure referred to by the STISSS concerning Ms Bonilla de Alarcón was the result of inappropriate actions taken by her, which, following due process, led to the issuance of a judgment by the Fourth Civil and Commercial Court of San Salvador on 14 January 2013, whereby the judge established beyond a reasonable doubt the worker's misconduct and granted the ISSS authorization to dismiss her. The Government nevertheless indicates that, although the ISSS duly obtained judicial authorization for her dismissal, the administration, as a gesture of openness and goodwill, decided not to implement the judgment and, at the time of writing of the Government's last reply, the worker remained in her post under the same conditions as when she was hired.

Allegations concerning the SIMETRISSS

410. As to the alleged refusal to bargain with the SIMETRISSS and the Committee's recommendation that the authorities work with the union to address the issues raised (promoting dialogue between the ISSS and the SIMETRISSS in order to find shared solutions to the alleged problems concerning wages and trade union facilities), the Government reports that a high-level institutional commission has been established to meet with the union at a high-level round table in order to address and resolve issues placed on the agenda. The Government indicates that this round table has met on several occasions and has begun preparing agreements to safeguard the rights of ISSS workers, covering issues such as arbitrary movements of employees, workers' benefits and the establishment of requirements before the executive board for the authorization of employee wage levels. The Government states that, while the SIMETRISSS has not been able to bargain together with the STISSS (the majority union), the workers' rights are still protected, since collective bargaining – a process whereby the workers are properly represented – has been negotiated with the established union (the STISSS). As to the regulations that govern collective bargaining, the Government points out that the Labour Code permits unions to unite when

engaging in collective bargaining, provided that the unions concerned have given their consent in their respective assemblies.

411. Furthermore, the Government denies the SIMETRISSS's allegation of non-observance of a 1998 wage agreement. The Government specifies that it implemented that agreement through Executive Board Agreement No. 98-05-0624 of 23 June 1998, which agreed to apply the wage scale agreed with the SIMETRISSS, as from 1 January 1998, with the wages agreed upon. Moreover, with regard to the discontent relating to wage issues expressed by the SIMETRISSS, which alleges that wages have been frozen for over 12 years, the Government indicates that the ISSS has been committed to dialogue and guaranteeing the rights of the SIMETRISSS's members. The Government adds that over the past few years, the ISSS adjusted wages in two phases: the first wage adjustment occurred in January 2014 through the Executive Board Agreement that authorized the implementation of a wage scale for practising physicians, coordinators and chief physicians for a sum of US$4,543,094; while the second took place in February 2015, when the remaining wage adjustment for the practising physicians was approved for the amount of US$4,229,404.

412. Moreover, the Government denies the allegation that the ISSS Deputy Director for Health circulated instructions among the directors and the management of the local medical centres to restrict trade union rights, in a memorandum in 2013. The Government specifies, first, that the memorandum was circulated by the then ISSS Deputy Director for Health, not the ISSS Deputy Director-General. As to its content, the Government states that: (i) the alleged instruction to prevent contact between the trade union representatives and the media does not appear in any part of the memorandum – the provision in question simply requests that "persons approached by the media refer any consultation or request for an interview to the communication department"; (ii) the allegation that trade unions are not allowed time in administrative meetings to raise their concerns is untrue: while point 1 of the memorandum establishes that "during administrative meetings held in the medical centres, time should not be allotted, at the request of the trade unions, for the discussion of situations relating to trade union activities", the Government stresses that the memorandum for local administrative authorities respects freedom of association in so far as this provision is restricted to meetings where institutional management plan and coordinate working methods, where it would be inappropriate to discuss union-related matters; and (iii) the allegation that the memorandum creates the obligation to inform superiors of meetings between trade union officials and members, and of activities of an official nature, is also unfounded, as point 3 of the memorandum simply establishes that "every director must report to hospital and outpatient care management any cases of staff absence from work on employment-related or duly justified grounds, in accordance with regulations" (recalling that all workers, including trade union leaders, must comply with the regulations concerning the grounds for absence established in the collective agreement, the Government also reiterates that trade union immunity must not be confused with so-called trade union impunity, which would enable workers neither to attend to nor to perform the work for which they have been hired).

413. As to the alleged instructions given by a hospital director, on 11 April 2013, supposedly to threaten doctors participating in activities organized by the trade union with sanctions, the Government clarifies that the then director of the specialized treatment hospital, upon receiving the memorandum on 11 April 2013, merely forwarded it to management and at no point did she hold a meeting in which she instructed management to sanction doctors participating in activities organized by the trade union.

C. The Committee's conclusions

414. *The Committee recalls that this case concerns allegations of obstacles to trade union activities, refusal of facilities for union representatives and obstacles to engagement by the SIMETRISSS in collective bargaining; favouritism, failure to transfer union dues and refusal*

to grant trade union leave in the context of a STISSS internal dispute, and disciplinary proceedings against its leaders.

Allegations concerning the STISSS

415. *With regard to the allegations of favouritism, refusal to grant trade union leave and withholding of union dues in the context of a dispute between factions within the executive board, the Committee notes the information provided by the Government in relation to the situation of undefined leadership during which: (i) each group organized an assembly to expel the members of the opposing group and propose a new executive board; (ii) as a result of the conflicting requests of both groups, a new executive board could not be registered and therefore its members were not entitled to union leave – the local trade union representatives were nevertheless still granted leave and the collective agreement still enforced; and (iii) union dues continued to be collected, but were deposited in a special holding account that was set up for this purpose at the Ministry of Finance. The Committee further notes that, according to the Government: (i) the dispute was resolved in late 2012 when a new executive board was elected at a general assembly; and (ii) the union dues were subsequently transferred to the new board, whose members formally stated that they had been duly received and agreed to withdraw the complaint against the Director-General of the ISSS for the alleged misappropriation of these dues. Noting that, according to the Government, these issues have been resolved, and in the absence of conflicting information from the STISSS, the Committee will not pursue its examination of these allegations.*

416. *Finally, as to the allegation of disciplinary proceedings against STISSS leaders (the trade union alleged that in all the hearings the courts ruled in favour of the officers, except in the case of Ms Bonilla de Alarcón, even though the proceedings had twice been declared null and void), the Committee notes the following information provided by the Government: (i) in a judgment of the Fourth Civil and Commercial Court of San Salvador, dated 14 January 2013, the judge established beyond a reasonable doubt the worker's misconduct and granted the ISSS authorization to dismiss her; and (ii) the administration nevertheless, as a gesture of openness and goodwill, decided not to implement the judgment and, at the time of writing of the Government's last reply, the worker remained in her post under the same conditions as when she was hired.*

Allegations concerning the SIMETRISSS

417. *In relation to the Committee's recommendation that the authorities, together with the union, address the issues raised (in particular, the doctors' wage problems and the problems related to the trade union facilities) and promote dialogue between the ISSS and the SIMETRISSS in order to find common solutions, the Committee observes that, according to the Government: (i) a high-level round table including the trade union has been established, met on several occasions and begun preparing agreements to safeguard the rights of ISSS workers, covering issues such as arbitrary movements of employees, workers' benefits and employee wage levels; (ii) the alleged non-observation of the 1998 wage agreement, mentioned by the SIMETRISSS in its complaint, is unfounded — the Government specifies that it implemented the agreement through Executive Board Agreement No. 98-05-0624 of 23 June 1998, whereby it agreed to apply the wage scale agreed with the SIMETRISSS as from 1 January 1998, with the wages agreed upon; and (iii) the ISSS adjusted wages in two phases in 2014 and 2015 (by a total amount of over US$8 million). As to the allegation of refusal of trade union facilities and obstacles to the posting of trade union announcements, the Committee notes with regret that the Government has not provided information on these matters. The Committee reiterates its previous recommendation in this regard and trusts that, as these issues have not been resolved, the authorities will ensure that they are addressed through the ongoing dialogue between the ISSS and the SIMETRISSS in order to*

find common solutions based on the principles of freedom of association referred to by the Committee in its previous examination of this case.

418. *With respect to the allegation that the ISSS Deputy Director for Health circulated instructions, in a 2013 memorandum, among the directors and the management of the local medical centres to restrict trade union rights, the Committee duly notes the Government's explanations describing the content of the memorandum so as to demonstrate that it does not seek to restrict the exercise of freedom of association. The Committee observes the Government's indication that the text of the memorandum: (i) does not seek to prevent contact between the trade union representatives and the media, but rather, simply establishes that persons approached by the media should refer any consultation or request for an interview to the communication department; (ii) restricts the discussion of union-related matters only to meetings where institutional management plan and coordinate working methods; and (iii) does not create an obligation to inform superiors of meetings between trade union officials and members, or of activities of an official nature, and simply reminds directors that they must report any absences from work and the grounds for those absences, in compliance with the regulations on grounds for absence established in the collective agreement. Moreover, the Committee duly notes that the Government denies the allegation that a hospital director circulated instructions among management to penalize doctors participating in activities organized by the trade union – clarifying that this director simply sent the memorandum in question to management. In the light of the foregoing and in the absence of additional information from the complainant organization, the Committee will not pursue its examination of these allegations on the understanding that, when implementing the memorandum, the competent authorities will ensure full respect for the principles of freedom of association.*

The Committee's recommendation

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

CASE NO. 3148

INTERIM REPORT

Complaint against the Government of Ecuador presented by
– the Trade Union Association of Agricultural and Rural Workers (ASTAC) and
– the Trade Union Association of the fruit company Compañía Frutas Selectas SA FRUTSESA

Allegations: The complainants denounce, firstly, the refusal to register a trade union of banana plantation workers bringing together workers from various companies in the sector and, secondly, anti-union action to prevent the setting up of a company union in that sector

420. The complaint is contained in communications of 18 May 2015, 19 February and 11 August 2016, submitted by the Trade Union Association of Agricultural and Rural Workers

(ASTAC) and the Trade Union Association of the fruit company Compañía Frutas Selectas SA FRUTSESA.

421. The Government submitted its observations in communications of 23 February, 24 October and 29 December 2016.

422. Ecuador 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 Rural Workers' Organisations Convention, 1975 (No. 141).

A. The complainants' allegations

423. In their various communications, the complainants allege, first, that in violation of ILO Conventions Nos 87, 98, 110 and 141, which have been ratified by Ecuador, the labour administration refused to register ASTAC. In this connection, the complainants contend, in particular, that: (i) on 10 February 2014, 66 workers from the banana agro-industry held a meeting in Quevedo, Los Ríos Province, in order to found ASTAC; (ii) on 30 July 2014, ASTAC lodged its registration application with the Regional Directorate of Labour in Guayaquil, duly supported by the documentation required by section 443 of the Labour Code; (iii) on 15 October 2014, a resolution of the Deputy Minister of Labour refused to recognize the setting up of ASTAC; (iv) the labour administration's decision rested on the finding that the workers who had attended ASTAC's constituent assembly were employed by a variety of companies, that the documents which had been submitted did not refer to any employer in particular and that the applicants therefore wished to set up an independent association without them having any dependent employment relationship, in breach of the procedures laid down in sections 1, 9, 443 and 454 of the Labour Code; (v) on 17 April 2015, the Ministry of Labour, basing its decision on the same grounds, rejected the extraordinary appeal for review filed against the resolution refusing to recognize the founding of the trade union; and (vi) on 12 February 2016, the Quevedo Court of Justice found that the lawsuit seeking protection against a denial of freedom of association brought by the nascent trade union against the Minister of Labour was inadmissible on grounds of lack of territorial jurisdiction. In this connection, the complainant holds that the Quevedo Court of Justice infringed both the Basic Act on jurisdictional guarantees and constitutional review, and the Constitution which recognize that "the court of the place where the act or omission arose, or where it produces its effects, shall be competent".

424. The complainants add that the refusal to recognize the establishment of a banana plantation workers' trade union covering workers from various companies in the sector prevents more than 20,000 banana plantation workers from exercising their trade union rights, since within the country there are more than 3,000 small banana plantations which employ fewer than 30 workers, the minimum number required by the Labour Code for setting up a trade union. The complainants further submit that, in plantations which employ a sufficient number of workers for the lawful founding of a trade union, the employers often tend to retaliate if a trade union is formed, as is demonstrated by the second allegation in the present complaint, this being all the more reason not to forbid the founding of a trade union organization in the banana sector. Lastly, the complainants hold that, in other areas, the Ministry of Labour recognizes the soundness of the sectoral trade union model, as is demonstrated by the registration of the National Union of Remunerated Domestic Workers (SINUTRHE) on 20 June 2016.

425. Secondly, the complainants allege that the members and leaders of the 7 February Association of Banana Plantation Workers of the Enterprise Frutas Selectas SA Frutsesa (hereinafter "the company trade union") are being targeted by a number of anti-union acts aimed at preventing the registration and securing the disappearance of this nascent trade union. In this connection, the complainants state in particular that: (i) the constituent

assembly of the company trade union took place on 22 June 2014 and was attended by 45 workers, as attested by their signature; (ii) on 14 August 2014, Mr Luis Ochoa, the general secretary, submitted an application for the registration of the company union to the Regional Directorate of Labour of Guayas Province; (iii) on 20 October 2014, the Provincial Labour Inspector of Guayas notified the banana company of the receipt of the trade union's application for registration; (iv) on 23 October 2014, the Regional Directorate of Labour of Guayaquil received the sworn testimony of five workers who stated that they had not taken part in the company trade union's constituent assembly and that they did not wish to become members thereof, although their names were on the founding document; (v) as from 24 October 2014, the company began to dismiss trade union leaders and members who had not signed sworn statements, including the organization's general secretary, Mr Luis Ochoa; (vi) on 27 and 29 October 2014 the Regional Directorate of Labour of Guayaquil received an additional three and four sworn statements, with identical wording to that of the statements received on 23 October 2014; (vii) in breach of the law, the notary did not read out the text of the these statements to the workers who were pressurized into signing them; (viii) on 28 October 2014, the banana company's legal representative filed an appeal against the proceedings to establish the trade union with the Regional Directorate of Labour, in which he argued that 12 of the 45 founding members of the trade union had never been company employees and that two other persons had terminated their employment relationship with the company prior to the founding of the trade union; (ix) on 26 November 2014, a resolution of the Deputy Minister of Labour refused to recognize the founding of the company union on the grounds that it lacked the minimum number of members required by the Labour Code; (x) the resolution expressly stated that, on checking with the company, it had been ascertained that of the 45 persons who had allegedly been founding members only 31 were company workers at the time the trade union was set up and that of these 31 persons, 11 had presented a sworn statement denying that they had participated in the founding of the trade union; and (xi) on 11 May 2015, Mr Luis Ochoa filed a criminal complaint against Mr Tito Gentillini, the company's representative, alleging intimidation, on the grounds that on 8 and 9 May 2015 he had received telephone calls and text messages containing threats of physical violence should he continue to remain in contact with company employees who had not yet been dismissed. Finally, the complainants contend that, notwithstanding the dismissal of and threats against the company's trade union's leaders, no public authority had taken a stand to protect the workers.

B. The Government's reply

Refusal to register the Trade Union Association of Agricultural and Rural Workers (ASTAC)

426. In its communication of 23 February 2016, the Government states, with reference to the Ministry of Labour's refusal to register ASTAC, that the Ministry's decision was based on the correct application of the provisions of the Labour Code. In particular, the Government contends that: (i) section 443 of the Labour Code requires at least 30 workers for the founding of a trade union; (ii) in pursuance of section 449 of the Labour Code, the leaders of workers' associations of any kind must be employees of the pertinent enterprise; and (iii) article 2.6 of the Regulations for Labour Organizations (Ministerial Order No. 130) makes notifying the employer of the founding of a trade union a prerequisite for its establishment. In view of the foregoing, the Government says that, in the case of ASTAC, the 31 persons who attended the constituent assembly worked for various employers and that ASTAC did not therefore comply with section 449 of the Labour Code which requires that trade union organizations comprise workers of the same enterprise. The Government further states that the members of ASTAC may form a social organization (governed by Executive Decree No. 739), but not a trade union organization.

427. In a second communication of 24 October 2016, the Government refers to the complainants' mention of the registration of the SINUTRHE. The Government holds that recognition of SINUTRHE does not constitute discrimination against banana plantation workers, since the authorization of the establishment of SINUTRHE is a direct response to and implements the Domestic Workers Convention, 2011 (No. 189), which has been ratified by Ecuador and which stipulates that the State must take measures to ensure the effective promotion and protection of the human rights of all domestic workers, inter alia, freedom of association and the effective recognition of the right to collective bargaining. The Government adds that, under the Labour Code, banana plantation workers always have the possibility to set up a second-level trade union comprising primary-level trade unions.

428. In a communication of 29 December 2016, the Government forwards its observations on the ruling of the Quevedo Court of Justice, of 12 February 2016, that the lawsuit seeking protection against a denial of freedom of association, which had been filed by ASTAC against the Minister of Labour, was inadmissible on the grounds of lack of territorial jurisdiction. The Government states that, under the Constitution of the Republic of Ecuador, it may not interfere in the administration of justice and courts' decisions.

429. In its communication of 23 February 2016, the Government states that the company trade union was not registered by the labour administration because it lacked the minimum number of members required by section 443 of the Labour Code. In this connection, the Government says that: (i) according to the payroll file of the Ecuadorian Social Security Institute, 12 of the 45 founding members of the company trade union had never worked for the company in question, which reduced the total number of signatories to 33; (ii) two of these 33 persons had left before the company trade union's constituent assembly, lowering the total number of signatories employed by the company to 31; (iii) 11 sworn statements were made to the effect that the workers concerned had not been present at the company trade union's constituent assembly and that they did not intend to belong to any trade union organization; (iv) these sworn statements made before a notary were taken into consideration by the labour administration, since article 6 of the Notary Act establishes that notaries are officials vested with public trust; and (v) it is clear from the above that only 20 company workers wish to be members of the trade union organization, which is under the minimum number of 30 workers required by section 443 of the Labour Code, this being the reason why recognition of the organization's establishment was refused by a resolution of the Deputy Minister of Labour of 26 November 2014.

430. In its communication of 29 December 2016, the Government forwards information from the Ministry of Labour records regarding the termination of employment of the banana plantation workers who took part in the setting up of the company trade union. The list supplied by the Government shows that: (i) two employment contracts of founding members of the trade union were terminated by mutual consent between 31 August and 9 September 2014; (ii) nine employment contracts of founding members of the trade union were terminated by mutual consent between 22 and 24 October 2014; (iii) two founding members were summarily dismissed on 24 October 2014; (iv) four further employment contracts of founding members of the trade union were terminated by mutual consent between January and March 2015; and (v) another founding member was summarily dismissed on 11 March 2015. The Government adds that, in that period, the employer was not found to have requested the labour inspectorate to terminate employment contracts owing to the workers' faults "authorization procedure".

C. The Committee's conclusions

431. *The Committee notes that, in this case, the complainants denounce, firstly, the refusal to register a trade union organization of banana plantation workers bringing together workers*

from various companies in the sector and, secondly, anti-union action aimed at preventing the establishment of a nascent works union in that sector.

432. *With respect to the refusal of the labour administration to register ASTAC, the Committee takes note of the fact that the complainants contend that ASTAC was formed on 10 February 2014 by a sufficient number of founding members, that the registration application submitted to the Ministry of Labour was supported by all the documentation required by the Labour Code, that, however, the Ministry of Labour refused to register the trade union on the grounds that it was not being set up by workers from one and the same company. The Committee notes that the complainants allege that: (i) the refusal to register the trade union was a clear violation of the trade union rights recognized by Conventions Nos 87, 98, 110 and 141, which Ecuador has ratified; (ii) in practice, preventing banana plantation workers from forming a trade union whose members come from more than one company renders it impossible for 20,000 workers in that sector to exercise their trade union rights, since thousands of banana plantations employ fewer than 30 workers, the minimum number of workers required by the Labour Code for the establishment of a trade union; and (iii) the refusal to register the trade union constitutes discrimination against banana plantation workers, given that in other sectors in the country the labour administration registers sectoral trade unions, as is shown by the establishment of the SINUTRHE in June 2016.*

433. *The Committee also takes note that the Government holds that: (i) the founding members of ASTAC were employed by several employers and, for that reason, ASTAC did not comply with section 449 of the Labour Code which requires that trade union organizations comprise workers from the same company; (ii) on the other hand, the members of ASTAC could set up a social organization, or a second-level trade union which must nevertheless comprise works trade unions; and(iii) the recognition of SINUTRHE, which brings together domestic workers who work for several employers, does not constitute discrimination against banana plantation workers, but is a direct response to the demands of ILO Convention No. 189 which requires states to ensure that domestic workers may exercise their freedom of association.*

434. *In the light of the foregoing, the Committee notes that the refusal to register ASTAC is due to the fact that the founding members of the trade union organization do not work for the same employer which, in the Government's opinion, is contrary to section 449 of the Labour Code, which stipulates that the leaders of workers' associations of any kind must be employees of the pertinent enterprise. Observing that section 449 of the Labour Code does not directly prohibit the establishment of trade unions made up of workers from various companies, while other provisions of the Labour Code (especially section 440) broadly recognize the right of workers to establish organizations of their own choosing, the Committee draws attention to the fact that the free exercise of the right to establish and join trade unions implies free determination of the structure and membership of those trade unions and that workers must be able to decide whether they prefer to establish, at the primary level, a works union or another form of basic organization, such as an industry or craft union [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 333 and 334]. Furthermore, the Committee recalls that, even though the minimum number of 30 workers would be acceptable in the case of sectoral trade unions, this minimum number should be reduced in the case of enterprise unions so as not to hinder the establishment of such bodies, particularly when it is taken into account that the country has a very large proportion of small enterprises and that the trade union structure is based on enterprise unions.*

435. *In the context of the present case, emphasizing once again that the possibility of setting up a primary-level trade union comprising workers from various companies is of special importance in that it enables workers to exercise their freedom of association, especially in*

a context where there are a large number of small firms, the Committee requests the Government to take the necessary measures to ensure that national legislation complies with the abovementioned principles, and refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations (CEACR).

436. *In this regard, the Committee takes due note of the Government's statements regarding the recognition of a trade union of domestic workers who do not work for a single employer, in order that these workers may exercise their rights to freedom of association under ILO Convention No. 189. The Committee recalls that, with respect to rural and agricultural workers in general, Article 3(3) of Convention No. 141, ratified by Ecuador, provides that the acquisition of legal personality by organizations of rural workers shall not be made subject to conditions of such a character as to restrict the exercise of the right of rural workers to establish and, subject only to the rules of the organization concerned, to join organizations, of their own choosing without previous authorization. It is also worth recalling that paragraph 8(2)(b)(i) of the Rural Workers' Organisations Recommendation, 1975 (No. 149) underlines the importance of the relevant laws and regulations being adapted to the special needs of rural areas and in particular that requirements regarding minimum membership, minimum levels of education and minimum funds shall not be permitted to prevent the development of organizations in rural areas where the population is scattered, ill-educated and poor. In this connection, the Committee notes with concern that many agricultural workers in Ecuador not only find it actually impossible to set up company unions owing to the minimum membership requirement which is conflicting with the structure of a sector where most production units are small, but that their efforts to overcome that obstacle by grouping together in sectoral organizations are frustrated as well. In this context, the Committee requests the Government to take the necessary measures to enable the registration of ASTAC without delay, and to ensure that, in the meantime, the necessary guarantees and protections are provided to its members. The Committee requests the Government to keep it informed in this regard.*

437. *As for the second allegation in this case regarding several anti-union acts, including dismissals and threats, to prevent the establishment of the 7 February Association of Banana Plantation Workers of the Enterprise Frutas Selectas SA Frutsesa (hereinafter, the company trade union), the Committee takes note of the fact that the complainants allege that: (i) the constituent assembly of the company trade union took place on 22 June 2014 and was attended by 45 workers, as is confirmed by their signatures, and that it submitted a registration application to the labour administration on 14 August 2014; (ii) the company was notified of the registration application on 20 October 2014; (iii) between 23 and 29 October 2014, the administration received identically worded sworn testimony to the effect that 12 workers had been pressurized into saying that they had not taken part in the trade union's constituent assembly and had no intention of participating in the establishment of any trade union organization; (iv) as from 24 October 2014, the banana company started to dismiss the leaders, including its general secretary, and the members of the company trade union who had not signed the sworn declarations; (v) on 28 October 2014, the legal representative of the banana company filed an appeal against the procedure establishing the trade union before the labour administration; (vi) on 26 November 2014, the labour administration refused to register the company trade union on the grounds that it did not have the minimum number of 30 members required by law; and (vii) on 11 May 2015, the general secretary of the trade union filed a criminal complaint against the company's legal representative accusing him of threats of physical violence.*

438. *The Committee also observes that the Government, in its comments, corroborates the facts reported by the complainants in regard to the founding of the company trade union, the receipt of sworn testimony from workers who denied that they had participated in the setting up of the trade union, the termination of the employment relationship of various founding members of the trade union and the refusal to register the trade union on the grounds that it*

did not have the minimum number of 30 working members required by the Labour Code. The Committee notes that, with regard to the aforementioned facts, the Government contends that: (i) 12 of the 45 founding members of the trade union were not taken into consideration because they had never been employed by the company; (ii) the sworn statements of 12 workers denying their participation in the setting up of the trade union were taken into consideration by the labour administration under the Notary Act establishing that notaries are officials vested with public trust; (iii) between 22 and 24 October 2014, the employment contracts of nine founding members of the company trade union were terminated by mutual consent, while two other members were summarily dismissed; and (iv) the cumulative effect of the various aforementioned factors meant that the trade union did not have the minimum number of 30 working members required by the Labour Code.

439. *Based on this, the Committee observes that the company trade union was not registered because, according to the labour administration, it had fewer than 30 members working for the company. The Committee notes that the complainants allege that the number of members of the nascent trade union was reduced by pressure exerted by the company, which resulted in practice in numerous founding members signing sworn statements denying that they had participated in the establishment of the trade union and also took the form of the termination of the contract of those members who refused to sign the sworn statements and of threats of physical violence towards the trade union's general secretary. In this connection, the Committee notes that, although the Government was informed that the contracts of many founding members of the trade union had been terminated a few days after the employer had been notified of the registration application, it is silent on the reasons for this termination and says nothing about the holding of investigations to ascertain the truth of the allegations of discriminatory anti-union acts made by the complainants. In this respect, the Committee recalls that anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions and that 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. paras 769 and 835]. While it refers to its previous recommendation regarding the minimum union membership required for registration, the Committee likewise requests the Government to ensure that an independent inquiry is held in the near future into the various anti-union acts that are alleged to have taken place around the time the company trade union was founded and that it inform the Committee of the inquiry's findings and of any action taken by the public authorities thereupon, including in relation to the registration of the company trade union.*

440. *The Committee further observes that the Government does not provide any information on the alleged threats received by the general secretary of the company trade union or on his criminal complaint of intimidation. 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 [See* ***Digest****, op. cit, para. 44], the Committee trusts that in the near future the criminal complaint will lead to the appropriate investigations and decisions by the competent authorities. The Committee requests the Government to keep it informed in this regard.*

441. *Lastly, the Committee regrets that it had to examine this aspect of the case in the absence of comments from the company concerned. The Committee therefore requests the Government to ensure that, through the pertinent employers' organization, the company has the opportunity, if it so wishes, to express its opinion on the abovementioned allegations.*

The Committee's recommendations

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

(a) The Committee requests the Government to take the necessary measures to ensure that national legislation complies with the principles of freedom of association concerning the minimum membership required to establish a trade union at the enterprise level and the possibility of setting up primary-level trade unions comprising workers from various companies. The Committee refers the legislative aspects of this case to the CEACR.

(b) The Committee requests the Government to take the necessary measures to enable the registration of ASTAC without delay, and to ensure that, in the meantime, the necessary guarantees and protections are provided to its members.

(c) The Committee requests the Government to ensure that, in the near future, an independent inquiry is held into the various anti-union acts which took place around the establishment of the company trade union and to provide information on the inquiry's findings and of any action taken by the public authorities, including in relation to the application to register the trade union.

(d) The Committee trusts that, in the near future, the criminal complaint filed by the general secretary of the aforementioned company trade union will lead to the appropriate inquiry and decisions by the pertinent authorities. The Committee requests the Government to keep it informed in this regard.

(e) The Committee requests the Government to ensure that, through the pertinent employers' organization, the abovementioned enterprise has an opportunity, if it so wishes, to express its opinion on the allegations regarding the setting up of a company trade union within it.

CASE NO. 2445

INTERIM REPORT

Complaint against the Government of Guatemala
presented by
– the World Confederation of Labour (WCL)
(the initial complainant in 2005, the WCL, merged with the International Trade Union Confederation in 2006) and
– the General Confederation of Workers of Guatemala (CGTG)

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

443. The Committee last examined this case at its October 2014 meeting, at which it presented an interim report to the Governing Body [see 373rd Report, approved by the Governing Body at its 322nd Session (November 2014), paras 310–323].

444. The Government provided information in communications dated 13, 21, 22 and 26 January 2015, 22 February, 12 September and 28 October 2016, 31 January and 2 February 2017.

445. Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the case

446. At its October 2014 meeting, the Committee made the following recommendations [see 373rd Report, para. 323]:

(a) With regard to the investigations into the murder of union leader Julio Raquec, the Committee once again urges the Government to take all the necessary measures to identify once and for all the instigators and perpetrators of this murder and the motives for the crime and to ensure that the guilty parties are prosecuted and punished by the courts. Additionally, the Committee once again expects the Government to take, without delay, the appropriate measures to guarantee the safety of Mr Julio Raquec's widow and that of their children. The Committee requests the Government to keep it informed of any developments in this regard.

(b) The Committee regrets that, despite the time that has elapsed since its last examination of the case, the Government has not sent observations on all the allegations pending from its examination of the case at its March 2010, March 2011, June 2012 and June 2013 meetings. Emphasizing that some of the alleged events are extremely serious and occurred in 2004, the Committee expects the Government to send all the information requested in the very near future. In this regard, the Committee once again reiterates the following recommendations:

- with regard to the death threats against members of the Trade Union Association of Itinerant Vendors of Antigua, the Committee once again urges the Government to take immediate steps to establish a protection mechanism for the persons who receive these threats and to institute an independent inquiry into these allegations without delay. The Committee requests the Government to keep it informed of the outcome of these actions;
- with regard to the allegations concerning the attempted murder of trade unionist Marcos Álvarez Tzoc, the Committee once again requests the Government to keep it informed with respect to the enforcement of the penalty imposed by the ruling of the Court of Criminal Judgment and urges the Government to take immediate steps to establish a mechanism to protect Mr Marcos Álvarez Tzoc;
- with regard to the alleged dismissal of workers at the El Tesoro Estate (municipality of Samayac) for submitting lists of claims during negotiations on a collective agreement, despite a judicial reinstatement order, the Committee again requests the trade union to which these trade unionists belong to request the competent legal authority to implement the reinstatement order; and
- with regard to the alleged threats against the employees of the General Directorate of Civil Aviation who participated in a protest in front of the building against the constant abuse by the administration (according to the allegations, the General Directorate's chief maintenance officer threatened that they would be reported and subsequently dismissed, if they were five minutes late back to work, and then took photographs of them) and with regard to the intimidation by security officers against the members outside the room where the union's general assembly was to be held, the Committee regrets that the Government has not sent its observations and urges it to do so without delay.

(c) The Committee once again firmly expects that the commitments assumed by the Government in the Memorandum of Understanding signed on 26 March 2013 between the Government of Guatemala and the Workers' group of the ILO Governing Body, as well as the efforts made to implement it, will be translated into tangible results with respect to the allegations still pending in this case. The Committee urges the Government to inform it of the outcome of these actions as soon as possible.

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

B. The Government's reply

447. In a communication of 13 January 2015, the Government sent information provided by the judiciary relating to the criminal proceedings concerning the attempted murder of the trade unionist Mr Álvarez Tzoc, stating that: (i) on 15 January 2014, a hearing was held at which Mr Julio Enrique Salazar Pivaral, the perpetrator of the attempted murder, was given a ten-year prison sentence, and the National Civil Police was ordered to arrest him; and (ii) to date, this arrest warrant has not been executed by the National Civil Police. The Government highlights that it is clear from the judicial decisions in the case that the motives for the attempted murder were completely unrelated to Mr Álvarez Tzoc's trade union activity, but were related to him allegedly stealing bananas.

448. In a communication of 21 January 2015, the Government sent information provided by the Public Prosecutor's Office concerning the allegations of death threats against members of the Trade Union Association of Itinerant Vendors of Antigua (hereinafter the Itinerant Vendors' Trade Union). In this regard, the Government states that: (i) on 17 February 2012, the Minister of Labour and Social Welfare requested the Public Prosecutor's Office to carry out an investigation into the death threats; (ii) on the basis of the proceedings filed by the Public Prosecutor's Office, it was able to access the file on the complaint lodged on 19 March 2005 with the District Prosecutor's Office of Antigua by five members of the Itinerant Vendors' Trade Union, alleging assault by municipal police officers; (iii) at that time, the forensic physician of the justice agency was able to confirm that the complainants had minor injuries with a healing time of eight days and without any visible scars; (iv) based on the above and in accordance with the Criminal Code, the District Prosecutor's Office of Antigua qualified the assaults as minor offences and referred the case to the magistrate's court judge of Antigua; (v) on 11 May 2005, Ms Higinia Concepción López, one of the five complainants and the only one who gave an address, was called on to provide further details concerning the complaint and details and addresses so that the other complainants could be contacted; (vi) Ms Concepción López did not appear at the interview and had no further contact with the Public Prosecutor's Office; and (vii) under the Criminal Code, the statutes of limitation for the offences reported by the complainants lapsed after six months, which is why the case was shelved. The Government adds that the Public Prosecutor's Office was not able to carry out an investigation ex officio concerning the alleged death threats because, under the current legal system, legal proceedings can only be instituted for threats when an individual files a complaint. Lastly, the Government states that, based on the information provided by the Ministry of Labour in 2012 and the contact made at the time with the General Confederation of Workers of Guatemala, the Itinerant Vendors' Trade Union has been headless and inactive since 2007.

449. In a communication of 22 February 2016, providing an update on the content of an earlier communication dated 26 January 2015, the Government sent information concerning the status of the investigations into the murder on 28 November 2004 of Mr Raquec Ishen, Secretary-General of the Trade Union Federation of Informal Workers. Based on the information provided by the Public Prosecutor's Office, the Government once again states that Ms Lidia Mérida Coy (an eyewitness and the victim's partner) has refused to cooperate; she refuses to identify the possible perpetrators. In addition, the Government indicates that

in May 2015, Mr Victoriano Zacarías, of the CGTG, was asked at a trade union round table meeting for his full cooperation in making Ms Mérida Coy aware of the need to cooperate in the investigation. However, to date, this has not been possible. The Government also indicates that Ms Lesbia Aracely Rodríguez Solís (another eyewitness to the event) was interviewed; in relation to the event, she stated that could not see the young people with whom Ms Mérida Coy was arguing on the day in question.

450. In a communication of 31 January 2017, the Government states that on 23 January 2017, orders were made to (i) implement perimeter security measures for Ms Lidia Mérida Coy de Sorayda Ninethe Raquec Mérida, Karina Yanethe Raquec Mérida and Dennis Orlando Raquec Mérida; and (ii) conduct a risk assessment to determine the current level of risk to which the above persons are exposed.

451. In a communication of 2 February 2017, the Government provided its observations regarding the allegations of threats of dismissal and acts of intimidation against the employees of the General Directorate of Civil Aviation. The Government states that: (i) on 21 January 2015, the Ministry of Labour and Social Welfare held a meeting with Ms Imelda López de Sandoval, Secretary-General of the Union of Workers of the General Directorate of Civil Aviation (STAC); (ii) the Secretary-General stated that protests had been staged at the Civil Aviation facilities against the violation of women workers' rights to maternity leave and breastfeeding leave but, that the threats and acts of intimidation mentioned in the complaint had not occurred; (iii) despite the agreement made in that meeting, Ms Imelda López did not submit her written statement; (iv) at a mediation meeting held in 2016, the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining examined the complaint brought by the STAC, whose leaders had stated that no threat, restriction or violation of any kind existed against freedom of association or collective bargaining; and (v) the Committee for the Settlement of Disputes is looking forward to receiving the STAC's written submission stating that the difficulties that motivated the presentation of this aspect of the complaint have been resolved.

452. The Government also sent communications dated 22 January 2015, 12 September 2016 and 28 October 2016 concerning allegations for which the Committee had not pursued its examination.

C. The Committee's conclusions

453. *The Committee recalls that the case under examination refers to allegations of murder, threats and acts of violence against trade unionists and their families, as well as anti-union dismissals and other acts. The Committee further recalls that, since the presentation of this complaint in 2005, it has examined this case on eight occasions.*

454. *With regard to the investigations into the murder of Mr Raquec Ishen, Secretary-General of the Trade Union Federation of Informal Workers, on 28 November 2004, the Committee notes that the Government reiterates that the main witness to the murder, Ms Mérida Coy, the victim's partner, continued to refuse to testify. The Committee also notes that the Government states that: (i) the Secretary-General of the General Confederation of Workers of Guatemala was contacted in May 2015 to make Ms Mérida Coy aware of the importance of her participating in the investigations but that this did not bear fruit; (ii) the second eyewitness to the crime was interviewed but said that she could not see the young people with whom Ms Mérida Coy was arguing at the time of the event. The Committee also notes, on the basis of the information the Governing Body of the ILO was furnished with in October 2016 as part of the follow-up to the complaint brought against Guatemala under article 26 of the ILO Constitution for the violation of ILO Convention No. 87, that the Government indicated that the witness statements of the police officers who drew up the crime report are still pending.*

455. *While noting the information from the Government, the Committee once again notes with regret that, despite the investigations having identified a suspect, they have not led to those responsible being prosecuted or punished. The Committee notes with great concern that, more than 12 years after the crime, the police officers who recorded the murder of Mr Raquec Ishen have not been identified and interviewed. The Committee recalls that the right to life is a fundamental prerequisite for the exercise of the rights contained in Convention No. 87 and 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 of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, paras 42 and 52]. The Committee emphasizes that it is essential in combating impunity for those who planned and carried out this murder, and the motives of the crime, to be clarified once and for all and for the perpetrators to be prosecuted and punished by the courts. The Committee once again urges the Government to take all the necessary measures in this regard and to keep it informed of any developments.*

456. *The Committee had requested, in its previous reports concerning this case, that the Government provide information on the measures taken to guarantee the safety of Mr Raquec Ishen's partner, Ms Mérida Coy, and their children. The Committee notes the Government's indications that orders were made on 23 January 2017 to: (i) implement perimeter security measures for Ms Lidia Mérida Coy de Sorayda Ninethe Raquec Mérida, Karina Yanethe Raquec Mérida and Dennis Orlando Raquec Mérid; and (ii) conduct a risk assessment to determine the current level of risk to which the above persons are exposed. While noting with concern that it took over 12 years to adopt the above measures, the Committee requests the Government to keep it informed of the outcome of the risk assessment and any security measures adopted as a result.*

457. *In relation to the attempted murder of Mr Álvarez Tzoc in January 2003, the Committee notes the Government's statement that: (i) in January 2014 a hearing was held at which the perpetrator was given a ten-year prison sentence and the National Civil Police was ordered to arrest said person, although this order has not, to date, been followed; and (ii) the judicial decisions in this case show that the attempted murder was unrelated to Mr Álvarez Tzoc's trade union activities. In this regard, recalling that, according to the complainant organization's allegations, the perpetrator of the attempted murder was the victim's employer and that the assault was preceded by harassment towards the trade union organization of which Mr Álvarez Tzoc was a member of the executive committee, the Committee notes that, 14 years after the events and more than ten years after the decision was handed down, the decision has still not been enforced. The Committee considers that these circumstances give rise to concern as to the climate of impunity for acts of violence against trade union members in the country. The Committee therefore requests the Government to send a copy of the judgment which clearly indicates that the motive of the crime is not related to the trade union activity of the victim. In addition, the Committee requests the Government to indicate the reasons for having not yet executed the criminal sanction ordered in respect of the attempted murder and once again expresses the firm hope that the aforementioned criminal sanction will be executed as soon as possible.*

458. *Lastly, the Committee notes that the Government has not provided information regarding the possible measures taken to ensure the safety of Mr Álvarez Tzoc. Noting that, through evidence provided to the Governing Body of the ILO, within the framework of the follow-up to the abovementioned complaint filed under article 26 of the ILO Constitution, the Government reported, in October 2016, the adoption, with the approval of the trade union movement, of the Protocol for the Implementation of Immediate and Preventive Security Measures for trade union members and leaders and labour rights activists, the Committee again urges the Government to provide information without delay concerning the action*

taken, in accordance with the above Protocol, to evaluate the need to ensure protective measures for Mr Álvarez Tzoc.

459. *Regarding the allegations of death threats against members of the Itinerant Vendors' Trade Union, the Committee notes the Government's statement that: (i) the complaint presented in 2005 by the members of the Itinerant Vendors' Trade Union concerning physical assault by the municipal police was closed on account of the complainants' failure to appear before the court and the statute of limitations for the offences reported; (ii) in response to the request to investigate made by the Ministry of Labour and Social Welfare in 2012, the Public Prosecutor's Office indicated that, pursuant to the Criminal Code, the investigations into the threats could not be carried out ex officio but could be pursued only at the request of an individual party; the Itinerant Vendors' Trade Union did not file a complaint to that end; and (iii) the Itinerant Vendors' Trade Union has been headless and inactive since 2007. While duly noting this information, the Committee notes with deep regret, particularly in a context of frequent and serious acts of anti-union violence, that the Government took seven years before taking action on the allegation of death threats against trade unionists by members of the police force. In the absence of a legal possibility to carry out an ex officio criminal investigation with regard to allegations of death threats and observing that the allegations concerned police action, the Committee requests the Government to carry out an internal investigation within the police force with respect to these matters, stressing 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 therefore urges the Government in the strongest possible terms to ensure that, in future, any reports of acts of anti-union violence against, threats to or harassment of members of the trade union movement trigger immediate and effective investigations by the competent public authorities and the implementation of adequate protection measures. The Committee emphasizes that the taking of such measures is an essential element in upholding the rule of law.*

460. *Regarding the alleged threats of dismissal and intimidation to which the workers of the General Directorate of Civil Aviation were allegedly subjected because they had participated in a protest in 2007, the Committee notes the Government's observations of February 2017 indicating that both the Ministry of Labour and Social Welfare in 2015 and the Committee for the Settlement of Disputes in 2016 met with the STAC leaders, who verbally denied the threats and acts of intimidation and stated that the difficulties with the employer had been resolved.*

461. *With regard to the alleged dismissal of workers at the El Tesoro Estate (municipality of Samayac) for submitting lists of claims during negotiations on a collective agreement, the Committee recalls that since its 2007 report it has been requesting the trade union to which these trade unionists belonged to call on the competent legal authority to enforce the reinstatement order. Since it has not received information from the complainant organizations in this regard, the Committee will not pursue its examination of this allegation any further.*

462. *In general, the Committee once again firmly expects that the commitments made by the Government in the roadmap referred to and the efforts made to implement it will be translated into tangible results with respect to the allegations still pending in this case.*

The Committee's recommendations

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

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

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

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

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

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

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

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

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

CASE NO. 2811

DEFINITIVE 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 at a national institute, anti-union dismissals in a municipality, obstacles to the negotiation of a new collective agreement at the Supreme Electoral Tribunal, and the violation of the provisions of a collective agreement in the agricultural sector

464. The Committee last examined this case at its March 2015 meeting, when it presented an interim report to the Governing Body [see 374th Report, approved by the Governing Body at its 323rd Session (March 2015), paras 359–371].

465. The Government replied to the requests for information in communications dated 21 May 2015, 31 August 2015 and 29 April 2016.

466. Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the case

467. At its March 2015 meeting, the Committee made the following interim recommendations regarding the allegations presented by the complainant organizations [see 374th Report, para. 371]:

(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.

B. The Government's reply

468. In its communications of 21 May and 31 August 2015, the Government sent its observations concerning the alleged anti-trade union dismissals in the municipality of Chimaltenango, indicating that: (i) on 19 May 2015, in the Committee for the Settlement of Disputes before the ILO in the Area of Freedom of Association and Collective Bargaining (the Committee for the Settlement of Disputes), a mediation session was held between the municipality of Chimaltenango and the Union of Employees of the municipality; (ii) at that session, the trade union representatives indicated that, since the entry into office of the new mayor and his team, a negotiation process had enabled the reinstatement of all of the dismissed workers, except in the case of one person who had not been paid the outstanding salary since, unlike the other workers, she would not accept the payment of a percentage of the outstanding wages and instead was demanding payment of the entire amount; (iii) on 19 August 2015, the independent mediator of the Committee for the Settlement of Disputes visited Chimaltenango and held a meeting with the parties, which ended with the signing of an agreement; and (iv) through this agreement, while reiterating that one reinstated worker continues to claim payment of the entire outstanding salary amounts, the parties indicate that the claims that gave rise to this part of the complaint presented to the ILO have been settled and they request the withdrawal of the complaint from the Committee on Freedom of Association.

469. In its communication of 29 April 2016, the Government sent its observations concerning the alleged violation of the provisions of the collective agreement on working conditions at the Palo Gordo Sugar Refinery (hereinafter, the sugar refinery). In this regard, the Government indicates that: (i) in 2011, the labour inspectorate office in Mazatenango Suchitepéquez consulted the members of the executive committee of the Union of Workers of the Palo Gordo Sugar Refinery concerning the employer's alleged attempts to make employees work on 24 and 25 December, in violation of the provisions of the collective agreement; (ii) the union's executive committee indicated that, following discussions with the employer, it had been agreed that work on 24 and 25 December would be optional and would give rise to the payment of a bonus to volunteer workers; (iii) the National Civil Police of San Antonio Suchitepéquez indicated to the Ministry of Labour that, on 24 December 2009, a manager of the refinery requested police assistance in response to being denied entry to the refinery in a threatening manner by a group of refinery workers armed with sticks and stones; (iv) the incident was followed up by the Public Prosecutor's Office of Mazatenango, which oversaw an agreement on mutual respect between the group of dissatisfied workers and the refinery's managers; and (v) this information was communicated to the ILO in 2011 but was mistakenly sent in connection with another case before the Committee on Freedom of Association.

C. The Committee's conclusions

470. *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.*

471. *The Committee notes the Government's observations regarding the alleged anti-trade union dismissals in Chimaltenango. The Committee notes especially that the Government states that: (i) the representatives of the Union of Employees of the municipality of Chimaltenango affirmed in the Committee for the Settlement of Disputes before the ILO in the Area of Freedom of Association and Collective Bargaining (the Committee for the Settlement of Disputes) that, since the entry into office of the new mayor and his team, a negotiation process had enabled the reinstatement of all of the dismissed workers and that an agreement would be struck on the payment of a percentage of the outstanding salaries; and (ii) in the presence of the independent mediator of the Committee for the Settlement of Disputes, on*

19 August 2015, the municipality and the abovementioned union signed an agreement by which the parties acknowledged that the claims that gave rise to this part of the complaint presented to the ILO had been settled and they requested the withdrawal of the complaint from the Committee on Freedom of Association. The Committee notes this information with satisfaction and considers that this allegation does not call for further examination.

472. *The Committee takes note of the Government's observations on the alleged violation of the provisions of the collective agreement on working conditions at the sugar refinery. The Committee notes especially that the Government states that: (i) according to the indications of the labour inspectorate, the executive committee of the Union of Employees of the Palo Gordo Sugar Refinery and the employer agreed on a solution regarding work on 24 and 25 December, namely that work on those dates was not compulsory and a bonus would be paid to volunteer workers; and (ii) the tension resulting from the incident of 24 December 2009 between the management of the refinery and a group of workers at the entrance to the premises led to an agreement of mutual respect being concluded at the Public Prosecutor's Office. The Committee notes this information with satisfaction and, in the absence of further information from the complainant organization, considers that this allegation does not call for further examination.*

473. *Regarding the alleged anti-trade union transfer of the trade union leader Ms Nilda Ivette González Ruiz by a national institute, the Committee, at its last examination of the case, requested the complainant organization to provide information on the abovementioned worker's reasons for withdrawing from the legal proceedings. As previously indicated by the Committee, and noting that the complainant organization has not provided any information in this regard, the Committee will not pursue its examination of this allegation.*

The Committee's recommendation

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

CASE NO. 2927

DEFINITIVE REPORT

Complaint against the Government of Guatemala presented by the Trade Union, Indigenous and Campesino Movement of Guatemala (MSICG)

Allegations: The complainant organization reports interference in the internal affairs of a trade union, violation of a majority union's right to collective bargaining and exclusion of a domestic workers' organization from social dialogue

475. The complaint is contained in communications dated 13, 14 and 15 February and 11 June 2012, presented by the Trade Union, Indigenous and Campesino Movement of Guatemala (MSICG).

476. The Government sent its observations in communications dated 26 March, 13 and 16 April 2015 and 2 June 2016.

477. Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

478. Firstly, the complainant organization alleges interference by the Guatemalan Social Security Institute (IGSS) in the functioning of the Union of Professional Workers of the Guatemalan Social Security Institute (STPIGSS) through administrative and criminal legal actions seeking to invalidate the registration of the union officers. In this regard, the complainant specifically states that: (i) in 2011, the IGSS adopted a series of measures to privatize certain social security services and restrict Guatemalan workers' acquired social security rights; (ii) the STPIGSS, together with the Union of Workers of the Guatemalan Social Security Institute (STIGSS) and the MSICG to which it is affiliated, opposed these reforms, both through judicial actions for constitutional review and through declarations and mobilizations; (iii) the general secretary, Mr Rodolfo Juárez Ralda, and the records secretary, Ms Layla Lerisa Chanquin Jocol de Pérez, of the STPIGSS were particularly active in these initiatives; (iv) in retaliation, in early 2011 the IGSS filed an appeal against the registration by the labour administration of the STPIGSS officers for the 2011–12 period, thereby administratively contesting the internal elections of the STPIGSS; (v) although the Ministry of Labour and Social Welfare rejected this appeal on 11 July 2011 on the grounds that the employer was not an injured party and that the trade union had complied with the law, at no point did the Ministry inform the IGSS that employer interference in the internal affairs of a trade union was prohibited by ILO Convention No. 87; rather, it indicated that the employer should use whatever means available to have the Ministry's registration of the union officers for the 2011–12 period invalidated; (vi) in its decision, the Ministry also ordered the employer to seek the suspension of the registration of the STPIGSS officers via criminal law proceedings; (vii) the action brought by the IGSS to contest the trade union elections is founded on the statements, given under pressure, of two STPIGSS members who stated that they had been placed on the list of union officers without standing as candidates; and (viii) the Ministry of Labour and Social Welfare has not received any challenge to the union elections from the union's own members.

479. The complainant organization then refers to the criminal action filed by the IGSS seeking to have the results of the union elections and the registration of the STPIGSS officers for 2010–12 invalidated. The complainant states that: (i) in addition to the administrative appeals, on 11 July 2011 the employer filed a criminal action against Mr Rodolfo Juárez Ralda, the general secretary of the STPIGSS, and Ms Layla Lerisa Chanquin Jocol de Pérez, the union's records secretary, for placing the names of two union members, without their consent or knowledge, on the list of union officers; and (ii) when the criminal proceedings began on 13 February 2012, the judge of the criminal court of first instance ordered the officers to be placed under house arrest and to appear in court on charges of falsification of facts and documents. The complainant stresses that, under the STIGSS constitution and the Labour Code, any objection to the internal elections of the union should give rise to the initiation of legal proceedings by union members, which has not occurred to date.

480. Secondly, the complainant organization alleges that the Attorney-General's Office and the national courts violated the right to collective bargaining of the Union of Organized Workers of the Attorney-General's Office (STOPGN) by promoting bargaining with a minority union, the Union of Workers of the Attorney-General's Office (STPGN). In this regard, the complainant specifically states that: (i) the STOPGN is the majority union at the Attorney-General's Office; (ii) as such, in accordance with section 51 of the Labour Code, the

STOPGN concluded a collective agreement on working conditions with the Attorney-General's Office that was approved on 28 January 2009; (iii) the STPGN, however, is a minority union under the influence of the employer; (iv) the minority union brought a collective dispute of an economic and labour-related nature before the labour courts in an attempt to secure recognition of its right to bargain collectively; (v) the Fourth Labour and Social Welfare Court, in violation of the provisions of the Labour Code which establish that the majority union is the one entitled to engage in collective bargaining, issued an arbitration award granting the STPGN that entitlement and unilaterally altering the content of the collective agreement signed by the STOPGN and approved by the labour administration; (vi) this amendment to the collective agreement was made without the STOPGN being summoned to court or notified by the employer; (vii) when it became aware of what had happened, the STOPGN applied to intervene as a third party *(tercero excluyente)* in the appeal against the award; (viii) although the First Chamber of the Labour and Social Welfare Court of Appeal allowed this intervention by the STOPGN, it issued a judgment on 10 June 2011 without so much as granting a hearing to the STOPGN; (ix) in view of the aforementioned irregularities, the STOPGN applied for *amparo* (protection of constitutional rights) before the Supreme Court of Justice and requested, but was denied, a temporary suspension of the arbitration award; (x) on 10 November 2011, the Supreme Court denied *amparo* and upheld the arbitration award; and (xi) the STOPGN filed an appeal against the judgment with the Constitutional Court. The complainant considers that this refusal to grant *amparo* to the STOPGN means in effect that an employer can negotiate, with a minority union, amendments to a collective agreement which has been negotiated with the most representative trade union and that a court can alter the content and scope of a freely concluded agreement without the involvement of the representatives of the signatory union.

481. Thirdly, the complainant organization alleges failure to include the Domestic Workers' Union of Guatemala (SINTRACAPGUA) in the social dialogue relating to the possible ratification of the Domestic Workers Convention, 2011 (No. 189). In this regard, the complainant specifically points out that: (i) SINTRACAPGUA applied for registration at the Ministry of Labour and Social Welfare in January 2011 and, although it met all the legal requirements, it was obliged to wait over a year before it was registered; (ii) SINTRACAPGUA, affiliated to the MSICG, is the only union of officially employed domestic workers in the country and is therefore the sector's most representative union; (iii) after Convention No. 189 was adopted by the International Labour Conference in June 2011, SINTRACAPGUA and the MSICG held a meeting with the Ministry of Labour and Social Welfare on 16 August 2011 to demand its ratification and to submit a draft bill in this regard; (iv) with the same objective, SINTRACAPGUA also held a meeting with the Office of the Vice-President of the Republic on 26 January 2012; and (v) in spite of the foregoing, the Government has consistently refused to engage in a dialogue with SINTRACAPGUA on account of its affiliation to the MSICG and has preferred to maintain contact with a civil association, the Association of Domestic, Home and Export-Processing Industry Workers (ATRAHDOM), and with the Union of Domestic, Allied and Own-Account Workers, which forms part of the Guatemalan Union of Workers, a pro-Government organization. In the light of the above, the complainant asserts that the members of SINTRACAPGUA are the subject of anti-union discrimination as a result of their organization's affiliation to the MSICG, which is contrary to ILO Conventions Nos 87, 98 and 144.

482. The communications submitted by the complainant organization in the context of this case also contain allegations that coincide with those made in other complaints presented to the Committee by this organization.

B. The Government's reply

483. In its communication of 17 April 2015, the Government finds it regrettable, first, that the complainant organization continues to make identical allegations in the context of various

complaints. The Government proceeds to provide its observations regarding the allegations of interference in the functioning of the STPIGSS through the administrative and criminal appeals filed by the IGSS. In this regard, the Government indicates that: (i) according to the Political Constitution of Guatemala, employers, like all other citizens, have the right of petition; (ii) the appeal filed by the IGSS management to challenge certain official records of the STIGSS was therefore not illegal; (iii) this appeal was dismissed by the Ministry of Labour and Social Welfare, upholding the rights of the workers; (iv) the criminal proceedings brought against Mr Rodolfo Juárez Ralda and Ms Layla Lerisa Chanquin Jocol de Pérez for the offences of falsification of documents and facts were dismissed in favour of the trade union leaders in a decision issued by the Tenth Criminal Court of First Instance for Drug-Related Activities and Crimes against the Environment in Guatemala City on 25 April 2014; and (v) this decision was upheld on 6 June 2014 by the First Chamber of the Criminal Court of Appeal for Drug-Related Activities and Crimes against the Environment.

484. In its communication of 23 April 2015, the Government provides its observations regarding the allegations of violation of the STOPGN collective bargaining rights by the Attorney-General's Office and the national courts. In this regard, the Government states that the Attorney-General's Office does indeed have two registered active trade unions: the STPGN, which was registered in 1995 and had 22 members in 2015, and the STOPGN, which was registered in 2006 and had 137 members in 2015.

485. The Government adds that the Constitutional Court examined the appeal lodged by the STOPGN against the judgment of 10 June 2011 of the Labour Court of Appeal, further to the adoption of an arbitration award by a labour court on 29 April 2011 which unilaterally altered the collective agreement concluded by the Attorney-General's Office and the majority union, the STOPGN, following a request by the STPGN to engage in collective bargaining. The Constitutional Court, in a judgment dated 10 September 2014, upheld the judgment of the Court of Appeal, finding that: (i) it was the responsibility of the majority union to inform the labour court that examined the action filed by the STPGN (the minority union) of the existence of a majority union within the Attorney-General's Office and of the signing of a collective agreement by this union; (ii) the majority union had waited two years and three months before contacting the labour court to inform it of the existence of this agreement; and (iii) the decision, which was upheld by the Court of Appeal and called for the draft collective agreement prepared by the minority union and the agreement signed by the majority union to be incorporated into a single instrument, was not contrary to the interests of the majority union, as the incorporation, in accordance with section 42 of the Labour Code, entailed selecting the clauses most favourable to the workers. The Government concludes by stating that the Attorney-General's Office has never negotiated with the STPGN (the minority union) and that the collective agreement which is in force at the Attorney-General's Office is the one that was concluded with the majority union, the STOPGN, and was approved in January 2009.

486. In its communication of 2 June 2016, the Government sends its observations concerning the alleged failure to include SINTRACAPGUA in the social dialogue relating to the possible ratification of ILO Convention No. 189. In this regard, the Government indicates that: (i) an ILO official was invited to explain the content of the new Convention to the Tripartite Committee on International Labour Affairs; (ii) two tripartite consultations were held in August 2012 and February 2013; and (iii) the consultation in February 2013 led to the participation of ATRAHDOM and of the Consortium of Social and Trade Union Organizations for Working Women and was held with support from the ILO. The Government concludes by saying that it has fulfilled its obligations regarding the submission of the new Convention adopted by the ILO and that the complainant organization's allegation is unrelated to the observance of the ILO Conventions on freedom of association and collective bargaining ratified by Guatemala.

C. The Committee's conclusions

487. *The Committee notes that, in the present case, the complainant organization alleges interference in the internal affairs of a trade union, violation of a majority union's right to collective bargaining, and exclusion of a domestic workers' union from social dialogue.*

488. *In relation to the allegations made by the complainant organization in the context of this case which coincide with allegations contained in other complaints submitted to the Committee by the same organization, the Committee notes that: (i) the allegations relating to the murder of Mr Jesús Ramírez, general secretary of the Union of Workers of the Public Criminal Defence Institute (STIDPP), are being examined in the context of Case No. 2609; (ii) the allegations relating to obstacles to the exercise of freedom of association and collective bargaining in the export-processing (maquila) sector have also been examined in the context of Case No. 2609; (iii) the allegations relating to anti-union acts committed by the Public Criminal Defence Institute against the STIDPP and those relating to obstruction of the right to collective bargaining of the Union of Workers of the Guatemalan Social Security Institute (STIGSS) are being examined by the Committee in the context of Case No. 2948; and (iv) the allegations of obstruction of the registration of various trade union organizations are being examined by the Committee in the context of Case No. 3042.*

489. *As regards the complaint of interference by the Guatemalan Social Security Institute (IGSS) in the internal affairs of the Union of Professional Workers of the Guatemalan Social Security Institute (STPIGSS), the Committee notes that the complainant organization indicates that: (i) in retaliation for the opposition of the STPIGSS to its policy of social security privatization and with a view to undermining the trade union, in 2011 the IGSS filed administrative and criminal appeals against the election of the union's officers for the 2011–12 period; (ii) no member of the STPIGSS challenged the election of the union executive committee, which was conducted in full respect for the law and the trade union's constitution; (iii) the appeals were based on the statements, given under pressure, of two STPIGSS members, who stated that they had been placed on the list of union officers without standing as candidates; and (iv) during its examination of the administrative appeal, the Ministry of Labour and Social Welfare invited the IGSS to file a criminal complaint in respect of certain events that allegedly surrounded the internal electoral process of the STPIGSS. The Committee further notes that the Government, for its part, states that: (i) the right of petition is a universal right under the national Constitution; (ii) the administrative appeal filed by the IGSS was dismissed by the labour administration in July 2011, on the grounds that the union electoral process had been lawful; (iii) the criminal appeals brought against the general secretary and the records secretary of the STPIGSS were dismissed in favour of the union leaders in first- and second-instance judgments dated 25 April and 6 June 2014. While observing that the information provided by the Government indicates that the courts ruled in favour of the trade union in the various actions brought by the IGSS, the Committee notes with regret that it took the criminal courts almost three years to determine that the abovementioned criminal appeals did not merit further examination. In this regard, the Committee recalls that respect for due process of law should not preclude the possibility of a fair and rapid trial and, on the contrary, an excessive delay may intimidate the [union] leaders concerned, thus having repercussions on the exercise of their activities [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 103]. The Committee trusts that, in the future, this principle will be given due consideration.*

490. *With regard to the alleged violation of the right to collective bargaining of the Union of Organized Workers of the Attorney-General's Office (STOPGN), the Committee observes that the allegations of the complainant organization and the Government's reply indicate that: (i) the Attorney-General's Office has two trade unions: the Union of Workers of the Attorney-General's Office (STPGN), established in 1995 and currently a minority union,*

and the STOPGN, currently the majority union and established in 2006; (ii) in 2004, prior to the establishment of the STOPGN, the STPGN, unable to reach direct agreement with the Attorney-General's Office on the conclusion of a collective agreement, brought an action before the labour courts to seek recognition of the right to bargain collectively and secure the adoption of a collective agreement through an arbitration award (start of an economic and labour dispute); (iii) the STOPGN, which was the majority union despite having been established later, negotiated and concluded a collective agreement with the Attorney-General's Office which was approved by the labour administration in 2009; (iv) the economic and labour dispute initiated by the STPGN, the older but minority union, nevertheless continued; (v) having become aware of the existence of the collective agreement concluded by the Attorney-General's Office and the STOPGN, the labour court issued its arbitration award on 29 April 2011, requiring the draft collective agreement submitted by the STPGN and the agreement signed by the STOPGN to be incorporated into a single instrument; and (vi) the STOPGN challenged the arbitration award, first in the Court of Appeal and then in the Constitutional Court, both of which ruled against the majority union (the latter judgment being issued in September 2014).

491. *In relation to these facts, the Committee observes, on the one hand, that the complainant organization alleges that the principles of collective bargaining and the provisions (section 51) of the Guatemalan Labour Code were violated in so far as the right to bargain collectively was granted to a minority union and the content of the collective agreement freely negotiated with the most representative union was unilaterally altered through an arbitration award. The Committee nevertheless observes the Government's indication that: (i) the Constitutional Court found that the STOPGN excessively delayed informing the Labour Court – which issued the arbitration award at the request of the rival union – of its majority status and the existence of the 2009 collective agreement; (ii) the Constitutional Court also found that the arbitration award did not cause harm to the STOPGN in that it introduced amendments which were more favourable to the workers, in accordance with the provisions of the Labour Code; (iii) the Attorney-General's Office did not engage in negotiations with the minority union STPGN; and (v) the agreement concluded with the STOPGN remains in force.*

492. *With respect to granting a minority union the right to bargain collectively, the Committee observes that section 51 of the Guatemalan Labour Code confers collective bargaining rights on the most representative union. It also observes that, as indicated in the Constitutional Court judgment included in the Government's reply, in the legal context of Guatemala, the existence of a majority union that was a signatory to an existing collective agreement was therefore a key element in the courts' resolution of the economic and labour dispute initiated by the minority union at the Attorney-General's Office. In this regard, the Committee notes with regret that the labour court took seven years to issue a verdict on the dispute initiated by the minority union at the Attorney-General's Office and that it did not appear to take into consideration the existence of a majority union that was a signatory to an existing collective agreement. While noting the Government's indication that the agreement concluded with the majority union at the Attorney-General's Office remains in force, the Committee emphasizes that the promotion of collective bargaining requires a clear legal framework whose rules are applied consistently and promptly by the various judicial authorities.*

493. *With regard to the incorporation of the draft collective agreement submitted by the STPGN and the existing agreement at the Attorney-General's Office signed by the STOPGN into a single instrument through an arbitration award, the Committee understands that this arbitration award had the effect of unilaterally altering an existing, freely negotiated collective agreement, the validity of which was never questioned either before the labour administration or before the courts. In this regard, while noting the Government's indication that the amendments introduced were supposedly favourable to the workers, the Committee*

*recalls that state bodies should refrain from intervening to alter the content of freely concluded collective agreements [see **Digest**, op. cit., para. 1001].*

494. *As to the alleged exclusion of SINTRACAPGUA from the social dialogue processes relating to the situation of domestic workers, the Committee notes the complainant organization's allegation that the Government is acting in a discriminatory manner in failing to recognize the most representative nature of SINTRACAPGUA on account of its affiliation to the MSICG and that the Government, in the framework of the consultations relating to the possible ratification of Convention No. 189, has preferred to consult associations of a civil nature and less representative trade unions which are sympathetic to the Government. The Committee also notes the Government's indication that it has met its obligations regarding tripartite consultation in relation to the submission of Convention No. 189, by conducting tripartite discussions with the inclusion of various organizations representing domestic workers' interests. The Committee wishes to stress the importance, for the preservation of stable labour relations in a country, of regular consultations with employers' and workers' representatives, and that such consultations should involve all trade unions. In the present case, while noting that the Government has not explained its reasons for excluding SINTRACAPGUA from the social dialogue processes, the Committee observes that the complainant has not provided any objective information demonstrating that SINTRACAPGUA is more representative than the consulted organizations, and therefore the Committee lacks the information that would enable it to determine whether or not the alleged discrimination against SINTRACAPGUA has occurred. At the same time, emphasizing the difficult challenges relating to organization and representation which domestic workers' unions must face owing to the very particular nature of this sector, the Committee invites the Government to ensure in the future that the various actors representing the aforementioned sector are extensively involved in the social dialogue processes relating to the situation of domestic workers.*

The Committee's recommendations

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

(a) The Committee trusts that any criminal complaints filed in the future against trade union leaders will be examined without delay by the judicial authorities.

(b) The Committee invites the Government to ensure in the future that the various actors representing the domestic work sector are extensively involved in the social dialogue processes relating to the situation of workers in the aforementioned sector.

CASE NO. 3076

INTERIM REPORT

Complaint against the Government of the Republic of Maldives presented by – the Tourism Employees Association of Maldives (TEAM)

Allegations: Disproportionate police force used against striking workers; arbitrary arrest of TEAM members and leaders; unfair dismissal of nine workers including TEAM leaders who participated and led a strike. The complainant reports that despite a definitive court judgment in their favour, the dismissed workers have not been reinstated in their positions more than four years after their dismissal

496. The Committee last examined this case at its October 2015 meeting, when it presented an interim report to the Governing Body [see 376th Report, paras 729–750, approved by the Governing Body at its 325th Session].

497. Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case on three occasions. At its meeting in October 2016 [see 380th Report, para. 8], the Committee issued an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of the case even if the information or observations requested had not been received in due time. To date, the Government has not sent any information.

498. The Republic of Maldives 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

499. At its October 2015 meeting, the Committee made the following recommendations [see 376th Report, para. 750]:

(a) The Committee regrets that, despite the time that has elapsed since the complaint was presented in April 2014, the Government has still not replied to the complainant's allegations, despite having been invited on several occasions to do so, including by means of an urgent appeal [see 375th Report, para. 8]. The Committee urges the Government to provide its observations on the complainant's allegations without further delay.

(b) The Committee urges the Government to conduct an independent investigation as to the grounds for the arrest and detention of TEAM members on the three abovementioned occasions, and, should it appear that they have been arrested because of their trade union activities, to hold those responsible into account and take the necessary measures to ensure that the competent authorities receive adequate instructions not to resort to arrest and detention of trade unionists for reasons connected to their union activities in the future. The Committee requests the Government to keep it informed of the measures taken in this regard.

(c) The Committee urges the Government to take all the necessary steps for the immediate enforcement of the sentence ordering the reinstatement of TEAM leaders and the payment of the remaining back wages, and to keep it informed of the steps taken in this regard.

(d) The Committee urges the Government to conduct an independent inquiry into the allegations of excessive force used by the police in this case, and ensure that adequate instructions are given so that such situations do not occur in the future. The Committee requests the Government to keep it informed of developments.

(e) The Committee requests the Government to solicit information from the employers' organizations concerned, with a view to having at its disposal their views, as well as those of the enterprise concerned, on the questions at issue.

B. The Committee's conclusions

500. *The Committee regrets that, despite the time that has elapsed since the last examination of the complaint in October 2015, the Government has once again not replied to the complainant's allegations even though it has been requested several times to do so, including through an urgent appeal [see 380th Report, para. 8]. The Committee urges the Government to provide its observations on the complainant's allegations without further delay and 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.*

501. *Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee is obliged to present a report on the substance of the case without being able to take account of the information which it had hoped to receive from the Government.*

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

503. *Under these circumstances, recalling that this case refers to events that took place between November 2008 and May 2013 and concerns allegations of disproportionate use of police force against striking workers, repeated arrest and detention of TEAM leaders, their unfair dismissal, and non-enforcement of the court ruling ordering their reinstatement without loss of pay, the Committee finds itself obliged to reiterate the conclusions and recommendations it made when it examined this case at its meeting in October 2015 [see 376th Report, paras 729–750].*

The Committee's recommendations

504. ***In 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 last examination of the complaint in October 2015, the Government has once again not replied to the complainant's allegations even though it has been requested several times to do so, including through an urgent appeal. The Committee urges the Government to provide its observations on the complainant's allegations without further delay and 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) The Committee urges the Government to conduct an independent investigation as to the grounds for the arrest and detention of TEAM members on the three mentioned occasions (December 2008, April 2009 and May 2013) and, should it appear that they have been arrested because of their trade union activities, to hold those responsible into account and take the necessary measures to ensure that the competent authorities receive adequate instructions not to resort to arrest and detention of trade unionists for reasons connected to their union activities in the future. The Committee requests the Government to keep it informed of the measures taken in this regard.

(c) The Committee urges the Government to take all the necessary steps for the immediate enforcement of the sentence ordering the reinstatement of TEAM leaders and the payment of the remaining back wages, and to keep it informed of the steps taken in this regard.

(d) The Committee urges the Government to conduct an independent inquiry into the allegations of excessive force used by the police in this case, and ensure that adequate instructions are given so that such situations do not occur in the future. The Committee requests the Government to keep it informed of developments.

(e) The Committee requests the Government to solicit information from the employers' organizations concerned, with a view to having at its disposal their views, as well as those of the enterprise concerned, on the questions at issue.

CASE NO. 2902

INTERIM REPORT

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

Allegations: The complainant organization alleges refusal by the management of an electricity enterprise 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

505. The Committee last examined this case at its March 2015 meeting, when it presented an interim report to the Governing Body [see 374th Report, paras 587–598, approved by the Governing Body at its 323rd Session].

506. The Government sent its partial observations in communications dated 28 May and 21 August 2015.

507. 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

508. At its March 2015 meeting, the Committee made the following recommendations [see 374th 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 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.

B. The Government's reply

509. In its communications dated 28 May and 21 August 2015, the Government indicates that: (i) the High Court of Sindh, on a writ petition from the Karachi Electric Supply Enterprise (hereinafter, the electricity enterprise) management, had restrained members of the Karachi Bench of the National Industrial Relations Commission (NIRC) from hearing petitions filed by members of the Karachi Electric Supply Corporation Labour Union (KESC); (ii) following the March 2015 meeting between the Federal Secretary of the Ministry of Overseas Pakistani Human Resource Development (OPHRD) and the Chairman of the Committee, the Ministry of Law, Justice and Human Rights was requested to depute a counsel to ensure that the stay granted by the High Court of Sindh could be vacated, thus enabling the NIRC to hear and conclude the pending cases of the KESC workers; (iii) the Ministry of Law, Justice and Human Rights nominated the Deputy Attorney General, High

Court of Sindh, to represent the Government before the High Court of Sindh with a view to vacating the stay; (iv) the Ministry of OPHRD held a meeting between the company management and the complainant to facilitate resolution of the issues but the management did not attend the meeting, claiming that the matter was sub judice and that a number of cases against the complainant were pending before the High Court of Sindh; (v) according to the company, reinstatement cases of workers were still pending before the Karachi Bench of the NIRC due to the stay granted by the High Court of Sindh and the company could not provide further comments due to the sub judice nature of the matter; and (vi) the Ministry of OPHRD is actively engaged with the Labour Department of the Sindh Province with a view to resolving the issue and any new developments will be communicated to the Committee. The Government adds that the Employers' Federation of Pakistan (EFP) indicated that most of the 4,500 staff retrenched in 2011 have availed themselves of the voluntary separation scheme offered by the company.

C. The Committee's conclusions

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

511. *With regard to the alleged refusal by the management to implement a tripartite agreement to which it was a party, the Committee recalls that the agreement in question was signed in July 2011 and provided for the reassignment of the 4,500 company workers declared redundant, as well as the recovery of unpaid wages. The Committee also recalls that the Government previously made reference to an agreement reached between the company management and the complainant as a result of an effective intervention of the governor of Sindh but failed to specify whether it was referring to the July 2011 tripartite agreement or a more recent agreement addressing the subsequent allegations of violence and dismissals. Noting the Government's indication that, according to the Employers' Federation of Pakistan (EFP), the majority of the 4,500 retrenched staff accepted a voluntary separation scheme offered by the company, the Committee observes that the July 2011 agreement providing for reassignment of the retrenched workers does thus not appear to have been implemented. The Committee, therefore, requests the Government to indicate whether a subsequent agreement replaced the July 2011 agreement, and if so, to provide further information on it, including the issues covered, and to specify the labour situation of those retrenched workers who did not accept the voluntary separation scheme offered by the company.*

512. *The Committee further notes the Government's indication that, based on a writ petition from the company, the High Court of Sindh restrained the Karachi Bench of the National Industrial Relations Commission (NIRC) from hearing petitions filed by members of the KESC but that several measures were taken or envisaged to address this matter, including: the appointment of a counsel to ensure that the stay would be lifted; the appointment of the Deputy Attorney General, High Court of Sindh, to represent the Government before the High Court of Sindh; and the Government's engagement with the Labour Department of the Sindh Province, as well as its efforts, albeit unsuccessful, to hold a meeting between the company management and the complainant to facilitate resolution of the issues. The Committee takes due note of these measures but observes that, according to the information provided, the stay ordered by the High Court of Sindh has not yet been lifted and the NIRC continues to be restrained from hearing the KESC workers' petitions. While further noting that the exact substance of the workers' petitions is unclear from the information provided – these could relate to any of the complainant's allegations: implementation of the July 2011 agreement, violence during a public demonstration in August 2011, subsequent dismissals and criminal*

charges against 30 trade union office bearers – the Committee recalls that respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial. Justice delayed is justice denied [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, paras 820 and 105]. The Committee expects that the High Court of Sindh will finally conclude on this matter without delay so that the claims of anti-union discrimination can be effectively examined either by the NIRC or the appropriate judicial body. The Committee also requests the Government to take all necessary measures to enable the concerned workers to have effective access to such means of redress for any alleged prejudice based on trade union membership or activities and further urges it to promote negotiation between the complainant and the company with a view to solving any pending issues. The Committee requests the Government to inform it of any developments in this regard.*

513. *In relation to the allegations that violence was used against trade union members during the August 2011 demonstration against the refusal of the company to implement the July 2011 tripartite agreement, injuring nine, and that 30 trade union office bearers were dismissed following this demonstration and/or criminal charges were brought against them, the Committee regrets the Government once again fails to provide any information on the measures taken to institute independent investigations in this regard. The Committee, therefore, urges the Government to provide information on the investigations instituted into these 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.*

514. *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

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

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

(b) The Committee expects that the High Court of Sindh will finally conclude on the matter concerning KESC workers' petitions without delay so that the

claims of anti-union discrimination can be effectively examined either by the NIRC or the appropriate judicial body. The Committee also requests the Government to take all necessary measures to enable the concerned workers to have effective access to such means of redress for any alleged prejudice based on trade union membership or activities, and further urges it to promote negotiation between the complainant and the company with a view to solving any pending issues. The Committee requests the Government to inform it of any developments in this regard.

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

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

CASE NO. 3019

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

Complaint against the Government of Paraguay presented by
– the National Confederation of Workers (CNT)
– the Central Confederation of Workers–Authentic (CUT–A) and
– the Trade Union Confederation of Workers of the Americas (CSA)

Allegations: Deficiencies in sanctions procedures of the labour inspectorate in relation to corruption practices, barriers to the creation of trade unions, dismissals of union leaders and members, and obstacles to collective bargaining and anti-union discrimination

516. The Committee examined this case at its October 2015 meeting and on that occasion presented an interim report to the Governing Body [see 376th Report, paras 825–847]. The Central Confederation of Workers–Authentic (CUT–A) sent new allegations in a communication dated 20 July 2016.

517. The Government sent its observations in communications dated 9 November 2016, 9 January and 6 February 2017.

518. 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

519. In its previous examination of the case, the Committee made the following recommendations [see 376th Report, para. 847]:

(a) Taking into account the fact that section 292 of the Labour Code, by requiring 20 per cent of workers to be affiliated in public sector institutions of up to 500 employees, could result in a requirement of up to 100 workers to establish a trade union, the Committee requests the Government to review this provision in consultation with the social partners concerned in order to not, in effect, undermine the right of public sector employees to establish and join organizations of their own choosing.

(b) The Committee urges the Government to provide detailed information on the alleged legal irregularities in the establishment of SINFAPAVI which led it to deny the union its final registration. Furthermore, in the light of the existence of numerous allegations of interference by management relying on legal provisions to challenge the final registration of unions, the Committee invites the Government to review on a tripartite basis without delay the use of employers' powers to contest the registration of unions.

(c) The Committee requests the Government to provide additional information on the allegations of anti-union dismissals made against the MAEHARA and IPFSA enterprises. In this regard, taking account of the general nature of the allegations of anti-union discrimination it has received, the Committee invites the complainants to provide additional information so that it may examine those and other allegations of anti-union

dismissals and discrimination in greater detail, and to seek the relevant additional observations from the Government.

(d) The Committee invites the Government to hold consultations with the social partners, to establish mechanisms to guarantee effective protection against acts of anti-union discrimination, including rapid and impartial procedures, with provision for appeals and sufficiently dissuasive sanctions. The Committee requests the Government to keep it informed in this respect.

(e) The Committee firmly expects the Government to provide more information on the grounds for the detention of trade unionists protesting outside the premises of the MAEHARA enterprise, and to keep it informed of the outcome of the resultant proceedings.

(f) The Committee requests the Government to provide its observations on the following allegations to which it has yet to reply: (1) procedures of the labour authorities in the event of violations of labour or union rights involving a high degree of corruption and which last one year; failure to deal with complaints made by trade unions; and the labour inspectorate's conducting inspections without the participation of the unions; (2) the Ministry of Labour's refusal to register more than 90 per cent of the collective agreements in the public service; (3) the passive attitude of the labour authorities to the illegal replacement of striking workers by other workers; and (4) the cancellation of the registration of the Union of Workers of the DORAM SA Enterprise. Furthermore, the Committee invites the Government to address these issues in tripartite dialogue with the most representative organizations of employers and workers, and to keep the Committee informed in this regard.

B. The complainants' new allegations

520. In a communication dated 20 July 2016, the CUT–A reported that Citibank (hereinafter, the bank) committed acts of anti-union discrimination against Mr Oscar Ricardo Paredes Dürrling, who worked in the bank from 1980 to 2014 and was a member of the executive committee of the Union of Citibank Employees (SECP) (a union which ceased to exist in around 1997). The CUT–A indicated that, in accordance with the pay adjustment mechanism agreed upon in the collective agreement on working conditions signed in 1995 by the SECP, Mr Paredes Dürrling's salary should have been automatically adjusted in accordance with the consumer price index. However, between 2002 and 2014 the real increase in Mr Paredes Dürrling's salary was 7.2 per cent compared with an increase in the consumer price index of 83.9 per cent, and between October 2001 and February 2006 his salary remained unchanged. The complainant organization adds that on various occasions the bank tried to obtain his voluntary resignation, and that over the past 12 years he felt discriminated against and persecuted.

521. The complainant organization indicates that on several occasions Mr Paredes Dürrling requested the bank to readjust his salary as it had for the other employees whose salaries the bank had increased between 48 per cent and 219 per cent but that, following the bank's constant refusal to adjust his salary, on 28 August 2014 Mr Paredes Dürrling did not go to work and after 34 years of service terminated his contract on account of the failure to pay the corresponding salary. According to the complainant, section 84 of the Labour Code provides that failure to pay the corresponding salary at the agreed or usual time and place is a legitimate reason for termination by the worker's unilateral will. The bank ordered the worker to return to his post but he did not show up and on 29 August 2014 he filed a claim against the bank demanding readjustment of his salary, regularization of pension payments and compensation for moral damages (verbal insults and social isolation). The bank, in turn, filed a case claiming compensation for unjustified resignation.

522. The CUT–A has appended the text of the request filed by Mr Paredes Dürrling against the bank, as well as a copy of the first instance ruling issued on 8 April 2016 by the third rota

labour court, which states that: (i) the provision of the 1995 collective agreement concerning salary readjustment is in force since it was incorporated into the complainant's labour contract; (ii) the bank is thereby ordered to pay compensation to the complainant for the amount claimed; (iii) the case filed by the bank claiming compensation for unjustified resignation is dismissed; and (iv) the request for reparation for failure to pay into the pension fund and compensation for moral damages is dismissed since the complainant did not prove that he had been a victim of bullying. Mr Paredes Dürrling appealed this ruling and the case is currently pending before the First Chamber of the Labour Appeals Court.

C. The Government's reply

523. In a communication of 9 November 2016, the Government replied to the new allegations of anti-union discrimination presented by the CUT–A. The Government sent the bank and its own observations, according to which: (i) Mr Paredes Dürrling's claim against the bank is currently pending before the First Chamber of the Labour Appeals Court and is reserved for judgement; (ii) the bank has not committed acts of anti-union discrimination given that the Paraguay branch does not have a workers' union; the last union stopped operations in around 1997; there is no record of Mr Paredes Dürrling having been the leader of this union and he never invoked trade union status in the judicial proceedings that he himself launched; (iii) the bank did not readjust his salary in accordance with the 1995 collective agreement because it was only in force until 1997 and his salary could not be compared with that of his colleagues who hold different posts; and (iv) the bank did not dismiss Mr Paredes Dürrling but rather he ordered the bank to pay a specific amount within 48 hours, as salary readjustment and damages, and resigned even before the end of the 48-hour period.

524. The Government has appended various documents to its communication, including: (i) a copy of decision No. 400 of the Ministry of Labour dated 31 July 2001 registering the members of the last executive committee of the SECP who were elected at the extraordinary general assembly on 5 April 2001, who do not include Mr Paredes Dürrling; and (ii) a copy of a report by the Department of Collective Relations and Trade Union Registration of the Ministry of Labour stating that the union has been "inactive" since 2001.

525. In its communications of 9 January and 6 February 2017, the Government sent its observations on some of the recommendations made by the Committee in its previous examination of the case. With regard to recommendation (a) of the Committee (review section 292 of the Labour Code, in consultation with the social partners concerned, which requires that 20 per cent of workers be affiliated in public sector institutions of up to 500 employees, as this could result in a requirement of up to 100 workers to establish a trade union, thus undermining the right of public sector employees to establish organizations of their own choosing), the Government indicates that: (i) this section of the Labour Code has not been examined by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in relation to the establishment of trade unions in the public sector; (ii) in order to avoid an excessively strict minimum threshold for public servants, national legislation fixes the percentage for public servants at a level that does not restrict the possibility for them to freely establish their organizations; and (iii) the Ministry of Labour, Employment and Social Security has made a considerable effort to facilitate the establishment of trade unions, such as setting up an online trade union registration system to streamline the procedures the unions must follow.

526. With regard to recommendation (b) of the Committee (detailed information on the alleged legal irregularities in the establishment of the Union of Workers of the Paraguayan Glass Factory (SINFAPAVI), which led the Government to deny the union its final registration and conduct a review on a tripartite basis of the use of employers' powers to contest the registration of unions), the Government indicates that while the Legal Adviser of the General Labour Directorate advised preliminary registration of SINFAPAVI, the enterprise

representative objected to this registration on the grounds that: (i) the registration did not fulfil the official requirements of Chapter III of the Labour Code; (ii) the General-Secretary of the trade union had left the enterprise of his own volition and for personal reasons; and (iii) the union did not have the required number of members to establish a union. The Government emphasizes that the union officials refrained from responding to the objections raised and that, therefore, the registration of the union was not finalized. The Government also reports that, under Decree No. 5159 of 18 April 2016, a Tripartite Advisory Council was established, under the Ministry of Labour, Employment and Social Security, which meets at least once a month to evaluate socio-economic and labour issues and make recommendations on questions relating to the competency of the Ministry of Labour, Employment and Social Security.

527. With regard to recommendation (c) of the Committee, the Government has forwarded the observation of the MAEHARA enterprise, according to which the workers' employment was terminated owing to restructuring carried out by the enterprise to reduce its labour and align itself with environmental and technological standards. The enterprise also indicates that the workers received the corresponding compensation and that a judgement of payment on consignment was handed down for those who were refused their entitlements, whereby those wages were deposited in judicial accounts. According to the enterprise, the workers whose employment was terminated established a trade union immediately after being relieved of their posts and the request for registration of the union was refused by the administrative labour authorities because it did not meet the minimum number of members required under section 292 of the Labour Code (20 members to establish an enterprise-level union).

528. With regard to recommendation (d) of the Committee (consultations with the social partners to establish mechanisms to guarantee effective protection against acts of anti-union discrimination), the Government reports that, in April 2014, a Memorandum of Commitment was signed between the public sector and the trade union federations and that round tables have been set up at which the trade union federations requested training on compliance with legislation on freedom of association. The Government therefore underlines that an online system for registering and updating data has been established enabling the trade unions to follow up cases and manage documents, thereby minimizing the red tape associated with those procedures.

529. With regard to recommendation (e) of the Committee (information on the grounds for the detention of trade unionists protesting outside the premises of the enterprise), the Government has forwarded the enterprise's observations, which reveal that the arrests of Mr Leoncio Brítez, Mr Gustavo Adolfo Jara Aquino and Mr Teodoro Enciso were made, further to complaints submitted in April 2012 to the national police, that these individuals had carried out acts of vandalism at the entrance to the enterprise, brandished wooden sticks, burned tyres and blocked access to the enterprise. The Government emphasizes that, as shown in the reports, police statement and arrest warrant of 24 April 2012, the arrests were ordered for the alleged commission of crimes against the safe coexistence of people and for disturbance of the public peace, which have no bearing on trade union affairs. The Government has attached the reports of the Public Prosecution Service and the national police related to the criminal case before the court against the detainees.

530. With regard to recommendation (f)(1) of the Committee (procedures of the labour authorities in the event of violations of labour or union rights involving a high degree of corruption, and which last one year; failure to deal with complaints made by trade unions; and the labour inspectorate's conducting inspections without the participation of the unions), the Government indicates that the reports and inspection requests made by the trade union organizations are followed up by issuing orders and when labour inspectors perform inspection duties in workplaces, they are accompanied by an employer representative and a union representative if there is one, or by the most senior worker in the enterprise, if the

employer authorizes access for these officials to the workplace. The Government adds that one of its priorities is to modernize the labour inspectorate and increase the effectiveness of inspection procedures. In this connection, the Government reports that, in 2015, 30 new labour inspectors were recruited who were trained in areas relating to the Conventions ratified by the country. The Government further highlights that various measures have been implemented to combat corruption, such as the creation of a website for the submission of complaints concerning allegations of corruption that have an impact on public institutions and the establishment of the Anti-corruption and Transparency Directorate under the Ministry of Labour, Employment and Social Security.

531. With regard to recommendation (f)(2) of the Committee (the Ministry of Labour's refusal to register more than 90 per cent of the collective agreements in the public service), the Government indicates that: (i) the Civil Service Secretariat is empowered to certify and register collective agreements on working conditions in state bodies and undertakings where they meet the requirements of form and content for their validation; (ii) collective agreements should be in line with the terms under Act No. 508/1994 on collective bargaining in the public sector; (iii) the draft collective agreements presented to the Civil Service Secretariat included benefits for public servants which were not subject to negotiation with the highest authority of the relevant institution, owing to which they could not be adopted; and (iv) public sector benefits are provided for in Act No. 1626/2000 and in the Act on the national general budget, and their inclusion in a collective agreement is therefore inappropriate since the public authorities are not legally competent to negotiate these issues.

532. With regard to recommendation (f)(3) of the Committee (the passive attitude of the labour authorities to the illegal replacement of striking workers by other workers), the Government indicates that the labour inspectorate oversees the non-replacement of striking workers during the strike, which is reported and communicated to the Administrative Labour Authorities with a specific period of advance notice. Where a replacement is detected, management is informed and the case is referred to the legal adviser. The Government quotes the names of certain enterprises in which monitoring of replaced workers was conducted in 2014 and 2015.

533. With regard to recommendation (f)(4) of the Committee (cancellation of the registration of the Union of Workers of the DORAM SA Enterprise), the Government indicates that while the enterprise representative raised objections to the establishment of the trade union, these were contested by the General-Secretary of the trade union and the legal adviser of the Ministry advised that the objections be dismissed and registration be finalized. However, following this, the members of the trade union executive committee (with the exception of the General-Secretary) expressed their wish to annul the final recognition of the trade union given that several of them had left the enterprise. Although the General-Secretary of the trade union urged that a decision be issued on the union's final recognition, the legal adviser of the Ministry recommended that the appellants' request be upheld and that the union's final registration be annulled. The General-Secretary of the trade union filed an appeal against this decision but subsequently withdrew it and hence the case was closed.

D. The Committee's conclusions

534. *The Committee recalls that this case concerns deficiencies in sanctions procedures of the labour inspectorate in relation to corruption practices, barriers to the creation of trade unions, dismissals of union leaders and members, obstacles to collective bargaining and anti-union discrimination.*

535. *With regard to recommendation (a) (review section 292 of the Labour Code in consultation with the social partners concerned), the Committee notes the Government's indications that: (i) this section of the Labour Code has not been examined by the CEACR as it applies to the*

establishment of trade unions in the public sector; (ii) in order to avoid an excessively strict minimum threshold for public servants, national legislation fixes the percentage for public servants at a level that does not restrict the possibility for them to freely establish their organizations; and (iii) the Ministry of Labour, Employment and Social Security has made a considerable effort to facilitate the establishment of trade unions, such as setting up an online trade union registration system to streamline the procedures the unions must follow. The Committee recalls that in this case it examined specific allegations on the way in which section 292 of the Labour Code undermines the rights of public sector workers' organizations and noted that a requirement that 20 per cent of workers be affiliated in public sector institutions of up to 500 employees could result in a requirement of up to 100 workers to establish a trade union, and that this could, in effect, undermine public sector workers' rights to establish organizations of their own choosing. In the light of the foregoing, the Committee once again requests the Government to hold consultations with the social partners concerned with a view to ensuring that section 292 of the Labour Code does not, in effect, undermine the right of public sector employees to establish organizations of their own choosing.

536. *With regard to recommendation (b) made during its last examination of the case (alleged legal irregularities in the establishment of SINFAPAVI which led the Government to deny the union its final registration), the Committee notes the Government's statement that although the Legal Adviser of the General Labour Directorate advised preliminary registration of the union, the enterprise raised objections on grounds that: (i) the registration did not fulfil the official requirements of Chapter III of the Labour Code; (ii) the General-Secretary of the trade union had left the enterprise of his own volition; and (iii) the union did not have the required number of members to establish a union. The Committee notes that the Government emphasizes that the union officials refrained from responding to the objections raised and that, therefore, the union's registration was not finalized. The Committee notes that the documents provided by the Government reveal that 20 members of the union gave up their membership of their own free will on 21 and 22 June 2011, which is to say a few days before the union requested its registration from the General Labour Directorate. The Committee also notes that these voluntary membership withdrawals from SINFAPAVI made it possible for the enterprise to challenge the union's final registration.*

537. *The Committee had also requested the Government in its recommendation (b) in the light of the existence of numerous allegations of interference by management relying on legal provisions to challenge the final registration of unions, to review on a tripartite basis the use of employers' powers to contest the registration of unions. In this respect, the Committee notes that the Government reports that in April 2016 the Tripartite Advisory Council was established under the Ministry of Labour, Employment and Social Security, which meets at least once a month to evaluate socio-economic and labour issues and make recommendations on questions regarding the competency of the Ministry of Labour, Employment and Social Security. The Committee requests the Government to keep it informed of the tripartite discussions held in the Tripartite Advisory Council or in any other setting in relation to the use of employers' powers to contest the registration of unions.*

538. *With regard to recommendation (c), the Committee notes the observations of the enterprise forwarded by the Government, according to which: (i) the workers' employment was terminated owing to restructuring carried out by the enterprise to reduce its labour; (ii) the workers received the corresponding compensation and a judgement of payment on consignment was handed down for those who were refused their entitlements, whereby those wages were deposited in judicial accounts; and (iii) the workers whose employment was terminated established a trade union immediately after being relieved of their posts, which could not be registered because it did not meet the minimum number of members required under section 292 of the Labour Code (20 members to establish an enterprise-level union). The Committee, while noting the enterprise's observations, recalls that, taking account of*

the general nature of the allegations of anti-union discrimination raised, it had invited the complainants to provide additional information so that it may examine those and other allegations of anti-union dismissals and discrimination in greater detail, and to seek the relevant additional observations from the Government. Noting that the complainants have not provided such information, and that without it an in-depth examination of the allegations of anti-union dismissals is not possible, the Committee will not pursue its examination of these allegations.

539. *With regard to recommendation (d) (consultations with the social partners, to establish mechanisms to guarantee effective protection against acts of anti-union discrimination), the Committee notes the Government's indication that in April 2014 a Memorandum of Commitment was signed between the public sector and the trade union federations, under which round tables on freedom of association had been set up at which the trade union federations had requested training on compliance with legislation on freedom of association. The Committee also notes that the Government underlines that an online system for registering and updating data has been established enabling the trade unions to follow up cases and manage documents, thereby minimizing red tape. Recalling that for many years the CEACR has been observing the need to strengthen the legal provisions against anti-union discrimination and that this Committee has in the past requested the Government "in consultation with the social partners, to ensure effective national procedures for the prevention and sanctioning of anti-union discrimination" [see Case No. 2648, 355th Report, para. 963], the Committee requests the Government to inform the CEACR, to which the legislative aspects of the case are referred, of the consultations held with the social partners to establish mechanisms to guarantee effective protection against acts of anti-union discrimination, including rapid and impartial procedures, with provision for appeals and sufficiently dissuasive sanctions.*

540. *With regard to recommendation (e), the Committee notes that the Government has forwarded the enterprise's observations, according to which the arrests of Mr Leoncio Brítez, Mr Gustavo Adolfo Jara Aquino and Mr Teodoro Enciso were made further to the complaints submitted in April 2012 to the national police that these individuals had carried out acts of vandalism at the enterprise entrance, brandished wooden sticks, burned tyres and blocked access to the enterprise. The Government emphasizes that, as shown in the complaints, police statement and arrest warrant of 24 April 2012, the arrests were ordered for the alleged commission of crimes against safe cohabitation of people and for disturbance of the public peace, which have no bearing on trade union affairs. Noting that, according to the reports of the Public Prosecution Service and the national police attached by the Government, the arrest warrant was issued on 24 April 2012, the Committee urges the Government to indicate whether Mr Leoncio Brítez, Mr Gustavo Adolfo Jara Aquino and Mr Teodoro Enciso remain in detention, to specify the status of the criminal case against them and to forward a copy of the court rulings once they have been issued.*

541. *With regard to recommendation (f)(1) of the Committee (procedures of the labour authorities in the event of violations of labour or union rights involving a high degree of corruption; failure to deal with complaints made by trade unions; and the labour inspectorate's conducting inspections without the participation of the unions), the Committee notes the Government's indication that labour inspectors perform inspection duties in workplaces accompanied by an employer representative and a trade union representative if there is one or by the most senior worker in the enterprise, if the employer authorizes access for these officials to the workplace. The Committee also notes that, according to the Government, one of its priorities is to modernize the labour inspectorate and increase the effectiveness of inspection procedures and that in 2015, 30 new labour inspectors were recruited who were trained in areas relating to the Conventions ratified by the country. The Committee also notes the various measures implemented by the Government to combat corruption, such as the creation of a website for the submission of*

complaints concerning allegations of corruption affecting public institutions and the establishment of the Anti-corruption and Transparency Directorate under the Ministry of Labour, Employment and Social Security.

542. *With regard to recommendation (f)(2) of the Committee (the Ministry of Labour's refusal to register more than 90 per cent of the collective agreements in the public service), the Committee notes the Government's indication that: (i) the Civil Service Secretariat is empowered to certify and register collective agreements on working conditions in state bodies and undertakings where they meet the requirements of form and content for their validation; (ii) collective agreements should be in line with the terms under Act No. 508/1994 on collective bargaining in the public sector; (iii) the draft collective agreements presented to the Civil Service Secretariat included benefits for public servants which were not subject to negotiation with the highest authority of the relevant institution, owing to which they could not be adopted; and (iv) public sector benefits are provided for in Act No. 1626/2000 and in the Act on the national general budget, and their inclusion in a collective agreement is therefore inappropriate since the public authorities are not legally competent to negotiate these issues. In this respect, the Committee has considered that the exercise of financial powers by the public authorities in a manner that prevents or limits compliance with collective agreements already entered into by public bodies is not consistent with the principle of free collective bargaining [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 1034]. The Committee also recalls that, with regard to the requirement that draft collective agreements in the public sector must be accompanied by a preliminary opinion on their financial implications issued by the financial authorities, and not by the public body or enterprise concerned, the Committee noted that it was aware that collective bargaining in the public sector called for verification of the available resources in the various public bodies or undertakings, that such resources were dependent on state budgets and that the period of duration of collective agreements in the public sector did not always coincide with the duration of the State Budgetary Law – a situation which could give rise to difficulties. The body issuing the above opinion could also formulate recommendations in line with government economic policy or seek to ensure that the collective bargaining process did not give rise to any discrimination in the working conditions of the employees in different public institutions or undertakings. Provision should therefore be made for a mechanism which ensured that, in the collective bargaining process in the public sector, both trade union organizations and the employers and their associations were consulted and could express their points of view to the authority responsible or assessing the financial consequences of draft collective agreements. Nevertheless, notwithstanding any opinion submitted by the financial authorities, the parties to collective bargaining should be able to conclude an agreement freely [see* ***Digest****, op. cit., para. 1037]. The Committee invites the Government to examine this matter of collective agreements in the public sector with the social partners concerned in the light of the aforementioned principles.*

543. *With regard to recommendation (f)(3) of the Committee (the passive attitude of the labour authorities to the illegal replacement of striking workers by other workers), the Committee notes the Government's indication that the labour inspectorate monitors the non-replacement of striking workers during the strike, which is reported and communicated to the Administrative Labour Authorities with a specific period of advance notice. Where a replacement is detected, management is informed and the case is referred to the legal adviser. The Government quotes the names of certain enterprises in which monitoring of replaced workers was conducted in 2014 and 2015.*

544. *With regard to recommendation (f)(4) (cancellation of a union registration), the Committee notes the Government's indication that although the legal adviser of the Ministry advised that the objections raised by the enterprise should be dismissed and the trade union's registration should be finalized, several members of the executive committee of the trade*

union requested that the union's final recognition be annulled as they were no longer working in the enterprise. While the General-Secretary of the union requested final recognition of the union, the legal adviser of the Ministry recommended that the appellants' request be upheld and that the union's final registration be annulled. The Committee notes that the General-Secretary of the union filed an appeal against that decision but subsequently withdrew it and hence the case was closed.

545. *With regard to the new allegations presented by the CUT–A in its communication of 20 July 2016, the Committee notes that these related to acts of anti-union discrimination against Mr Oscar Ricardo Paredes Dürrling, who worked at the bank from 1980 to 2014 and was a member of the executive committee of the SECP (a union which, according to information in annexed documents, has been inactive since 2001). In particular, the complainant alleges that on various occasions the bank tried to obtain his voluntary resignation and that since 2001, and unlike his colleagues, the bank did not readjust his salary in accordance with the consumer price index, thereby failing to comply with the 1995 collective agreement. Following the bank's constant refusal to readjust his salary, on 28 August 2014 Mr Paredes Dürrling did not go to work and after 34 years of service terminated his contract on account of the failure to pay the corresponding salary. The bank ordered the worker to return to his post but he did not show up and on 29 August 2014 he filed a claim against the bank demanding readjustment of his salary, regularization of pension payments and compensation for moral damages (verbal insults and social isolation).*

546. *The Committee notes that, as indicated by the complainant and the Government: (i) in the judicial proceedings in question, the bank alleged that it was not appropriate to readjust salaries in accordance with the collective agreement because it was in force until 1997 and that his salary cannot be compared with that of his colleagues, who hold different posts; (ii) in a ruling issued on 8 April 2016, the labour court decided that the provision of the collective agreement concerning salary readjustment was in force since it had been incorporated into the complainant's labour contract and ordered the bank to pay him compensation for the amount claimed but dismissed the request for reparation for failure to pay into the pension fund and compensation for moral damages, since the complainant did not prove that he had been a victim of bullying; (iii) in these proceedings the complainant did not allege that the bank had discriminated on grounds of trade union membership or trade union activities; and (iv) Mr Paredes Dürrling appealed this ruling and the case is currently pending before the Labour Appeals Court.*

547. *The Committee notes that, while the complainant organization alleges that over the past 12 years, out of a total of 34 years of work, the bank did not readjust Mr Paredes Dürrling's salary as it should have, and that on various occasions he felt discriminated against, the allegations and documents provided do not prove that the bank has discriminated on grounds of his trade union membership or that it refused to readjust his salary on account of his participation in trade union activities up to 2001. The Committee also notes that in the proceedings before the labour courts, the complainant did not claim that the bank had discriminated on grounds of his trade union membership or trade union activities. In light of the foregoing, the Committee will not pursue the examination of these allegations.*

The Committee's recommendations

548. ***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 hold consultations with the social partners concerned with a view to ensuring that section 292 of

the Labour Code does not, in effect, undermine the right of public sector employees to establish organizations of their own choosing.

(b) The Committee requests the Government to keep it informed of tripartite discussions held in the Tripartite Advisory Council or in any other setting in relation to the use of employers' powers to contest the registration of unions.

(c) The Committee requests the Government to inform the CEACR, to which the legislative aspects of the case are referred, of the consultations held with the social partners to establish mechanisms to guarantee effective protection against acts of anti-union discrimination, including rapid and impartial procedures, with provision for appeals and sufficiently dissuasive sanctions.

(d) The Committee urges the Government to indicate whether Mr Leoncio Brítez, Mr Gustavo Adolfo Jara Aquino and Mr Teodoro Enciso remain in detention, to specify the status of the criminal case against them and to forward a copy of the court rulings once they have been issued.

(e) The Committee invites the Government to examine the matter of collective agreements in the public sector with the social partners concerned in the light of the aforementioned principles.

CASE NO. 3180

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

Complaint against the Government of Thailand presented by
– the Thai Airways International Union (TG Union),
– the State Enterprise Workers Relations Confederation (SERC) and
– the International Transport Workers' Federation (ITF)

Allegations: The complainant organizations allege judicial and disciplinary harassment of four leaders of the TG Union. They further allege that the conduct of the company in the dispute that prompted the complaint, exposes a number of failures in Thai law to protect workers' and trade union rights, as well as that the disputed ruling highlights a number of inconsistencies between the law and the principles of freedom of association and the right to collective bargaining

549. The complaint is contained in a communication from the Thai Airways International Union (TG Union), the State Enterprise Workers Relations Confederation (SERC) and the International Transport Workers' Federation (ITF) dated 15 January 2016.

550. The Government provided its observations in communications dated 14 March 2016 and 24 February 2017.

551. Thailand 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. The complainants' allegations

552. In a communication dated 15 January 2016, the complainant organizations, the TG Union, SERC and ITF allege that the conduct of Thai Airways International Public Company Limited (hereinafter; the company) in the dispute that prompted this complaint exposes a number of failures in Thai law to protect workers' and trade union rights, for which the Government is responsible as a member of the ILO. While this complaint focuses on the Government's failures to adequately respect trade union and workers' rights in accordance with the principles of freedom of association as set forth in ILO Conventions Nos 87 and 98, the complainants also contend that the Government does not meet the minimum requirements contained in Conventions Nos 135, 151 and 154 on workers' representatives, public sector labour relations and collective bargaining, respectively.

553. The complainants indicate that the company, originally founded in 1960 as a joint venture between an international airline and Thailand's domestic carrier, was launched on 1 April 1988 and is a publicly traded company with 51 per cent of its shares owned by the country's Ministry of Finance. From its hub at Suvarnabhumi Airport, the company flies to 78 destinations in 35 countries using a fleet of 89 aircraft. It is a founding member of Star Alliance. As of 2015, almost 30,000 workers are working at the company, of which 21,600 are directly employed by the company.

554. The TG Union was first founded in 1979. It was dissolved by the military junta in 1991 following a blanket ban on trade unions in the public sector. After operating as an employees' association for nine years, the union was re-established following labour law reforms. Today, it represents 13,000 members in all categories of the company (out of an eligible pool of 19,000 workers). The TG Union represents the voice of labour in the company's Bipartite Labour Relations Committee. Nationally; the TG Union is affiliated to SERC, where it plays a leadership role. Founded in 1980, SERC brings together 45 public sector unions which represent 70 per cent of organized labour in the Thai public sector. It joined the International Trade Union Confederation in 2008. Internationally, the TG Union has been an affiliate of the ITF since 1996.

555. The complainants allege that on 2 January 2013, the company's chairperson announced bonus payments amounting to no less than one month's pay for all employees (including managers) to be paid before the end of that month. On 17 January 2013, following two weeks of silence from management and spurred on by its members, the TG Union sent a letter to the company's chairperson calling for a 7.5 per cent salary increase and bonus payments equivalent to two months' pay for all employees. The List of Demands was re-submitted on 18 January 2013 to the company's chairperson and the Minister of Transport ahead of a board meeting scheduled for later that day. That afternoon, the board announced that it had agreed to give all employees a bonus equivalent to one month's pay, but that there were to be no salary increases.

556. According to the complainants, following this announcement, around 1,000 disgruntled employees, who were either off duty or on rest breaks, spontaneously assembled at the ground equipment service centre at Suvarnabhumi airport. The gathering called on the TG Union to explain the board's decision. These employees protested the board's decision, called on the company's chairperson to honour the commitments made on 2 January 2013

and requested him to address the crowd in person, but he failed to do so. The employees continued their spontaneous protest until the evening of 19 January 2013, with many joining before or after work. The complainants underline that, during both days, some TG Union leaders attended the protest to appease employees and explain the union's requests and the board's decision, and that at no time did the TG Union or its leadership instigate or encourage the protestors.

557. The complainants state that, around 11 p.m. on 19 January 2013, the management and the TG Union leadership signed a memorandum of agreement (MoA), with a view to the Union calling on employees to end the protest. The TG Union made it clear at the time that it played no part in organizing the protest, but that it would use its position to encourage employees to end the action in the spirit of cooperation and social partnership. Among other things, it was agreed in the MoA that the TG Union would have further meetings with management to discuss the salary and bonus issues, and that no reprisals would be taken against employees who took part in the protest. The MoA explicitly states that: "It is deemed to be normal performance of the works. Therefore, no disciplinary transgression exists and the management shall not initiate legal proceedings, either in a civil or criminal matter, against the related employees who join in the assembly in good faith."

558. The complainants indicate that, at a meeting on 21 January 2013, management and the TG Union discussed the company's economic performance and whether it could fulfil the List of Demands. It was agreed by both parties that the company could not pay a two-month bonus, but that it was in a position to make a special incentive payment to all employees in addition to a one-month bonus. On 22 January 2013, the TG Union met with the company's chairperson and agreed on the outcomes of the previous day's meeting. According to the complainants, on 7 February 2013, a further meeting was held between the TG Union and management where it was finally agreed that a recommendation would be made to the board for a 7.5 per cent salary increment, a one-month bonus and a special incentive payment of 300 million Thai baht (THB) to be shared by all employees. On 8 February 2013, the board approved a resolution to, among other things, agree to management's recommendation.

559. The complainants denounce that, on 20 January 2014, the company filed a lawsuit against four leaders of the TG Union in the Central Labour Court (CLC) seeking damages over alleged losses directly attributable to the protest. The four defendants and their roles within the TG Union at the time of the protest were as follows: (i) Ms Chamsri Sukchotrat, President (now retired); (ii) Mr Damrong Waiyakanee, Vice-President; (iii) Mr Somsak Manop, Secretary; and (iv) Mr Suphorn Warakorn, Chairperson of the TG Union Subcommittee.

560. On 3 August 2015, the CLC ruled in favour of the company and ordered the four defendants to pay THB303,619,865 (circa US$8.6 million) in damages with interest accruing from the date of the protest. The Court took the view that the List of Demands signed by all four defendants amounted to a demand for an agreement relating to conditions of employment; that the protest amounted to industrial action contrary to the outright ban on strikes under the State Enterprise Labour Relations Act (SELRA); that the collective bargaining demand failed to comply with the procedure under the SELRA, thereby making it an unlawful collective bargaining demand; that the MoA was void ab initio due to it being signed by unauthorized signatories (this was despite five senior executives executing the document in apparent good faith); and that, as the List of Demands was deemed to fall outside the scope of the TG Union's remit, the Court held that the four defendants should be jointly liable in their personal capacities for the following damages: (i) damages resulting directly from the protest: THB499,677.50 for hiring replacement workers on 18 and 19 January 2013; and (ii) damages for loss of image/reputation THB157,640,671.84, and for negative coverage in print and television media THB142,500,401.

561. The complainants add that the four defendants filed an appeal to the Supreme Labour Court on 29 October 2015. The appeal concerned the following points of law: (i) the company did not obtain the requisite authorization of its board to file a case against the union leaders; (ii) the List of Demands did not constitute a collective bargaining demand under SELRA; (iii) the case was filed one day after the expiry of the limitation period for appeals; and (iv) the damages sought by the company were improperly calculated. The Supreme Labour Court only allowed the appeal on the issue of requisite authorization. Following a second appeal by the TG Union, the Supreme Labour Court decided that it would entertain all four grounds of appeal if the union paid in to the court as security the full claim amount. The TG Union has since filed a complaint against this decision.

562. According to the complainants, management opened, in addition to the court proceedings, disciplinary investigations against the three defendants still employed by the company. Following a conciliation meeting organized by the Labour Ministry in November 2015, the company agreed to suspend the disciplinary process pending the outcome of the appeal to the Supreme Labour Court.

563. In the complainants' view, ordering the TG Union leaders to pay $8.4 million in damages is an act of judicial harassment amounting to a gross violation of the rights to freedom of association and collective bargaining as set forth in Conventions Nos 87 and 98; in particular, the judgment highlights inconsistencies between national law and the principles of freedom of association and the right to collective bargaining.

564. The complainants believe that sections 25–27 of the SELRA governing public sector collective bargaining only offer limited collective bargaining machinery to the social partners. Indeed, the TG Union's List of Demands calling on the company to honour previous commitments relating to pay and bonuses was considered by the court to fall foul of the SELRA. The Committee on Freedom of Association (CFA) has held that: the right to bargain freely with employers constitutes an essential element of freedom of association, and trade unions, including those representing public sector workers, should have the right through collective bargaining or other lawful means to seek to improve the conditions of their members; that any interference by public authorities in this regard constitutes a restriction on that right; and that, in the context of Convention No. 151, a degree of flexibility can be afforded in the choice of procedures to be used in the determination of the terms and conditions of employment.

565. Therefore, in the complainants' view, sections 25–27 the SELRA, a breach of which can result in exorbitant fines or damages, do not conform to the principles of freedom of association. Furthermore, the complainants believe that, by accepting the company's claim that the MoA is void due to its defective execution, the court fails to recognize the importance of the social partners' obligation to negotiate in good faith. The complainants feel that the Government has failed to take measures to encourage and promote the full development and utilization of machinery for voluntary negotiations between social partners as per Article 4 of Convention No. 98.

566. The complainants recall that section 33 of the SELRA imposes a general prohibition on industrial action in the public sector, and section 77 stipulates penalties for strike action: up to one year of imprisonment or a fine, or both, for participation in a strike; and up to two years of imprisonment or a fine, or both for its instigation. The complainants underline that the TG Union denies having instigated the protest, and that the protest was lawful, as it did not amount to industrial action under the SELRA. Consequently, the Court's designation of the protest as a strike could not have been supported by national law. Furthermore, the complainants believe that, even if the protest did constitute prohibited industrial action under the SELRA, it is clear that Thai law is not in conformity with the principles of freedom of association.

567. The complainants stress that, in recognizing the right to strike, the CFA has stated that it regards the right as constituting a fundamental right of workers and of their organizations and one of the essential legitimate means through which workers and their organizations may promote and defend their economic and social interests. According to the complainants, while it would appear that the Government recognizes this fundamental right for private sector workers, it clearly does not hold the same view for public sector workers. The CFA has held that the right to strike may only be restricted or prohibited in the following cases: (i) in the public service only for public servants exercising authority in the name of the State; (ii) 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); or (iii) in the event of an acute national emergency and for a limited period of time. It is clear from the jurisprudence of the CFA that aviation workers employed by state-owned air carriers would not count as public servants exercising authority in the name of the state. Too broad a definition of the concept of public servant is considered to result in a very wide restriction or even a prohibition of the right to strike for these workers. The CFA has held that air travel does not constitute an essential service in the strict sense of the term. The same applies to transport services and public transport services generally.

568. The complainants conclude that, while it is clear that the Thai prohibition on strikes in the public sector cannot be justified by any of the reasons cited above, it also fails to give compensatory guarantees for workers deprived of that right. The CFA has held that such protection should include, for example, impartial conciliation and, eventually, arbitration procedures which have the confidence of the parties. In this regard, the complainants wish to highlight the TG's Union's complete lack of faith in the national bipartite and tripartite structures available to them. While the protest was designated as a strike in a civil law context and the TG Union leaders were not subject to penal sanctions, the complainants submit that the excessive penalties contained in section 77 of the SELRA contravene the principles of freedom of association.

569. As the CFA has previously concluded in similar cases, penalties of this nature can have an intimidating effect on trade unions and inhibit their legitimate trade union activities. Furthermore, by targeting individual trade union leaders, rank and file members and activists are discouraged from seeking leadership positions within their unions. In the complainants' view, the damages awarded to the company could lead to the bankruptcy of the four defendants and possibly the dissolution of the TG Union.

570. The complainants indicate that the TG Union can only appeal the Court's decision on points of law. They allege that the Court relied heavily on the company's version of events and its dubious damages calculations, so that the defendants have effectively had to accept an inaccurate set of facts. For example, the defendants vehemently deny that the company hired replacement workers during the protest. Furthermore, the complainants denounce that the presiding judge refused full disclosure of the company's documents to the TG Union in contravention of civil procedure rules. In the complainants' view, the Court's judgment is a political decision aimed at intimidating trade unionists. As the CFA has previously stated, the absence of guarantees of due process of law may lead to abuses and result in trade union officials being penalized by decisions that are groundless. This in turn can also create a climate of insecurity and fear which may affect the exercise of trade union rights. For these reasons, the complainants contend that the Government has failed to apply in practice the safeguards of normal judicial procedure embodied in Thai law.

571. Given the serious nature of the violations of trade union rights set out in the present complaint, the complainants respectfully request the Committee to find the Government to be in breach of the principles of freedom of association as set out in Conventions Nos 87 and 98 with a view to restoring the full exercise of those rights, and to urge the Government

to consider the appeal filed by the TG Union to have a suspensive effect with regard to the payment of damages.

B. The Government's reply

572. In a communication dated 24 February 2017, the Government confirms the facts alleged by the complainants and indicates, in addition, that: (i) the protesting employees prevented employees who did not join the assembly from entering to perform duties in substitution for the employees who had joined the assembly; (ii) one of the four defendants, Mr Somsak Manop, was terminated with the permission of the judiciary upon an intentional, criminal offense against the employer; (iii) as to the MoA dated 19 January 2013 referred to by the court, its negotiation and conclusion between the company and the TG Union took place under the bipartite system without any interference from the Government; (iv) as to the demand submitted to change the agreement of conditions of employment, it must be considered as accomplished, since the company agreed on 8 February 2013 to pay working benefits as demanded by the TG Union (salary increase of 7.5 per cent and bonus equivalent to 1 month's pay); (v) on 8 October 2015, the Government received a letter dated 6 October 2015 from the TG Union regarding the labour rights abuses committed by the company, the lawsuit for damages filed by the company and the judgment in favour of the company, urging it to settle the dispute between the parties, to attempt to withhold the enforcement of the judgment, to prevent the disciplinary punishment and to reform labour relations; and (vi) negotiations aiming to resolve the conflict between the company and the trade union have taken place on 28 October and 27 November 2015.

573. In its communications dated 14 March 2016 and 24 February 2017, the Government specifies that the conciliation led to the following result: (i) regarding the damages compensated by TG Union leaders at the order of the CLC, the parties agreed to await the verdict of the court as appealed by the TG Union; whether the appeal court will uphold the verdict of the CLC or not, the company will propose this issue to be an item on the agenda of the Relations Affairs Committee, the bipartite body in the State enterprise, in order to seek a mutual solution; (ii) regarding the disciplinary punishment to be imposed on two out of four members of the TG Union committee, while awaiting the court verdict concerning reinstatement, the company decided to suspend the inquiry until the end of the procedure in the appeal court; the parties agreed to propose this issue to be an item on the agenda of the Relations Affairs Committee after the end of the appeal proceedings in order to seek a mutual solution; and (iii) regarding the labour relations reform, the parties agreed to communicate more among themselves and to hold the Relations Affairs Committee meeting at least once a month for consulting with each other on any concerns raised and for mutually seeking labour solutions.

574. The Government states that the Memorandum of Negotiation was signed by representatives of the company and the TG Union on 27 November 2015.

575. In its communication dated 24 February 2017, the Government underlines that the CLC's order on payment of damages is not a sentence against the labour organization but rather concerns the individual leaders and, in addition, the lawsuit is not finalized yet. The parties mutually agree to await the judgment of the appeal court and agreed to conduct a consultation seeking resolution when the judgment is handed down. The Government recalls that the CLC is an independent body, and that no one has influence over the jurisdiction of the court.

576. Lastly, the Government announces that the tripartite working group for revising the SELRA already made a proposal to delete sections 33 and 77. The tripartite working group also proposed to include the right to strike for State enterprise employees in the revised draft of SELRA. The revised draft of SELRA will be submitted to Cabinet for approval in principle and will be approved in content and wording by the Council of State. Then, the revised draft

will be proposed to the National Legislative Assembly in accordance with the national legislative process.

C. The Committee's conclusions

577. *The Committee notes that, in the present case, the complainants allege judicial and disciplinary harassment of four leaders of the TG Union and that the company's conduct in the dispute that prompted the complaint, as well as the disputed ruling, highlight a number of inconsistencies between the law and the principles of freedom of association.*

578. *The Committee observes that, according to both the complainants' allegations and the Government's reply, following the management's rejection of the List of Demands, the employees gathered to protest against the refusal of a wage increase of 7.5 per cent and a two-month bonus. The Committee also observes that, despite the signing of a MoA, pursuant to which the union was to end the protest (which it did) and the management was to continue discussions on the List of Demands (which it did) and to refrain from initiating legal proceedings due to the protest, one year later the company lodged a claim for damages over losses allegedly attributable to the protest. In this regard, the Committee regrets the Central Labour Court's (CLC's) finding that the MoA was, due to a formality, invalid ab initio, and emphasizes that, in line with the principle of bargaining in good faith, agreements negotiated in good faith create the expectation of the parties that commitments will be honoured.*

579. *The Committee further observes that the CLC held that, after advancing a demand on conditions of employment to the employer, the union committed a wrongful act by violating the strike prohibition in section 33 and disregarding the procedure set out in the SELRA, and consequently ordered that the four trade union leaders compensate the damages inflicted upon the company through the protest, which were evaluated in the amount of THB303,619,865 (circa $8.6 million). The Committee recalls that, in the framework of previous cases concerning Thailand, it had repeatedly noted with regret that section 33 of the SELRA imposes a general prohibition of strikes in the public sector [Case No. 3022, 372nd Report, para. 614; Case No. 1581, 327th Report, para. 111]. The Committee has always recognized that the right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 522]. Reaffirming that section 33 of the SELRA is not in conformity with the principles of freedom of association, the Committee notes with interest the Government's indication that the tripartite working group revising the SELRA proposed deleting section 33 (strike prohibition) and section 77 (corresponding prison sentence and fine) of the SELRA and proposed granting the right to strike to state enterprise employees. The Committee further notes that the draft will be submitted to Cabinet and the Council of State for approval, and will subsequently be proposed to the National Legislative Assembly. The Committee trusts that the abovementioned revision process will result in the abrogation of these provisions without delay and requests the Government to keep it informed of the progress made in this regard.*

580. *Furthermore, the Committee recalls that sanctions should only be imposed as regards strikes where there are violations of strike prohibitions which are themselves in conformity with the principles of freedom of association. In light of the above, the Committee reiterates that the decision against the four union officials to pay damages was based on strike prohibitions which are themselves contrary to the principles of freedom of association. Moreover, the Committee recalls to the Government that the use of extremely serious measures against workers for having participated in a strike, implies a serious risk of abuse and constitutes a violation of freedom of association. For instance, the Committee has repeatedly emphasized that fines which are equivalent to a maximum amount of 500 or 1,000 minimum wages per day of abusive strike, may have an intimidating effect on trade unions and inhibit their*

legitimate trade union activities. The Committee observes with deep regret that the damages of approximately $8,6 million ordered by the court against the four union leaders for a two-day strike that it deemed unlawful, correspond to more than 30,000 minimum wages, and considers that damages of such an amount are disproportionate and excessive and are likely to have an intimidating effect, regardless of whether they are imposed against the union itself or against its leaders. Noting in addition with great concern the complainants' indication that the court decision could lead to the bankruptcy of the four individuals concerned and the dissolution of the TG Union, the Committee trusts that the Supreme Labour Court will be informed by the Government of the Committee's conclusions concerning the principles of freedom of association. The Committee requests the Government to keep it informed of developments in this regard and to provide a copy of the Supreme Labour Court's decision once it is handed down. In this context, the Committee, welcoming the conciliation meetings held between the parties and facilitated by the Ministry of Labour and the resulting Memorandum of Negotiation signed by representatives of the company and the TG Union on 27 November 2015, notes in particular that the parties agreed, with regard to the damages compensated by TG Union leaders at the order of the CLC, to await the verdict of the court as appealed by the TG Union and, whatever the ruling, to submit the issue to the bipartite Relations Affairs Committee.

581. *Lastly, the Committee welcomes the agreement reached by the parties on the suspension of the disciplinary measures imposed by the company due to the conduct of the protest pending the outcome of the appeal lodged by the union before the Labour Court. With reference to its foregoing conclusions, the Committee again considers that the disciplinary measures against the trade union officials have been imposed in response to violations of strike prohibitions, which are themselves contrary to the principles of freedom of association, and trusts that the Labour Court will be informed by the Government of the Committee's conclusions concerning the principles of freedom of association. The Committee requests to be kept informed of developments in this regard.*

The Committee's recommendations

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

(a) Noting with interest the Government's indication that the tripartite working group revising the SELRA proposed deleting sections 33 and 77 of the SELRA, the Committee trusts that the revision process will result in the abrogation of these provisions without delay and requests the Government to keep it informed of the progress made in this regard.

(b) Considering that, upon the claim for damages lodged by the company over losses allegedly attributable to the protest action, the damages ordered against the four union officials are based on violations of strike prohibitions which are themselves contrary to the principles of freedom of association, and that their excessive amount is likely to have an intimidating effect on the TG union and its leaders and inhibit their legitimate trade union activities, the Committee trusts that the Supreme Labour Court will be informed by the Government of the Committee's conclusions concerning the principles of freedom of association. The Committee requests the Government to keep it informed of developments in this regard and to provide a copy of the Supreme Labour Court's decision once it is handed down.

(c) Considering that the disciplinary measures imposed by the company against officials of the TG Union due to the conduct of the protest have been imposed in response to violations of strike prohibitions, which are themselves contrary to the principles of freedom of association, the Committee trusts that the Labour Court will be informed by the Government of the Committee's conclusions concerning the principles of freedom of association and requests the Government to keep it informed of any developments in this regard.

CASE NO. 3172

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

Complaint against the Government of the Bolivarian Republic of Venezuela presented by the Single Union of Workers in Industries Producing Beer, Soft Drinks and Nutritional Drinks in the State of Carabobo (SUTRABA–CARABOBO)

Allegations: Interference by the public authorities in voluntary collective bargaining, by promoting pro-Government trade union organizations and discriminating against the complainant organization (disregarding its greater representativeness, depriving it of any means of defence, hindering its collective bargaining and imposing the compulsory extension of an arbitration award), and acts of violence preventing access to the workplace in the context of a work stoppage

583. The complaint is contained in communications dated 11 November 2015 and 2 March 2016 from the Single Union of Workers in Industries Producing Beer, Soft Drinks and Nutritional Drinks in the State of Carabobo (SUTRABA–CARABOBO).

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

585. The Bolivarian Republic of Venezuela has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

586. In its communications of 11 November 2015 and 2 March 2016, the Single Union of Workers in Industries Producing Beer, Soft Drinks and Nutritional Drinks in the State of Carabobo (SUTRABA–CARABOBO) alleges that the public authorities interfered in its voluntary collective bargaining processes with Cervecería Polar CA (the employer, involved in the brewing and distribution of beer and malt), including by systematically discriminating against SUTRABA–CARABOBO and promoting pro-Government trade union organizations, disregarding the greater representativeness of the complainant organization,

depriving it of any means of defence, hindering its collective bargaining and imposing compulsory arbitration and extension of the resulting arbitration award.

587. In its communication of 11 November 2015, the complainant alleges that, on 7 October 2013, the so-called Regional Union of Workers in the Territorio Centro Polar (SINTRATERRICENTROPOLAR), an organization that had never been involved in a collective bargaining process , submitted a draft collective labour agreement in the States of Carabobo, Amazonas, Apure, Aragua, Bolívar, Cojedes, Falcón and Guárico (states in which SUTRABA–CARABOBO represents the majority of workers and has the longest experience). On 9 December 2013, the employer submitted a written document containing allegations and arguments against the draft collective agreement, pointing out that SUTRABA–CARABOBO was the most representative trade union organization in the states concerned. However, the administrative authority, in a decision dated 11 March 2014, based its formal argument on the fact that the complainant organization could only operate within the State of Carabobo since it was not registered as a regional trade union (disregarding the primacy of fact of its greater representativeness) and, without attempting to analyse the issue of representativeness, simply excluded the State of Carabobo from negotiations because an agreement was already in force in that state.

588. The complainant alleges that, as a result of this administrative decision, the Ministry of Popular Power for the Social Labour Process (hereinafter "the Ministry") unduly authorized SINTRATERRICENTROPOLAR to enter into collective bargaining in workplaces in the States of Amazonas, Apure, Aragua, Bolívar, Cojedes, Falcón and Guárico, despite not being the most representative trade union organization in those states. Of the 351 workers concerned in the employer's branches in the above states (excluding the State of Carabobo), SUTRABA–CARABOBO claims to represent 224 workers, or 64 per cent – compared to 127 workers represented by SINTRATERRICENTROPOLAR, or 36 per cent). The complainant provides detailed data comparing the respective membership numbers of the trade union organizations in each state, which show that in 14 of the 15 employer's branches in the states concerned over 50 per cent of unionized workers are members of SUTRABA–CARABOBO, while SINTRARRICENTROPOLAR has less than 20 per cent of unionized workers in nine of the 15 branches and no members at all in four branches.

589. The complainant also alleges that, during the bargaining process, the majority of workers expressed, in a variety of ways, their desire not to be represented by SINTRATERRICENTROPOLAR, as they consider this union acts against their labour interests and integrity because its executives are merely puppets of the governing party (United Socialist Party of Venezuela – PSUV) and uses violence against dissident workers. In support of these allegations, the complainant provides evidence that SINTRATERRICENTROPOLAR press conferences are held in the PSUV press room. The complainant adds that rejection of SINTRATERRICENTROPOLAR in favour of support for SUTRABA–CARABOBO increased in the wake of the violent acts carried out by SINTRATERRICENTROPOLAR after it had submitted a list of contentious demands on 1 December 2014. In this connection, the complainant alleges that a group of persons from outside the enterprise, carrying firearms, accompanied the president of SINTRATERRICETROPOLAR, in a show of support for him, to the vicinity of the Turmero works between 9 and 17 April 2015. They prevented workers from carrying out their work, using threats and violence to try to make them abandon their work stations and join the work stoppage. The majority of workers refused and the incident led to SUTRABA–CARABOBO representatives filing a criminal complaint on 28 April 2015. The complainant further states that, in a clear case of interference in trade union matters, the mayor of the municipality of Santiago Mariño in the State of Aragua, who belonged to the Government's PSUV party, came to the Turmero works to show his agreement to the work stoppage promoted by SINTRATERRICENTROPOLAR, despite the fact that the majority of workers had rejected it.

590. The complainant alleges that the Ministry's interference continued, disregarding the greater representativeness of SUTRABA–CARABOBO and unduly recognizing the legitimacy of SINTRATERRICENTROPOLAR. This included, once the deadline in the procedure for submitting the contentious list of demands had expired, imposing arbitration proceedings through Decision No. 9273 dated 14 July 2015 and further discriminating against SUTRABA–CARABOBO by restricting its area of operation to the State of Carabobo, despite it having signed up workers as the most representative trade union in both of the states concerned.

591. The complainant adds that, during the collective bargaining process and subsequent arbitration proceedings, the complainant, workers and employer all objected to SINTRATERRICENTROPOLAR representation. In addition to making a number of statements to the public, the complainant's representatives met with the Bolivarian Republic of Venezuela's Vice-President and the Chairperson of the National Assembly's Comprehensive Social Development Committee, with detailed information and evidence showing that SINTRATERRICENTROPOLAR was not representative and had lost the support of the workers and that SUTRABA–CARABOBO had managed to unite the overwhelming majority. These allegations were also forwarded to the ombudsperson. However, according to the complainant, these arguments were not taken into account.

592. The workers of the states concerned, meanwhile, requested the employer to extend the benefits in the collective agreement concluded with SUTRABA–CARABOBO, already approved for the State of Carabobo on 23 December 2014, to them, as they considered the agreement better serves their interests. This was verified in the records of the workers' assemblies organized by the complainant in each of the employer's branches, which the complainant attaches to its complaint. It appears from the records that at least two out of three workers of the 15 branches concerned requested the benefits in the agreement entered into with SUTRABA–CARABOBO to be extended to them, to which the employer had agreed with effect from February 2015.

593. The complainant states that, during arbitration proceedings (ordered despite the fact that it had been agreed to extend the benefits of the agreement concluded by SUTRABA– CARABOBO to all the states concerned), the workers went before the arbitration board appointed by the Ministry on several occasions to express their rejection of SINTRATERRICENTROPOLAR, but their right to participate to defend their interests, either themselves or through their trade union organization (SUTRABA–CARABOBO), was not recognized. This rejection was expressed in writing by 226 union members on 3 September and 15 October 2015. The complainant claims that the arbitration board appointed by the Ministry disregarded the many worker witnesses opposed to SINTRATERRICENTROPOLAR, with the strange argument that they had seemed keen for SINTRATERRICENTROPOLAR not to handle the possible arbitration award. The arbitration board used the criterion in the Civil Procedure Code whereby "the enemy cannot testify against his enemy" to dismiss witnesses as interested parties when, clearly, in the context of the exercise of their right to freedom of association, the workers were legitimately interested in being represented by the trade union organization to which the majority had signed up. The complainant adds that, as neither the Ministry nor the arbitration board had taken its allegations into account, each of the 226 workers went in person to the Ministry (many of whom had been obliged to travel for more than 12 hours) to deposit their resignation from SINTRATERRICENTROPOLAR in writing (in this regard, the complainant points out that the relevant authority required each of them to come in person).

594. The complainant states that the employer also submitted its objections to the representativeness of SINTRATERRICENTROPOLAR during these proceedings and defended SUTRABA–CARABOBO's most representative status. However, the Government denied SUTRABA–CARABOBO and its members the right to voluntary

collective bargaining by depriving it of the right to operate outside the State of Carabobo, and its members (many from other states) the right to be represented by the trade union organization that they had freely joined. The complainant alleges that this means that both the Ministry and the arbitration board failed to verify the representativeness of SUTRABA– CARABOBO and SINTRATERRICENTROPOLAR in the other states concerned, even though they were aware that SUTRABA–CARABOBO is the most representative union and should therefore have bargained collectively on behalf of the occupational category concerned.

595. In its communication dated 2 March 2016, the complainant maintains that it had been discriminated against by the authorities through additional obstacles to its collective bargaining with the employer, as well as the illegal extension of the arbitration award issued as a result of the abovementioned arbitration proceedings.

596. The complainant alleges in general that several provisions of the Organic Labour and Workers Act and their implementation in practice violate the principle of voluntary collective bargaining provided for in Article 4 of Convention No. 98. The complainant refers to sections 448–451 of the act regarding the involvement of the public authorities in collective bargaining, under which applications for collective bargaining must be submitted to the Ministry's labour inspectorates for their approval, officials from those inspectorates must be present in negotiations, and any agreements entered into must be submitted to the labour inspectorate for its approval. The complainant recalls that the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has expressed its views on this matter, requesting in particular the amendment of section 449 of the Act.

597. With regard to implementation of these provisions in this specific case, the complainant alleges that, despite the fact that SUTRABA–CARABOBO complies with the provisions in its negotiations, the authorities blocked the collective bargaining process initiated by the union in September 2015. The complainant states that, on 11 September 2015, it submitted a draft collective agreement to the competent authorities to be negotiated with the employer and that, on 8 October 2015 (27 days later – failing to comply with the legal deadline for the administration's response), the labour inspectorate issued a decision ordering the correction of mere formalities and irrelevant aspects of the records of the trade union assembly at which the draft agreement was approved (the decision found inconsistencies in the times referred to in the convocation, in the assembly record and in the list of workers). On 13 October 2015, these formalities were corrected and, on 14 October, collective bargaining began with the employer. The collective agreement was concluded on 18 November 2015 and registered on 2 December 2016. The complainant alleges, however, that, in an act of anti-union harassment, on 4 December 2015 (two days after registration of the agreement) the labour inspectorate gave notice of an alleged decision dated 30 November 2015 ruling that the corrections of 16 September 2015 to the draft agreement submission to the authorities were inadequate. The complainant considers that this allegation of the non-existent inadequacy of the corrections was clearly intended to hinder SUTRABA–CARABOBO's voluntary collective bargaining. The complainant, despite these arbitrary acts, submitted a new collective agreement to the same labour inspectorate on 15 December 2015 but, as of the date of its latest communication, it had still not been approved by the authority.

598. Moreover, the complainant states that, in Decision No. 9551 of 29 December 2015, the Ministry ordered the extension of the arbitration award referred to above to all of the employer's workers (issued in the negotiations brokered by SINTRATERRICENTROPOLAR for some states). The complainant claims that the decision was allegedly handed down at the request of the National Union of Workers in Companies Producing Food, Beer, Soft Drinks, Liquor and Wine (SINTRACERLIV) and reports that this union does not represent the majority of the employer's workers countrywide – as falsely stated in the decision; that it had no legal grounds for requesting the extension;

and that the union is noted for its subservience to the political guidelines of the Government and the PSUV. In this respect, the complainant states that SINTRACERLIV only represents 18.65 per cent of unionized workers in the enterprise and that SUTRABA–CARABOBO is more representative, given that it has 24 per cent of union members. The complainant alleges that the extension was ordered illegally because: (i) the Ministry does not have the authority to forcibly extend the arbitration award to all of the employer's establishments and workplaces; (ii) the procedure in force for labour standards meetings was not applied in order to guarantee SUTRABA–CARABOBO and other trade union organizations the right to defence (there was no procedure to allow them to participate and defend themselves); (iii) compulsory extension does not apply to an enterprise not providing essential services in the strict sense (only in cases where a compulsory arbitration award would be permissible), or to public utility or crucial services; (iv) there was no collective labour dispute putting at risk the normal course of productive activities and justifying this extension; and (v) compulsory extension violates free and voluntary collective bargaining.

599. The complainant claims that, as a result of this decision on extension, SUTRABA– CARABOBO and the other trade unions concerned may be prevented from engaging in collective bargaining and concluding collective agreements, undemocratically imposing the implementation of the arbitration award countrywide and handing over its administration to a single trade union that is subservient to the Government and the PSUV. In this regard, the complainant refers to an administrative decision dated 11 February 2016, in which the labour inspectorate, pursuant to the extension of the arbitration award, ordered the suspension of negotiations on a draft collective agreement between another trade union (the Workers' Union of the Beverages Industry in the State of Zulia – SITIBEB–ZULIA) and the employer while the award was in force. The complainant therefore alleges that the Government is discriminating against and undermining SUTRABA–CARABOBO, while promoting SINTRACERLIV and membership of that union and its intention to handle the arbitration award and negotiations on future agreements at national level.

B. The Government's reply

600. In its communication dated 2 September 2016, the Government provides its observations on the allegations of the complainant (detailed below). In general, it states that the Government guarantees freedom of association and the exercise of that right and that the actions of the Ministry have in no way contravened the freedom of association of the complainant organization, or discriminated against or interfered with it.

601. The Government refutes the allegation that the arbitration board had been appointed by the Ministry and states that one member was appointed by the employer, another by SINTRATERRICENTROPOLAR representatives and that, failing to reach agreement on the appointment of the third member, the Ministry had been required to appoint that member. With regard to the arbitration board's decisions, the Government maintains that it had not interfered in them in any way, given that its members were from third parties unrelated to the parties and the Government.

602. The Government also rejects the allegation that SUTRABA–CARABOBO was discriminated against and even more so the suggestion that it was for political reasons. The Government states that this trade union was not included in the collective bargaining in question because of its territorial area of operation and that, as its name indicates, it is an organization belonging to the State of Carabobo. Thus, there was no reason for it to participate, since collective bargaining did not cover workers in this state (given that, at the time of the submission of the agreement by SINTRATERRICENTROPOLAR, there was already an agreement in force for workers in the State of Carabobo). In this regard, the Government states that, in response to the objections of the enterprise to the lack of representativeness of SINTRATERRICENTROPOLAR in comparison with

SUTRABA– CARABOBO, the competent authority, having excluded the State of Carabobo from negotiations because of an existing agreement in force there, considered it futile to review the alleged lack of representativeness, as it centred on the representativeness of a trade union whose area of operation was the State of Carabobo. The Government recalls that section 372 of the Organic Labour and Workers Act provides that trade union organizations may be local, state, regional or national and that, at the time it was established and in line with its own internal statutes, SUTRABA–CARABOBO had restricted its activities to the State of Carabobo. By signing up workers who provide services in other states, without changing its area of operation, it is violating the provisions of those statutes. The Government emphasizes that the territorial boundary is set for a trade union organization from its inception and does not change until the organization decides to extend its area by amending its internal statutes. The Government recalls that, according to section 391 of the Act, a trade union organization's assembly or board cannot take decisions in contravention of its own statutes – a provision that the administrative authority could not ignore. On the other hand, SINTRATERRICENTROPOLAR, as a regional trade union organization, could represent workers from several states. The Government points out that the fact that SINTRATERRICENTROPOLAR is a fledgling organization without a track record in collective bargaining does not preclude it from exercising its right to collective bargaining, provided it complies with the legal requirements. This was verified in October 2013 by the labour inspectorate in its Decision No. 2013-0580 supporting the collective agreement submitted.

603. The Government declines to give its view on the allegation that SINTRATERRICENTROPOLAR executives act as puppets of the PSUV because this is a subjective fact, clearly political in nature and going beyond the trade union realm and into direct government opposition. It therefore considers that the Committee should not comment on matters of this nature, which are beyond its remit.

604. With regard to the allegations of violent acts, the Government reports that it requested information from the public prosecutor's office, which it will forward to the Committee once it has been received.

605. With respect to the decision taken by the employer to apply the benefits of the agreement entered into with SUTRABA–CARABOBO and approved in December 2014 to all workers from February 2015, the Government welcomes the decision, which will ensure equal treatment.

606. Regarding the allegation that the public authorities had required each of the workers wishing to register their resignations from SINTRATERRICENTROPOLAR to do so in person, the Government points out that the National Register of Trade Unions cannot accept resignations submitted by a third party who is not authorized to do so through a power of attorney. It also points out that resignations are normally tendered to executive committees and not registered directly in the records kept of the proceedings of each trade union organization.

607. The Government refutes the allegation that there is no rule in the legal system that allows the Ministry to extend an arbitration award or collective agreement, recalling that section 468 of the Organic Labour and Workers Act: (i) provides that the collective labour agreement concluded in a labour meeting or the resulting arbitration award can be declared compulsory for extension to other employers and workers in the same branch of activity by the ministry responsible for labour matters; and (ii) section 432 provides that, when an enterprise has departments or branches in locations belonging to different jurisdictions, the collective agreement it concludes with the trade union organization representing the majority of its workers will apply in those departments or branches.

608. Concerning the allegations challenging the legitimacy of SINTRACERLIV to request the extension of the arbitration award, the Government states that, in the extension of the arbitration award, SINTRACERLIV's petition was considered because this trade union organization exercised the right of petition provided for in section 51 of the Venezuelan Constitution, referring to the right of every person to address petitions to any public authority. The Government adds further that the extension was initially requested by the Ministry's arbitration board.

609. With regard to the allegation that SUTRABA–CARABOBO and the other trade unions concerned had been prevented from engaging in collective bargaining after the application and extension of the arbitration award, the Government maintains that the Organic Labour and Workers Act recognizes the right to collective bargaining for representative trade unions (which must demonstrate their representativeness), provided that no peremptory challenges are made, including the existence of a collective agreement already in force and the absence of any discussion with another union. In this case, the representativeness of the different organizations concerned should be challenged. The Government also warns of the legal and practical implications of an increase in disputes in collective labour relations and the undermining of the legal certainty of these relations when, with a collective agreement still in force, a trade union association attempts to demand another agreement be negotiated and concluded.

C. The Committee's conclusions

610. *The Committee notes that the complaint concerns allegations of interference by the public authorities in voluntary collective bargaining, promoting pro-Government trade union organizations and discriminating against the complainant organization (disregarding its greater representativeness, depriving it of any means of defence, hindering its collective bargaining and imposing the compulsory extension of an arbitration award), and acts of violence preventing access to the workplace in the context of a work stoppage.*

611. *The Committee notes that several of the allegations concerning interference by the authorities in voluntary collective bargaining correspond to those raised in Case No. 3178 (complaint filed against the Government of the Bolivarian Republic of Venezuela by the International Organisation of Employers (IOE) and the Venezuelan Federation of Chambers of Commerce and Manufacturers' Associations (FEDECAMARAS).*

612. *With regard to the allegations of discrimination against the complainant organization by excluding it from the bargaining process initiated by SINTRATERRICENTROPOLAR, without taking into account the former's greater representativeness, the Committee notes, on the one hand, that the Government states that the complainant organization was unable to take part because this process went beyond its area of operation. The Government points out that the complainant organization, according to its own statutes, is a state-level organization (being attached to the State of Carabobo) and that, on the other hand, SINTRATERRICENTROPOLAR has a regional scope, meaning that its operations can cover several states. The Government claims that the authorities could not take decisions that were contrary to the statutes of the complainant organization. In this regard, the Committee invites the complainant organization, if it so wishes, to consider amending its statutes, as appropriate, to adjust the area of operations covered by its activities. The Committee notes that the Government further claims that, since a collective agreement was already in force in the State of Carabobo, it was excluded from negotiations and it was therefore unnecessary to look into the issue of which organization was the more representative.*

613. *The Committee also notes that, as claimed by the complainant and not denied by the Government, SUTRABA–CARABOBO has numerous members in other states (in addition to the State of Carabobo) and the application of collective agreements concluded by*

SUTRABA–CARABOBO would have been extended to workers in the other states. The Committee also notes that the Government does not contest the data on membership provided by the complainant, which would show its greater representativeness in terms of membership numbers (a criterion laid down in section 438 of the Organic Labour and Workers Act as a key element in determining the representativeness of an organization in collective bargaining) both in comparison to SINTRATERRICENTROPOLAR and SINTRACERLIV. The Committee notes that, as alleged by the complainant and not disputed by the Government, a considerable number of workers affected by the draft collective bargaining agreement, as well as the employer, had reportedly opposed negotiating with SINTRATERRICENTROPOLAR, providing statements and evidence on numerous occasions to demonstrate that the complainant organization was more representative.

614. *Furthermore, in reviewing the development of the whole case, the Committee cannot fail to observe, with regard to the arguments on the territorial area that the Government states formed the basis of the decisions taken by the relevant authorities, that: (i) while initially the authorities reduced the territorial scope of negotiations, excluding the State of Carabobo (thus justifying the non-participation of the complainant organization and recognizing the entitlement to negotiate of the trade union organization alleged to be close to the governing party (SINTRATERRICENTROPOLAR)); and (ii) once the arbitration award had been adopted, the authorities did not take into account the territorial restriction initially prescribed (thus disregarding the need to examine which organization was the most representative) and instead extended the award to all workers in all states (again without objectively considering the representativeness of the trade union organizations affected by such a decision, to the advantage of one organization (SINTRACERLIV), which the complainant alleges to be allied to the governing party).*

615. *Regretting that, despite the fact that the complainant, employer and the workers concerned have on numerous occasions argued the need to verify the representativeness of the trade union organizations involved, providing specific data and evidence on membership numbers, the authorities failed to take into consideration the issues raised on representativeness – and referring to its previous conclusions on the issue of SUTRABA–CARABOBO's area of operation – the Committee requests the Government to take the necessary steps to ensure that, without any interference, the majority will of the employer's workers with regard to their representation in collective bargaining is respected and, in this connection, of the most representative trade union organization, by carrying out an objective verification of representativeness. The Committee requests the Government to keep it informed in this regard.*

616. *With regard to the allegations of violent acts preventing access to the workplace in the context of the work stoppage promoted by SINTRATERRICENTROPOLAR, the Committee notes that the complainant filed a criminal complaint and that the Government states that, once it has received information from the public prosecutor's office, it will forward this to the Committee. The Committee requests the Government to keep it informed of developments in the criminal complaint and of any proceedings initiated and decisions taken regarding these allegations.*

617. *Concerning the allegations of discrimination against the complainant organization by extending the arbitration award resulting from compulsory arbitration (the complainant argues that the Ministry lacked the necessary authority and that the extension was in favour of a less representative union allied to the governing party (SINTRACERLIV)), the Committee notes that the Government states: (i) that the Organic Labour and Workers Act confers on the Ministry the authority to declare the compulsory extension of a collective agreement concluded in a labour meeting or the resulting arbitration award; and (ii) that in the extension of the arbitration award SINTRACERLIV's petition was considered because this trade union organization exercised the right of petition provided for in article 51 of the*

Venezuelan Constitution, referring to the right of every person to address petitions to any public authority. With regard to the imposition of arbitration proceedings, the Committee refers to its conclusions in Case No. 3178. As for the decision to extend the resulting award, the Committee considers that the extension of an agreement adopted when the greater representativeness of the organization that had promoted it was in dispute, as well as the legitimacy of the arbitration that had given rise to the award and its proceedings, should have been the subject of a tripartite consultation once the representativeness of the workers' organizations concerned had been objectively determined. The Committee also notes that both the complainant and, as is clear from examination of Case No. 3178, the employer dispute the arbitration proceedings and extension of the arbitration award (alleging discrimination and irregularities – in particular bias and interference by the authorities). The Committee is compelled to recall in this respect that in mediation and arbitration proceedings it is essential that all the members of the bodies entrusted with such functions should not only be strictly impartial but, if the confidence of both sides, on which the successful outcome even of compulsory arbitration really depends, is to be gained and maintained, they should also appear to be impartial both to the employers and to the workers concerned [see ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 598]. The Committee requests the Government to take all necessary steps to ensure full respect for voluntary collective bargaining, in conformity with the principles of freedom of association and collective bargaining, in particular by ensuring that the will of the parties to collective bargaining is respected and that, where arbitration is applicable, the proceedings are impartial and have the confidence of the parties. The Committee requests the Government to keep it informed in this regard.*

618. *Regarding the allegations of hindering collective bargaining by the authorities using delaying tactics and extending the arbitration award, the Committee notes that the Government merely points out that the Organic Labour and Workers Act recognizes the right to collective bargaining provided that the organizations can justify their representativeness and no peremptory challenges are made, including the existence of a collective agreement already in force. The Committee regrets that, despite the fact that in Case No. 3178 the Government states that the decision extending the arbitration award does not indicate any impediment to concluding new collective agreements, the Government fails to make it explicitly clear whether the arbitration award and its extension have in practice limited the opportunities for the complainant and other trade unions to bargain collectively, or provide its views on the administrative decision referred to by the complainant in this respect (under which the labour inspectorate had reportedly suspended collective bargaining between another union and the employer while the arbitration award extended by the Ministry's decision remained in force). The Committee notes with concern that the extension of the arbitration award appears to have prevented exercise of the right to collective bargaining by the various trade union organizations concerned. The Committee requests the Government to take the necessary steps to ensure that the complainant and other representative organizations are able to freely negotiate with the employer beyond the stipulations under the arbitration award. The Committee requests the Government to keep it informed in this regard.*

619. *With regard to the allegations that some provisions of the Organic Labour and Workers Act (sections 448–451) would allow the authorities to interfere in collective bargaining, the Committee regrets that the Government has failed to respond to them. The Committee recalls, as does the complainant, that the CEACR has been examining these issues and has requested the Government to: (i) amend section 449 of the Act (which provides that discussion of proposals for collective bargaining will take place in the presence of a labour official, who will chair the meetings) to bring it into line with the principles of free and voluntary negotiation and autonomy of the parties; and (ii) with a view to finding solutions to the issues raised, to conduct a tripartite dialogue on the question of the application in*

practice of section 450 of the Act (concerning the registration of a collective agreement, and which states that the labour inspectorate will verify its conformity with the applicable public order regulations, with a view to granting approval) and section 451 of the Act (concerning the granting of approval, and which states that, if the labour inspectorate considers it appropriate, it will make the appropriate observations or recommendations to the parties instead of granting approval, to ensure compliance). In view of the fact that the Bolivarian Republic of Venezuela has ratified Convention No. 98, the Committee refers the legislative aspects of this case to the CEACR and requests the Government to provide it with any relevant additional information.

620. *As for the allegations of interference by the authorities to the detriment of the complainant organization and to the advantage of other trade union organizations alleged to be close to the governing party (PSUV), the Committee notes that the Government declines to give its view on the alleged link between SINTRATERRICENTROPOLAR and the PSUV because it is a subjective fact that is clearly political in nature and goes beyond the trade union realm and into direct opposition to the Government. It therefore considers that the Committee should not comment on matters that are beyond its remit. In regard to this, the Committee is compelled to recall the importance of non-interference in trade union activities, both by the authorities and the Government's political party, and reiterates that these issues form part of its mandate. In this connection, the Committee recalls that, in the interests of the normal development of the trade union movement, it would be desirable to have regard to the principles enunciated in the resolution on the independence of the trade union movement adopted by the International Labour Conference at its 35th Session (1952) that the fundamental and permanent mission of the trade union movement is the economic and social advancement of the workers and that when trade unions, in accordance with the national law and practice of their respective countries and at the decision of their members, decide to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social or economic functions, irrespective of political changes in the country [see **Digest**, op. cit., para. 498].*

621. *With this in mind, the Committee notes that the Government does not deny the allegations and information provided by the complainant to substantiate the allegations of government support, through its party, for SINTRATERRICENTROPOLAR, which is to the detriment of the complainant organization (for example, the use of PSUV media channels for SINTRATERRICENTROPOLAR press releases or public authority support for this union's actions). In addition, with respect to the decisions of the authorities, whose bias has been alleged, and based on information provided by the complainant, which the Government does not contest, the Committee can only challenge: (i) on the one hand, the failure to include the complainant organization in the decision-making process to extend the arbitration award – which would affect the State of Carabobo as well – or the arbitration board's use of the rules of the Civil Procedure Code to exclude the opposing party in order to avoid taking into account in proceedings the allegations of its union members, considering them to be interested parties; and (ii) on the other hand, applying the rules to trade union organizations alleged to be close to the governing party to accommodate the claims of these organizations – for example, to impose compulsory arbitration (the Government, in its reply to Case No. 3178, states that these proceedings were based on the fact that, due to the strike's extent and duration (more than 90 days), productive employment providing each worker with a decent existence was under threat, despite the fact that, as the Government itself acknowledges, essential services were not affected, or to extend the resulting arbitration award (using as justification for supporting the extension the general right of petition)).*

622. *Noting with concern the numerous detailed allegations of bias and interference by the governing party and the public authorities in the labour dispute, the Committee requests the Government to take the necessary steps to prevent any interference in industrial relations between the complainant and the employer. The Committee requests the Government to keep it informed in this regard.*

The Committee's recommendations

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

(a) ***The Committee invites the complainant organization, if it so wishes, to consider amending its statutes, as appropriate, to adjust the area of operation covered by its activities.***

(b) ***The Committee requests the Government to take the necessary steps, in conformity with the principles of freedom of association and collective bargaining, to: (i) ensure full respect for voluntary collective bargaining, in particular by ensuring that the will of the parties to collective bargaining is respected and that, where arbitration is applicable, the proceedings are impartial and have the confidence of the parties; (ii) ensure respect for the majority will of the employer's workers with regard to their representation in collective bargaining and, in that connection, of the most representative trade union organization, by carrying out an objective verification of representativeness; (iii) ensure that the complainant and other representative organizations are able to freely negotiate with the employer beyond the stipulations under the arbitration award; and (iv) prevent any interference in industrial relations between the complainant and the employer. The Committee requests the Government to keep it informed in this regard.***

(c) ***The Committee requests the Government to keep it informed of any proceedings initiated and decisions taken in relation to allegations of violent acts preventing access to the workplace in the context of a work stoppage, including developments in the criminal complaint referred to by the complainant.***

(d) ***In view of the fact that the Bolivarian Republic of Venezuela has ratified Convention No. 98, the Committee refers the legislative aspects of this case to the CEACR and requests the Government to provide it with any relevant additional information regarding the allegations that some provisions of the Organic Labour and Workers Act (sections 448–451) would allow the authorities to interfere in collective bargaining.***

CASE NO. 3178

INTERIM REPORT

Complaint against the Government of the Bolivarian Republic of Venezuela presented by
– the International Organisation of Employers (IOE) and
– the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS)

Allegations: Interference in collective bargaining, in the form of imposing negotiations relating to proposals presented by a minority trade union linked to the governing party; acts of violence obstructing access to the workplace in the context of a strike; illegal imposition of compulsory arbitration, interference and irregularities in the arbitration proceedings, and illegal extension of the resulting award; intimidation and harassment of the enterprise, its corporate group, its chairman and FEDECAMARAS, including threats, harassment, invasion of privacy, cases of confiscation and detention of managers

624. The complaint is contained in communications dated 18 and 21 December 2015, 21 March, 8 and 28 July and 8 November 2016 from the International Organisation of Employers (IOE) and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS).

625. The Government sent new observations in a communication dated 2 September 2016.

626. The Bolivarian Republic of Venezuela has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

627. In their communications dated 18 and 21 December 2015, 21 March, 8 and 28 July and 8 November 2016, the IOE and FEDECAMARAS presented the following allegations.

628. The complainant organizations allege that the Government compelled Cervecería Polar CA (hereinafter, the enterprise) to engage in collective bargaining with a trade union with government ties that represents only a minority of the workers.

629. The complainant organizations indicate that the enterprise (the country's leading producer and distributor of beer and malt beverages, a member of the Empresas Polar group and an affiliate of FEDECAMARAS) has customarily concluded collective agreements with the most representative trade union in the state of Carabobo (the location of the country's largest beer and malt beverage production plant) and extended the scope of those agreements by

mutual consent to employees in the other federal states of the "central commercial zone" (Amazonas, Apure, Aragua, Bolívar, Cojedes, Falcón and Guárico). This has been the case on six occasions since 1998.

630. At the expiry of the 2011–14 collective agreement, the enterprise concluded another such agreement with the most representative trade union, the Single Union of Workers of the Beer, Soft Drink and Nutritional Beverage Industries of Carabobo State (SUTRABACARABOBO), which was registered by the competent administrative authority on 23 December 2014. The complainant organizations denounce the fact that, at the time, the People's Ministry for the Social Process of Labour (hereinafter, MPPPST) rejected the (hitherto customary) extension of the agreement to workers in other states, arguing that the agreement with SUTRABACARABOBO could only be applied in the state of Carabobo, notwithstanding the trade union's most representative status in the other states. The complainant organizations allege that this occurred because the Government favours the Single Regional Workers' Union of the Polar Group Central Zone (SINTRATERRICENTROPOLAR), another trade union which has ties with the governing United Socialist Party of Venezuela (PSUV) and which instigated a separate bargaining process. According to the complainants' indications, in the states in question (in other words, elsewhere than in Carabobo), SINTRATERRICENTROPOLAR only represents 35 per cent of all the workers concerned – compared with the 65 per cent represented by SUTRABACARABOBO (and the complainants add that, outside those states, SINTRATERRICENTROPOLAR represents only 6 per cent of all unionized workers employed by the enterprise). Consequently, the enterprise made it known to the competent authority that SINTRATERRICENTROPOLAR was not the most representative organization and that, as was the custom, the collective agreement concluded with SUTRABACARABOBO should be applied. Nevertheless, the MPPPST failed to acknowledge the most representative status of SUTRABACARABOBO and obliged the enterprise to negotiate in relation to a draft agreement presented by SINTRATERRICENTROPOLAR, disregarding all the evidence demonstrating that the latter organization was less representative.

631. The complainant organizations substantiate their allegations of government interference in favour of SINTRATERRICENTROPOLAR and to the detriment of SUTRABACARABOBO by reporting the following acts (referring to information available to the public through, for example, news media, social networks and PSUV communications): (i) the participation of SINTRATERRICENTROPOLAR at press conferences organized by the PSUV and held at its headquarters, where the aforementioned union referred to the enterprise using insulting terms and in a party-political tone aiming to demonstrate that it enjoyed extensive government support; (ii) statements by PSUV representatives supporting SINTRATERRICENTROPOLAR and insulting the enterprise; (iii) the support and favour of the Vice-President of the Republic in the form of a photo with the leaders of SINTRATERRICENTROPOLAR; (iv) social network posts by the People's Minister for the Prison Service expressing support and favour for SINTRATERRICENTROPOLAR; and (v) social network posts by the ombudsman expressing the favoured position of SINTRATERRICENTROPOLAR and false and defamatory accusations against the enterprise.

632. The complainant organizations allege that, in an attempt to coerce the enterprise into conducting collective negotiations in relation to its draft agreement, SINTRATERRICENTROPOLAR engaged in various acts of violence between 7 April and 20 July 2015 with the aim of halting production at certain distribution agencies, harming the enterprise's business and disrupting its operations: (i) on 9, 10 and 13 April 2015, a group of persons unconnected with the enterprise, supported and accompanied by the SINTRATERRICENTROPOLAR president, gathered in the vicinity of the distribution agency in the town of Turmero in the state of Aragua, bearing firearms and obstructing

normal workplace operations and worker access through the use of violence (according to the complainants, these facts were duly and promptly reported to the competent authorities and reflect the gravity of the arbitrary violence of criminal factions acting with impunity as a result of the inaction of the criminal prosecution authorities); and (ii) between 13 and 17 April 2015, a group of persons unconnected with the enterprise once again gathered in the vicinity of the Turmero distribution agency, bearing firearms and obstructing normal workplace operations and worker access through the use of violence, further harming the enterprise's business (according to the complainants, these persons had been contacted by the executive committee of SINTRATERRICENTROPOLAR and, since they lacked the support of most of the workers, who accepted the recent agreement with SUTRABACARABOBO, they resorted to the use of threats to win support for their efforts to cause a work stoppage). The complainants indicate that these acts of violence were roundly condemned by the workers of the Turmero agency.

633. The complainant organizations further denounce the repeated threats and verbal attacks by the SINTRATERRICENTROPOLAR president, at press conferences, interviews and even PSUV rallies, against the enterprise, the corporate group, its workers and shareholders and its chairman. These false and unbecoming accusations aimed to denigrate and to incite harmful aggression and were later broadcast repeatedly and extensively on state television channels. The complainants submit detailed information about these events and allege that they form part of a government-backed campaign to harm the corporate group, its workers and shareholders, and in particular the enterprise, its chairman and the corporate group, through work stoppages and criminal acts.

634. The complainant organizations denounce the fact that, on 26 June 2015, the director of the national labour inspectorate, which is attached to the MPPPST, issued a report indicating the impossibility of reaching an agreement and, after more than 80 days since the start of the strike, recommended that the People's Minister for Labour refer the dispute to arbitration, which the Minister did through Decision No. 9273 of 14 July 2015. The complainants recall that no legal standard provides for such recourse in the event that a strike, such as that initiated by SINTRATERRICENTROPOLAR, paralyses operations in the beer and malt beverage distribution sector (which is not an essential service) and highlight the fact that section 492 of the Basic Act on Labour and Men and Women Workers (LOTTT) stipulates that a collective labour dispute can only be referred to compulsory arbitration where the strike poses an immediate threat to the lives or safety of the whole or part of the population. The complainants emphasize that it was inconceivable that this strike could endanger the lives or safety of the population and so the dispute should never have been submitted to compulsory arbitration; this constituted a gross violation of the right to voluntary collective bargaining. They further denounce the fact that, without impartiality, due process or the right of defence, and under the control of the Ministry of Labour: (i) Decision No. 9273 portrayed the enterprise, in a biased and unfounded manner, as being opposed to dialogue, describing its chairman as stubborn and turning the workers against it, instead of creating conditions that were conducive to settling the dispute; (ii) the arbitration proceedings were held at the Office of the Ombudsman, a body whose mandate does not extend to labour relations and whose most senior figure publicly expressed opposition to the enterprise; (iii) throughout the arbitration proceedings, the presiding arbitrator (imposed by the Ministry of Labour) and the arbitrator nominated by SINTRATERRICENTROPOLAR acted in unison, arbitrarily rejecting the arguments put forward by the enterprise and the workers present and even by the third arbitrator, nominated by the enterprise; (iv) without any prior debate, the presiding arbitrator presented a draft award to the board, the content of which could not be justified since it was wholly devoid of any economic or legal analysis, and a number of clauses were approved in disregard of the overall nature of the award; in response to the third arbitrator's requests for explanation of the technical grounds for the draft award, the presiding arbitrator acknowledged that it had been drafted by the MPPPST and that any changes would therefore require the approval of the competent ministry official; (v) the arbitrator nominated by the

enterprise said that he was obliged to make an out-of-hours visit to the headquarters of the Ministry on 6 October to speak to the author of the draft award, who (with the quiescence of the presiding and union-nominated arbitrators) defended it, agreed to introduce certain changes and demanded that it be signed also by the enterprise-nominated arbitrator, under the threat of greater financial losses being inflicted upon the enterprise; and (vi) the arbitration award published on 5 October 2015 blatantly disregards the points of agreement reached by the parties to the direct and voluntary negotiations (the award disregards the content of 20 clauses that had been established by the parties and incorporates a modified version; it ignores the agreement of the parties to exclude 18 clauses regulating conditions of work and inserts them in the award; and it includes clauses that had never formed part of the draft collective agreement – an *extra petita* case which it was beyond the competence of the arbitration board to settle). The complainants allege that these practices supplant freedom of association and the freedom to engage in collective bargaining with autocratic decisions imposed by the Government. The complainants consider that the imposition of arbitration and the overstepping of its lawful authority by the Government in the arbitration proceedings and the substance of the award set a very serious precedent that could become an instrument for the imposition of working conditions in private companies that disregard the wishes and the freedoms of the parties, particularly freedom of association and the freedom to engage in voluntary collective bargaining, in clear violation of ILO Conventions Nos 87 and 98.

635. Referring more broadly to the authorities' interference in the collective bargaining process, the complainant organizations recall that the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) made observations on certain provisions of the LOTTT and underlined the need to amend them, in particular section 449 concerning the presence of labour administration officials at collective bargaining negotiations. Even more serious in the view of the complainant organizations is section 493, which stipulates that, where collective disputes are referred to arbitration and where no agreement can be reached on the nomination of the third arbitrator at the end of five days, the latter will be appointed by the labour inspectorate (the CEACR considers that this method of appointment fails to ensure the parties' confidence either in the method or in the arbitration board thus established).

636. The complainant organizations denounce the fact that, by Decision No. 9551 of 29 December 2015, the MPPPST unilaterally extended the arbitration award to "all subsidiary units of the enterprise throughout the country", without submitting the collective dispute to any form of mediation and even though the dispute did not affect any services deemed essential or of public utility, and to the detriment of both voluntary collective bargaining and trade union pluralism. The complainants recall that the award should, under the terms of its own text, apply exclusively to the states of Amazonas, Apure, Aragua, Bolívar, Cojedes, Falcón and Guárico (and that, in this regard, Carabobo had actually been excluded as a pretext for barring SUTRABACARABOBO from the collective bargaining process). They consider this to be further proof of the systematic persecution suffered by the enterprise and recall once more that the enterprise had concluded collective labour agreements with the most representative trade union organizations at each of its establishments. This resulted in a total of 16 trade unions and 15 labour agreements (covering the various plants and agencies across the states where the enterprise is operational) existing alongside one illegal and unconstitutional arbitration award imposed and extended by the Government to favour the trade unions which had ties with its political party. As is stated in Decision No. 9551, the compulsory extension responded to a request by the National Union of Workers of Foodstuff, Beer, Soft Drink, Spirit and Wine-Producing Enterprises (SINTRACERLIV), an organization whose membership accounts for only 18.5 per cent of the enterprise's unionized workers but whose leaders maintain close ties with the PSUV. The complainants consider that the aim of SINTRACERLIV and the Ministry of Labour is to contrive to give SINTRACERLIV the status of the most representative national organization (despite it

lacking the necessary membership) and to assign it the capacity of sole administrator of the award at all enterprise locations throughout the country.

637. The compulsory extension of the arbitration award for the duration of its validity (30 months) effectively introduces a ban on voluntary collective bargaining at all the enterprise's workplaces, where various trade unions represent the majority of workers. To substantiate this, the complainant organizations send a copy of an administrative decision dated 11 February 2016 whereby the labour inspectorate orders, by virtue of the extension of the arbitration award and for its entire duration, the suspension of negotiations relating to a draft collective agreement between the enterprise and another union (the Union of Workers of the Beverage Industry of Zulia State (SITIBEB-ZULIA).

638. Furthermore, the complainant organizations allege that the acts denounced form part of a government-led campaign of intimidation, harassment and defamation against the various enterprises of the group, including the employing enterprise, whose chairman and FEDECAMARAS were groundlessly accused by representatives of the authorities, and even by the President of the Republic, of plotting and waging economic warfare against the Government. The complainants provide a detailed report of the systematic campaign of harassment in the media and on social networks (including repetitive and extensive broadcasts over many channels, particularly the state television channel, which sometimes airs reports specifically targeting the corporate group, and by way of the PSUV's social networks). As part of the campaign, there have been frequent and repetitive attacks by the President of the Republic and other senior and former state officials, including the former Vice-President of the National Assembly, ministers and members of parliament, in the form of groundless accusations and insults directed at the corporate group, its chairman and FEDECAMARAS, including: labelling them "enemies of the people", "traitors to their country" and drivers of the "economic warfare and destabilization" aimed against the country (threatening them with the full weight of the law should they fail to end the warfare, calling for their leaders to be prosecuted for their links to criminal gangs hoarding basic products, and even threatening to deprive the chairman of his freedom); accusing them of "hiding foodstuffs from the people", conspiring abroad, "controlling the distribution of foodstuffs and financing the opposition", "consorting with criminal gangs" and denigrating the chairman of the corporate group as a "devil", "murderer" and "bourgeois exploiter", as being "corrupt" and "a criminal who should be in jail". According to the complainants, the President of the Republic declared that talking to the chairman of the corporate group would be tantamount to "treason" against the nation and constantly threatens the corporate group with expropriation. He also allegedly accuses the group of failing to produce basic foodstuffs and of hoarding foreign currency, when in fact it is unable to purchase imported inputs needed for production as it is denied access to official foreign currency (as a result of which a number of factories are unable to operate). The complainants allege that this campaign has been amplified through the enormous state media network, the Bolivarian Communication and Information System, which includes "Venezolana de Televisión", the channel that in October 2015, for example, dedicated 1,499 minutes of airtime to the Government's campaign of aggression. Furthermore, the complainants describe instances where public spaces and resources, including human resources, were used to hold defamatory events and activities and to disseminate information that was often spun to give the appearance of being news.

639. The complainants also denounce the following acts of aggression: (i) the violent seizure, on 18 February 2016, of five trucks belonging to the corporate group by factions shouting pro-government and anti-corporate slogans, while police officers under the command of the Government failed to intervene; (ii) the moral and economic harassment of the corporate group by government-controlled inspection and regulatory bodies, examples of which include: intimidation through compulsory labour inspections, often in the presence of law enforcement officers, in particular a series of 38 inspections in four days, a total of over

293 inspections between 1 January and 13 August 2015, inspections at the enterprise on 75 occasions between 29 April and 27 May 2016, and an excessive, unjustifiable fine equivalent to US$87,000 imposed in November 2015 for alleged failure to provide requested information on time; (iii) cases of confiscation and expropriation, and threats of expropriation made by the President of the Republic himself, of the corporate group's facilities, with at least eight cases of permanent damage to the group's property, without any observance of legal requirements and procedures or of the constitutionally guaranteed rights to defence and due process; (iv) persecution and invasion of the privacy of the group chairman, whose private conversations were recorded and who was threatened with deprivation of his freedom (this refers in particular to the TV broadcast of a conversation between the group chairman and an expatriate Venezuelan economist regarding the fragile state of the nation's economy. The then President of the National Assembly accused them both of "conspiring against the nation", and the President of the Republic renewed his accusations of economic warfare and called for a judicial investigation and proceedings against the corporate group chairman); and (v) the harassment and detention of seven managers against the backdrop of suspended production due to shortages of raw materials and imported inputs; through irregular proceedings that violated the rights to defence and due process and disregarding the fact that the suspended production was due to force majeure, the authorities ordered the reinstatement of the workers; since it was impossible to comply with this, the managers were held in contempt of court and an order was issued for the illegal detention of these enterprise representatives (even though the detention did not exceed 48 hours, as a result of the legal action taken by the corporate group, precautionary measures as an alternative to detention were imposed in three cases, requiring, for example, the managers to appear before the courts and prohibiting them from leaving the country).

640. Lastly, in their communication of 8 November 2016, the complainant organizations denounce: (i) the continuation of the campaign of defamation and stigmatization against the corporate group, its chairman and FEDECAMARAS; (ii) 19 new instances of police detention of representatives of the corporate group in retaliation for alleged contempt of court declared without due process and in violation of the right to defence. Six of these instances resulted in indefinite restrictions on freedom (for example, bans on leaving the country, court summonses and orders to remain at the courts' disposal). The complainants highlight the fact that on the basis of the excessive power granted to the labour administration by the LOTTT, including the possibility of police detention in the event of failure to comply with administrative orders, the Government has led a campaign to persecute the corporate group and, as an illustration of the authorities' animosity and cruelty, they cite the arbitrary and extrajudicial 15-day detention of a manager charged with boycotting; and (iii) persecution and harassment through the presence of armed officials of the Bolivarian National Intelligence Service in the vicinity of the corporate group's premises in Caracas and the chairman's home (the reasons for this presence remain unknown). In the light of the foregoing, the complainants consider that the harassment and intimidation of the corporate group by the Government have intensified.

B. The Government's reply

641. In a communication dated 2 September 2016, the Government sent its observations in response to the allegations of the complainant organizations; these observations are set out below.

642. As regards the allegation of the imposition of collective bargaining with a minority organization having no trade union tradition, the Government indicates that under no circumstances did it impose collective bargaining with SINTRATERRICENTROPOLAR and that it is incorrect that the aforementioned trade union represents a minority of workers at the employing entity (hereinafter, the enterprise). The Government indicates that: (i) on 24 October 2013, the competent authority, by Order No. 2013-0580, accepted the submission

of draft collective bargaining proposals by SINTRATERRICENTROPOLAR in accordance with the legal requirements; (ii) on 9 December 2013, the enterprise exercised its right of defence, claiming that SINTRATERRICENTROPOLAR was not the most representative organization; and (iii) by Order No. 2014-0056 of 11 March 2014, the competent authority, noting that the dispute regarding representativeness was limited to the state of Carabobo (since the sphere of operation of the trade union that the enterprise considered the most representative was limited to Carabobo), and since there was a collective agreement in force for workers in Carabobo, proceeded to exclude the aforementioned state from the scope of negotiations and considered that there was no point in investigating the claimed lack of representativeness.

643. As regards the complainants' allegation of damage resulting from the work stoppage instigated by SINTRATERRICENTROPOLAR with the support of the governing party and the Office of the Vice-President of the Republic, the Government indicates that the strike met the legal requirements with the establishment of minimum services, and so it had the full support of the State. The Government also indicates that it does not know whether the strike had the support of the PSUV and recalls that there is a vigorous democratic system in Venezuela which allows parties to concern themselves with social and labour issues; that the Government does not get involved in party campaigning activities; and that if any damage occurs, there are legal mechanisms for imposing penalties.

644. As regards the allegation of the imposition of compulsory arbitration by the Ministry [of Labour], the Government states that SINTRATERRICENTROPOLAR exercised its right to strike and that, even though essential public services were not affected, it is correct that, because of the territorial extension (with solidarity strikes) and the main dispute lasting more than 90 days, there was a danger to the productive employment that enables all workers to earn a decent living. The Government explains that it was because it was clearly impossible to reach agreements through "internal" mechanisms and recourse was needed to "external" mechanisms – in this case, arbitration – that the MPPPST ordered the collective dispute to be referred to arbitration through Decision No. 9273 issued on 13 July 2015, in accordance with section 492 of the LOTTT (which provides that "in the event of a strike which by its extension, duration or other serious circumstances constitutes an immediate danger to the life or safety of the whole or part of the population, even where the conciliation board has not concluded its work, the People's Minister for Labour shall, by means of a reasoned decision, bring the dispute proceedings and thereby the strike to an end and shall submit the dispute to arbitration"). As a result of the aforementioned decision, normal work operations could be resumed, thereby safeguarding the social process of labour and the human and constitutional right to conclude a collective labour agreement.

645. As regards the allegation of interference in arbitration, the Government indicates that the appointed arbitrators were not under the instructions of the MPPPST since their election depended on the parties involved in the dispute – namely, the enterprise and SINTRATERRICENTROPOLAR – and that both parties asked the MPPPST to appoint a third arbitrator. As regards the lack of impartiality denounced in the decision-making, the Government considers that this allegation is unfounded, as borne out by the fact that one of the arbitrators (nominated by the enterprise) expressed a concurring opinion since he held different views regarding certain points agreed upon by the majority.

646. As regards the allegation that the arbitration award was in violation of what was decided autonomously during the voluntary collective bargaining, the Government argues that in equity-based arbitration the arbitrators must be fundamentally guided by what they consider most equitable, acting in full freedom and being able, on the basis of equity, to decide something different from what was previously agreed by the parties, without this violating any right.

647. As regards the allegation that the extension of the award seeks to obstruct the negotiation of collective agreements until the expiry of the award, the Government indicates that Ministerial Decision No. 9551, which was issued on 30 December 2015 and extends the award, does not constitute any kind of obstacle to the conclusion of new collective labour agreements. Moreover, the Government denies that the compulsory extension modifies the bargaining model and affirms that, since only one enterprise is concerned and in order to protect the right to equal treatment that all workers enjoy, the purpose of the abovementioned extension was to protect, safeguard and implement the social process of labour.

648. As regards the allegation that the Government discriminated against the trade unions that did not follow its political guidelines, as a result of which the extension of the award was granted at the request of a trade union (SINTRACERLIV) linked to the PSUV with the intention of contriving the status of most representative organization and the sole administrator of the award at the national level to the detriment of the other unions, the Government indicates that although the request from SINTRACERLIV was taken into consideration in the extension, it was not a case of giving SINTRACERLIV preferential treatment but because the aforementioned union made use of the right of petition established in article 51 of the Constitution of the Bolivarian Republic of Venezuela. As regards the allegation that the aforementioned union has ties with the governing party (PSUV), the Government indicates that this complaint is of a political nature, since it directly opposes the Government, and does not come within the trade union sphere.

649. As regards the allegation that the extension of the award was ordered by an authority that lacked competence and was not covered by any procedures that would have guaranteed the right to defence and due process of the enterprise and the other 15 legitimately operating trade unions, the Government indicates that the Ministry of Labour has the necessary competence to issue the abovementioned administrative act under sections 499 and 500 of the LOTTT, which grant it the competence to enforce laws and regulations relating to labour and social security and to issue decisions and perform all actions within its competence necessary to achieve that end. Moreover, the Government indicates that at no time did it act outside the law, since the enterprise was aware, through the *Official Gazette* that published the arbitration award, of the request made to the Minister by the arbitration board to examine the compulsory extension of the collective agreement agreed upon by the award, so that this would be applied to all of the enterprise's offices and agencies throughout the country.

650. As regards the allegations of a government media campaign identifying FEDECAMARAS and the corporate group to which the enterprise belongs as responsible for economic warfare and accusing them of hiding products from the people and controlling the distribution of foodstuffs, the Government states that the Committee is aware that FEDECAMARAS has participated as an organization in coups d'état, illegal work stoppages and acts of sabotage against the economy of the country, and that it is regrettable that this organization has done nothing to put its past behind it; on the contrary, its actions have had more to do with political confrontation than trade union activity. To illustrate the political belligerence of the corporate group in question, the Government cites the example of the statements made by its chairman to the effect that the language and tone of the Head of State were not helping to generate confidence for investors, and emphasizes that FEDECAMARAS leaders expressed their support for revoking the mandate of the President of the Republic. The Government indicates that there is evidence of participation by the enterprise in the destabilization of the Venezuelan economy, using for political ends its market position and the financing of publicity campaigns involving attacks on the social and political process in the country.

651. In reply to the complaints regarding accusations of conspiracy and economic warfare made by the President of the Republic and through the state television channel, and regarding acts of intimidation through forced inspections, the Government indicates that the corporate group in question has a major share in food production in the country, in which they actively

participate in order to sabotage the economy. The Government emphasizes that the legal system allows inspections in enterprises and that while these practices occur on a daily basis in any enterprise, there are exceptions where they are undertaken exhaustively in the agri-food industry. As regards the allegations of use of the media, the Government indicates that it has a constitutional obligation to keep the Venezuelan people informed and consequently there are many programmes and special features on the state TV channel to denounce the economic warfare and those largely responsible for it.

652. The Government affirms that the spokespersons of the governing party exercise their democratic right of freedom of expression, recalling that the members of the National Assembly have special constitutional immunity to express opinions without any other authority being able to take legal action against them (these are prerogatives also enjoyed by opposition members). The Government emphasizes that the complex economic situation of the country is the result of falling oil prices and the destabilizing actions of powerful economic groups that hold a monopoly over food distribution and production in the country. The Government indicates that this situation has generated a climate of tension as regards the declarations and statements both from government representatives and from employers' and workers' representatives, given that full freedom of expression exists in the country.

653. The Government also denies the allegations of exclusion from social dialogue since FEDECAMARAS and the corporate group participate in the National Council for the Economy, through one of their leaders. The Government denies that its intention is to suppress free entrepreneurship or freedom of association, emphasizing that there is vigorous private entrepreneurship in the country and that the Government has policies for boosting production.

654. Lastly, the Government affirms that neither the president of FEDECAMARAS, nor the chairman of the corporate group or its workers have been harassed or persecuted by the Government, and so it rejects the accusations contained in the complaint. As regards the allegation of the detention of managers, the Government states that this is not the result of their connections with FEDECAMARAS but stems from violations of the law, often involving failure to implement reinstatement orders. The Government affirms in general terms that due process and access to defence lawyers has been guaranteed in all cases.

655. The Government recalls that Venezuelan legislation provides for the possibility of reporting alleged assaults or cases of harassment, and also cases of defamation. Moreover, the Government confirms what it has already stated on other occasions with regard to similar allegations in the context of Case No. 2254. Since it considers that there is no violation of Convention No. 87 in the acts described above, the Government requests the Committee to refrain from addressing issues that do not come within its remit and are unrelated to the aforementioned Convention, so that the latter does not continue to be used to satisfy individual political interests opposed to the Bolivarian Republic of Venezuela.

C. The Committee's conclusions

656. *The Committee notes that the complaint is concerned with the following allegations: interference in the collective bargaining of the enterprise imposing the negotiation of proposals submitted by a minority trade union which is linked to, and supports, the governing party; acts of violence obstructing access to the workplace in the context of a strike; the illegal imposition of compulsory arbitration, and also interference and irregularities in the arbitration proceedings, and the illegal extension of the arbitration award; intimidation, harassment and defamation of the enterprise, the corporate group to which it belongs, its chairman and FEDECAMARAS by the authorities, the governing party and pro-government organizations, including allegations of threats, harassment, invasion of privacy, cases of confiscation and detention of workers with management responsibilities.*

657. *The Committee notes that a number of the allegations concerning interference by the authorities in voluntary bargaining coincide with those raised in Case No. 3172 (complaint against the Government of the Bolivarian Republic of Venezuela presented by SUTRABACARABOBO.*

658. *As regards the allegation of the imposition of collective bargaining with a minority trade union, the Committee notes the Government's indications that, as regards the bargaining process instigated by this union (SINTRATERRICENTROPOLAR) which affected a number of states covered by the enterprise, the competent authority considered that: (i) the dispute over representativeness cited by the enterprise was confined to the state of Carabobo (where the union that the enterprise considered most representative was registered; as a result of that registration, the authority considered that it was not entitled to negotiate in other states); and (ii) since a collective agreement was in force for workers in Carabobo, it proceeded to exclude that state from the territorial scope of the negotiations, and consequently there was no point in investigating the claimed lack of representativeness.*

659. *The Committee also notes that the complainant organizations recall that the practice of collective bargaining (undertaken on six occasions since 1998) consisted of concluding collective agreements with the most representative trade union organization in the state of Carabobo (where the biggest beer and malt beverage production plant in the country is located), the scope of the agreements being extended by mutual consent to workers employed in the other federal states comprising the "central commercial zone" (Amazonas, Apure, Aragua, Bolívar, Cojedes, Falcón and Guárico). The Committee notes the complainants' claim, which is not challenged by the Government, that the initial request from the enterprise was simply to extend the collective agreement which it had concluded with SUTRABACARABOBO. The Committee also observes that the complainants provided membership data (a criterion recognized by section 438 of the LOTTT as a crucial element for determining the representativeness of an organization for collective bargaining) as evidence of the greater representativeness of SUTRABACARABOBO, which was excluded from the negotiations initiated by SINTRATERRICENTROPOLAR. The Committee notes in this regard that the Government does not question these data, which appear to demonstrate that SUTRABACARABOBO is more representative than SINTRATERRICENTROPOLAR (both in Carabobo and in the other states concerned).*

660. *Moreover, in examining the whole process, the Committee is bound to note, with regard to the arguments concerning territorial scope indicated by the Government as forming the basis of the decisions of the competent authorities, that: (i) the authorities initially reduced the territorial scope of bargaining, excluding the state of Carabobo (thereby justifying the non-participation of SUTRABACARABOBO – on the grounds that the union could only operate in Carabobo – and conferring the right to bargain on the organization with alleged links to the governing party (SINTRATERRICENTROPOLAR)); (ii) however, once the arbitration award had been adopted, the authorities took no account of the initially decreed territorial restriction (by virtue of which it had been deemed unnecessary to establish which was the most representative organization); instead, they imposed the extension of the award to all workers in all states (once again without objectively assessing the representativeness of the organizations that such a decision concerned, and to the benefit of an organization (SINTRACERLIV) which the complainants allege to have ties with the governing party).*

661. *Noting with regret that, despite the many occasions on which both the enterprise and the workers concerned underlined the need to verify the representativeness of the trade unions concerned through the provision of data and concrete proof of membership, the authorities took no account of the issues of representativeness raised, and referring to its conclusions in Case No. 3172 regarding the sphere of operation of SUTRABACARABOBO, the Committee requests the Government to take the necessary steps to ensure that the wishes of the majority of workers at the enterprise regarding their representation in collective*

bargaining and, accordingly, the wishes of the trade union deemed the most representative on the basis of an objective assessment of representativeness, are respected without any interference. The Committee requests the Government to keep it informed in this respect.

662. *As regards the allegations of acts of violence obstructing access to the workplace, in the context of a work stoppage instigated by SINTRATERRICENTROPOLAR, the Committee notes the Government's indication that the strike was lawful and was therefore entitled to support from the State. The Committee regrets that the Government does not provide any information on the allegations of violence and requests it to report on the action taken in response to the complaint referred to by the complainants and on any proceedings initiated or decisions taken in relation to these allegations.*

663. *As regards the allegations of unlawful recourse to compulsory arbitration, the Committee notes the Government's indication that, even though no essential services were affected, the extension and duration of the strike (over 90 days) meant that there was a danger to the productive employment that enables workers to earn a decent living, and so the order was given to refer the collective dispute to arbitration. The Committee also notes the complainants' claim that, as a result of this decision and to the detriment of voluntary collective bargaining, the outcome of the arbitration failed to honour the agreements reached by the parties during the bargaining phase (amending clauses that had already been agreed upon, reinstating clauses that had been removed, and inserting clauses that had never been part of the initial proposals for the collective agreement). In this regard, the Committee is bound to recall that state bodies should refrain from intervening to alter the content of freely concluded collective agreements [see* ***Digest of decisions and principles of the Freedom of Association Committee****, fifth (revised) edition, 2006, para. 1001]. Moreover, the Committee recalls that the right to strike is the last resource available to workers' organizations to defend their interests, since the exercise of that right has serious consequences not only for the employers but also for the workers, who bear any resulting economic repercussions; hence those consequences cannot justify unilateral action by the Government restricting not only the right to strike but also the principle of free and voluntary collective bargaining.*

664. *The Committee also notes with concern the allegations of bias against the enterprise and irregularities and interference on the part of the authorities, regarding both the decision that referred the dispute to arbitration and the arbitration proceedings themselves. As regards the allegations of lack of impartiality on the part of the arbitrators and dependence on the instructions of the Government, described in detail by the complainants, the Committee notes that the Government merely states in reply to the allegations that each of the parties nominated one arbitrator, the MPPPST nominated another, and the arbitrator designated by the enterprise expressed a concurring opinion since he held different views regarding certain points agreed upon by the majority. The Committee also regrets that the Government has not provided any detailed observations concerning the specific allegations of irregularities in the arbitration proceedings and the arbitrary determination of content in the award, noting that the implementation of those proceedings was vigorously challenged both by the enterprise and by the union which presented the complaint addressed by Case No. 3172. The Committee is bound to recall that in mediation and arbitration proceedings it is essential that all the members of the bodies entrusted with such functions should not only be strictly impartial but if the confidence of both sides, on which the successful outcome even of compulsory arbitration really depends, is to be gained and maintained, they should also appear to be impartial both to the enterprises and to the workers concerned [see* ***Digest****, op. cit., para. 598].*

665. *As regards the allegation of the illegal extension of the arbitration award, the Committee, while noting the Government's claim that the aim of the extension was to ensure equal treatment for workers, considers that the extension of an agreement adopted in a context*

where the status of the instigating organization as more representative and the legitimacy of the arbitration that gave rise to the award and the related proceedings were contested, should have been submitted to tripartite consultation, further to objective determination of the representativeness of the workers' organizations concerned. The Committee notes with concern that the extension of the award was imposed and that it is alleged – and not denied by the Government – that there was no discussion with the enterprise or the trade unions concerned, nor even an assessment of the representativeness of the unions affected (where it is also alleged and not denied by the Government that the union requesting the extension (SINTRACERLIV) is less representative, for example, than the union excluded from the initial proceedings (SUTRABACARABOBO)). The Committee further notes with concern that, according to the information provided and despite the Government's affirmation that the decision extending the award in no way impedes the conclusion of new collective agreements, the extension appears to have prevented the various representative trade unions concerned from subsequently exercising the right to collective bargaining (as illustrated by the abovementioned order of the labour inspectorate to suspend negotiations relating to a draft collective agreement during the period of validity of the extended arbitration award).

666. *Expressing its concern at the allegations of irregularities in the proceedings in question, and also at the restricting effect of the contested administrative decisions on the exercise of the right to collective bargaining, the Committee requests the Government to take the necessary steps to ensure full respect for voluntary collective bargaining in accordance with the principles of freedom of association and collective bargaining, in particular ensuring that there is no recourse to compulsory arbitration in non-essential services, that when arbitration is appropriate its proceedings are impartial and the parties have confidence in them, and that the enterprise can engage in free and voluntary negotiation with the representative workers' organizations. The Committee requests the Government to keep it informed in this respect.*

667. *As regards the allegations that the provisions of the LOTTT enable the authorities to interfere in collective bargaining and in arbitration proceedings, the Committee notes with regret that the Government has not responded to these allegations. The Committee recalls, as do the complainants, that the CEACR has been examining these issues and has asked the Government: (i) to amend section 449 of the LOTTT (which provides that discussions of collective bargaining proposals shall be held in the presence of a labour administration official, who shall chair the meetings) to bring it into conformity with the principles of free and voluntary negotiation and the autonomy of the parties; and (ii) with regard to section 493 of the LOTTT (concerning the appointment of the arbitration board), to take steps, in consultation with the most representative workers' and employers' organizations, to ensure that the parties have confidence in the composition of the arbitration board. In view of the fact that the Bolivarian Republic of Venezuela has ratified Convention No. 98, the Committee is referring the legislative aspects of this case to the CEACR and requests the Government to send the latter any additional information that is relevant in this respect.*

668. *As regards the allegations of interference by the Government in favouring a minority trade union alleged to have ties with the governing party, the Committee notes the Government's indication that it does not know whether the PSUV supported the strike; that since the strike was declared lawful it had the support of the State; that parties are allowed to concern themselves with social and labour issues; and that the Government does not get involved in party campaigning activities. The Committee also notes that the Government neither denies nor comments on the complainants' specific allegations regarding various instances of interference through expressions of support for SINTRATERRICENTROPOLAR, often directed against the enterprise, both from the governing party (PSUV) (for example, through the use of its offices and communication channels) and from the public authorities (public officials such as a minister, a mayor and the ombudsman). The Committee is bound to stress the importance of non-interference in activities of trade unions or employers' organizations*

either by the authorities or by the government political party and refers to its conclusions in Case No. 3172. Expressing its deep concern at the numerous, detailed and serious allegations of lack of impartiality and interference by the governing party and the public authorities in the labour dispute in question, the Committee requests the Government to take the necessary steps to avoid interference of any kind in industrial relations between the enterprise and the workers' organizations operating there. The Committee requests the Government to keep it informed in this respect.

669. *Lastly, the Committee notes with deep concern the serious and detailed allegations of intimidation, harassment and defamation by the authorities, the governing party and pro-government organizations against the enterprise, its corporate group and the group chairman, and against the employers' organization to which the corporate group is affiliated (FEDECAMARAS). These include allegations of violence, harassment, invasion of privacy, cases of confiscation and detention of workers with management responsibilities. While recognizing the importance in terms of freedom of association of certain elements referred to by the Government – namely, freedom of expression and the role of labour inspection as recognized by international labour standards – the Committee considers that the aforementioned remarks do not constitute a satisfactory response to the numerous allegations of harassment and intimidation reported by the complainants. Moreover, the Committee recalls that the Government has a duty to ensure that the exercise of freedom of expression by FEDECAMARAS and its affiliated organizations is respected and cannot be used as a pretext for restricting the participation of that organization and its members in social dialogue. The Committee notes with regret that most of the Government's reply focuses on reiterating, and thus confirming, the accusations denounced by the complainants (for example, the accusations of economic warfare or sabotage of the economy and other actions of incitement to hatred against the enterprise and its management, and also against FEDECAMARAS, by the highest public authorities). The Committee recalls that it has repeatedly expressed deep concern at the many serious forms of stigmatization and intimidation of FEDECAMARAS, its affiliated organizations, leaders and affiliated companies, by the authorities or by groups or organizations with links to the governing party, and also at other connected allegations, such as that of exclusion from social dialogue, in the context of Case No. 2254, to whose conclusions and recommendations the Committee refers. The Committee further notes that these allegations are also the subject of a complaint made under article 26 of the ILO Constitution against the Bolivarian Republic of Venezuela, which is being examined by the Governing Body.*

670. *As regards the allegations of cases of detention and restrictions on the freedom of workers with management responsibilities in the corporate group to which the enterprise belongs, in violation of their right of defence, the Committee notes the Government's general statement, without additional detail, that the cases of detention do not relate to employer-organization activities but stem from non-compliance with judicial orders and that due process was ensured. The Committee further notes that the Government also denies any act of harassment, persecution or defamation and asserts that the legal system has mechanisms for addressing such accusations. In view of the divergent accusations of the complainants (who claim that these actions are connected with a campaign of harassment conducted by the Government against the corporate group and the employers' organization FEDECAMARAS) and the lack of precise information from the Government, the Committee recalls that the arrest of trade unionists and leaders of employers' organizations may create an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities [see **Digest**, op. cit., para. 67], and that in the cases concerning the arrest, detention or conviction of an employers' leader, the Committee considers that the person concerned should be entitled to be presumed innocent and that it is for the Government to demonstrate that the measures which it has taken do not stem from the employer-organization activities of the enterprise to which these measures apply. Noting the Government's indication that the alleged cases of detention are based on contempt of*

judicial orders and are unrelated to the activities of employers' organizations, the Committee invites the complainants to provide the Government and the Committee with any additional information at their disposal, especially relating to any complaint or legal action brought, and requests the Government to report in detail on the outcome of any administrative or judicial proceedings instituted in this respect, particularly with regard to the alleged cases of deprivation of freedom.

671. *As regards the allegations of seizure of the corporate group's property by violent factions, and also cases of confiscation and expropriation (or threats of expropriation) without satisfying the legal requirements and procedures or the constitutional guarantees of the right to defence and due process, the Committee notes with regret that the Government has not provided any specific observations in this respect. The Committee requests the Government to send detailed observations regarding these allegations and accordingly invites the complainants to provide any additional information at their disposal, particularly regarding any complaint or other legal action brought in this respect.*

672. *Furthermore, the Committee notes with concern the complainants' additional allegations of 8 November 2016 (including reports of the continuation of the campaign of defamation and stigmatization against the corporate group to which the enterprise belongs, its chairman and FEDECAMARAS; 19 new cases in which managers from the corporate group were detained by the police for alleged contempt of court, without any guarantee of due process and with the imposition of restrictions on freedom in six cases; and persecution and harassment through the presence of armed officials of the Bolivarian National Intelligence Service in the vicinity of the corporate group's facilities in Caracas and the group chairman's home). The Committee requests the Government to send its observations on this matter.*

673. *Expressing its concern at the numerous allegations of threats, harassment and intimidation, the Committee is bound to recall the principle that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see* ***Digest****, op. cit., para. 44]. The Committee requests the Government to take strong measures both to ensure that acts and statements of this kind are avoided and to ensure that a climate of constructive dialogue for promoting harmonious labour relations is restored.*

The Committee's recommendations

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

(a) The Committee requests the Government to take the necessary steps to ensure, in accordance with the principles of freedom of association and collective bargaining: (i) that voluntary collective bargaining is fully respected, ensuring that, when arbitration is appropriate, its proceedings are impartial and the parties have confidence in them, and that the enterprise can engage in free and voluntary negotiation with the representative workers' organizations; and (ii) that the will of the majority of the workers at the enterprise regarding their representation in collective bargaining and, accordingly, the will of the trade union deemed the most representative on the basis of an objective assessment of representativeness, are respected. The Committee requests the Government to keep it informed in this respect.

(b) Expressing its deep concern at the seriousness of the allegations made, the Committee requests the Government to take the necessary steps to avoid interference of any kind in industrial relations between the enterprise and the workers' organizations operating there. The Committee requests the Government to keep it informed in this respect.

(c) The Committee requests the Government to keep it informed with regard to any proceedings initiated or decisions taken in relation to the allegations of acts of violence obstructing access to the workplace in the context of a strike, including the action taken in response to the complaint referred to by the complainant organizations.

(d) In view of the fact that the Bolivarian Republic of Venezuela has ratified Convention No. 98, the Committee is referring the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and requests the Government to send the CEACR any additional information of relevance to the allegations that certain provisions of the Basic Act on Labour and Men and Women Workers (LOTTT) (sections 449 and 493) enable interference by the authorities in collective bargaining and in the composition of arbitration boards.

(e) The Committee requests the Government to send detailed observations concerning the allegations of seizure of the corporate group's property by violent factions and also concerning cases of confiscation and expropriation (or threats of expropriation), and accordingly invites the complainant organizations to provide any additional information at their disposal, particularly regarding any complaint or other legal action brought in this respect; the Committee also invites the complainants to provide the Government and the Committee with any additional information at their disposal concerning the allegations of cases of detention and restrictions on the freedom of workers with management responsibilities in the corporate group to which the enterprise belongs, especially relating to any complaint or legal action brought, and requests the Government to report in detail on the outcome of any administrative or judicial proceedings instituted in this respect, particularly with regard to the alleged cases of deprivation of freedom.

(f) The Committee requests the Government to send its observations concerning the latest allegations made by the complainant organizations, dated 8 November 2016 (reported continuation of the campaign of defamation and stigmatization; 19 new cases in which managers from the corporate group were detained by the police; and persecution and harassment through the presence of armed officials of the Bolivarian National Intelligence Service in the vicinity of the corporate group's facilities in Caracas and the group chairman's home).

(g) The Committee requests the Government to take firm measures both to ensure that any kind of statement, threat, harassment or intimidation against the corporate group to which the enterprise belongs, its chairman and the FEDECAMARAS is avoided, and to ensure that a climate of constructive dialogue for promoting harmonious labour relations is restored.

Geneva, 17 March 2017

(Signed) Professor Paul van der Heijden
Chairperson

Points for decision:

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Paragraph 112
Paragraph 124
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Paragraph 172
Paragraph 219
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